



**Mutiva v Technical University of Kenya (Cause E625 of 2024)  
[2025] KEELRC 1193 (KLR) (25 April 2025) (Ruling)**

Neutral citation: [2025] KEELRC 1193 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E625 OF 2024**

**AK NZEI, J  
APRIL 25, 2025**

**BETWEEN**

**BANDE LEONARD MUTIVA ..... CLAIMANT**

**AND**

**TECHNICAL UNIVERSITY OF KENYA ..... RESPONDENT**

**RULING**

1. The Claimant herein sued the Respondent vide a Memorandum of Claim dated 7<sup>th</sup> August, 2024 and set out a two fold claim against the Respondent. The Claimant pleaded:-
  - a. that he was engaged by the Respondent University as a part-time teaching staff for the academic years 2017/2018 and 2018/2019; and on contractual basis from 2018 to 2020. That the contract was renewed vide a contract dated 10<sup>th</sup> September, 2020 for a period of two years (until 5<sup>th</sup> September, 2022).
  - b. that for the first period, the Claimant rendered teaching services, for which he was not remunerated, despite several demands.
  - c. that vide a letter dated 3<sup>rd</sup> October, 2023, written in response to the Claimant's demand through a letter by the Commission On Administrative Justice (CAJ) dated 20<sup>th</sup> September, 2023, the Respondent admitted owing the Claimant Kshs 535,609.82 (as the gross of Kshs 765,156.88 was inclusive of tax).
  - d. that despite having committed to pay, the Respondent, failed to fulfil its commitment, and refused and/or neglected to pay the Claimant for work done in academic years 2017/2018 and 2018/2019.
  - e. that during the second period when the Claimant was engaged on contractual basis, his basic salary was Kshs 98,000/=.



- f. that upon termination of the Claimant’s contract in 2022 (by effluxion of time), the Claimant was entitled to a gratuity payment of 30% of his basic pay as stipulated in the terms of service for academic staff (Grade XI – XV).
  - g. that the Respondent ignored and/or failed to pay the Claimant his gratuity for the four years he worked, in the sum of Kshs 1,411,200/=.
  - h. that the Claimant’s claim against the Respondent is for salary arrears (amounting to) Kshs 535,609.82 and unpaid gratuity for the contracted period (amounting) to Kshs 1,411,609.82.
  - i. that the Respondent’s actions (amounted) to violation of the Claimant’s constitutional right to fair labour practices under Article 41 of the Constitution of Kenya 2010.
2. The Claimant seeks the following reliefs in the suit herein:-
- a. A declaration that the Respondent’s actions amounted to unfair labour practices and a violation of the Claimant’s constitutional right to fair remuneration under Article 41(2)(a) of the Constitution of Kenya.
  - b. A declaration that the Respondent’s failure to pay the Claimant’s dues has violated, infringed or threatened to violate and/or infringe on the Claimant’s right to life, and human dignity as enshrined in Articles 26 and 28 of the Constitution of Kenya 2010.
  - c. An order compelling the Respondent to pay the Claimant a sum of Kshs 535,609.82 being the admitted unpaid salary for part-time teaching services rendered during 2017/2018 and 2018/2019 academic years.
  - d. An order compelling the Respondent to pay the Claimant Kshs 1,411,200/= being gratuity payment due upon termination of the Claimant’s contract in 2022, as stipulated in the terms of service for academic staff (Grade XI – XV).
  - e. General damages for violation of the Claimant’s constitutional rights.
  - f. Costs of the claim and interest.
  - g. Any other relief that the Court may deem just and fit to grant.
3. Documents filed alongside the Claimant’s Memorandum of Claim include a letter by The Commission On Administrative Justice to the Respondent dated 12<sup>th</sup> September, 2023 addressing non-payment by the Respondent for services rendered by the Claimant during 2016/2017 and 2017/2018 academic years. Also filed alongside the Claimant’s memorandum of claim is the Respondent’s letter to The Commission on Administrative Justice dated 3<sup>rd</sup> October, 2023, stating as follows:-

“RE: Complain By Leonard Mutiva Bande Against The Technical University Of Kenya

We refer to the above captioned matter and write further to your letter to us dated 12<sup>th</sup> September, 2023 and our letter to you dated 20<sup>th</sup> September, 2023.

Please note that we have established from our records that the Outstanding Net Balance owed to Mr. Leonard Mutiva Bande is Kshs 535,609.82 since his Gross payment is Kshs 765,165.88 inclusive of tax. However, we will request the forbearance of Mr. Bande so that his payment is made in accordance to the current payment schedule.



Kindly revert to the undersigned on any further clarification that you may require on the matter herein.

(Signed)

Prof. Dr. Ing. Benedict M. Mutua, PhD.

Rer. Nat.

VICE-CHANCELLOR”

4. The Respondent entered appearance on 16<sup>th</sup> September, 2024, and is not shown to have filed Response to the Claimant’s Memorandum of Claim.
5. On 24<sup>th</sup> September, 2024, the Claimant filed a Notice of Motion dated 23<sup>rd</sup> September, 2024 seeking the following Orders:-
  - a. That Judgment be entered against the Respondent for the sum of Kshs 535,609.82 being the admitted amount of unpaid salary arrears for part-time teaching services rendered by the Claimant during 2017/2018 and 2018/2019 academic years.
  - b. That the Respondent be ordered to pay interest on the said sum of Kshs 535,609.82 at Court rates from the date of admission until payment in full.
  - c. That costs of the application be borne by the Respondent.
6. The application, which is now before me for determination, sets out on its face general grounds on which it is anchored, and is based on the Claimant/Applicant’s supporting affidavit sworn on 23<sup>rd</sup> September, 2024. Annexed to the said affidavit is a copy of the Respondent’s letter to The Commission On Administrative Justice dated 3<sup>rd</sup> October, 2025 and reproduced at paragraph 3 of this Ruling.
7. The Respondent has opposed the application vide a replying affidavit of Ruth Kirwa, the Respondent’s Legal Officer, sworn on 19<sup>th</sup> November, 2024. It is deponed in the said affidavit:-
  - a. that issues raised in the application are contested, and can only be addressed at a full trial.
  - b. that the application herein was filed after the Respondent entered appearance, but before it had filed a defence.
  - c. that after pleadings are filed, parties normally fix a matter for pre-trial conference where parties ascertain the manner in which documentary evidence is to be dealt with. That the document attached to the (supporting) affidavit and which was not addressed to the Claimant, is yet to be admitted in evidence.
  - d. that communication made by parties in negotiations in an effort to settle the matter amicably is privileged, and is not admissible as evidence.
  - e. that the document annexed to the (supporting) affidavit was made on without prejudice basis.
  - f. that the application is brought under provisions of the *Civil Procedure Act* and the Civil Procedure Rules 2010, which has limited application in this Court.
  - g. that the Claimant/Applicant will not suffer any prejudice if the matter goes to full trial.
8. On 4<sup>th</sup> December, 2024, Counsel for the Respondent informed the Court that he intended to file a Preliminary Objection alongside the Respondent’s written submissions on the Claimant’s application herein, which the Court allowed him to file. The filed Notice of Preliminary Objection is dated 24<sup>th</sup>



January, 2025. The Respondent objects to both the suit herein and the Claimant's Notice of Motion dated 23<sup>rd</sup> September, 2024 on the following grounds:-

- a. That in so far as the claim relates to causes of action that allegedly accrued between 2017 and 2020, the claim is time-barred by virtue of the provisions of Section 90 of the *Employment Act* 2007.
  - b. That the Court lacks Jurisdiction to hear and determine the claim herein.
9. I will determine the Preliminary Objection first.
  10. As already stated in this Ruling, the suit herein was filed in Court on 8<sup>th</sup> August, 2024, and the Claimant pleads that he rendered teaching services to the Respondent during the 2017/2018 and 2018/2019 academic years, and that his net earnings for this period, amounting to Kshs 535,609.82, were not paid to him by the Respondent. The Claimant claims the said sum. This claim would ordinarily have been statute-barred by dint of Section 89 (formerly Section 90) of the *Employment Act* had the Respondent not made the written admission of liability thereon contained in its open letter dated 3<sup>rd</sup> October, 2023, and promised to pay the said sum. It matters not that the said letter was not addressed to the Claimant. In my view, what matters is the fact that the said letter was written in response to a letter written on behalf of the Claimant seeking payment of salary arrears making up the said sum.
  11. The Respondent's said open letter dated 3<sup>rd</sup> October, 2023 admitting the unpaid salary arrears and agreeing to pay gave the otherwise statute-barred claim a new lease of life. The suit herein was filed less than a year from the date of the said letter; and at paragraph 5 of his Memorandum of Claim, the Claimant pleads admission by the Respondent of the said claimed sum of Kshs 535,609.82 vide a letter dated 3<sup>rd</sup> October, 2023.
  12. The Respondent has not disputed the validity and/or authenticity of its said letter of admission, despite having filed herein a replying affidavit in opposition of the Claimant's application. I make a finding that the Claimant's claim for Kshs 535,609.82 is not statute-barred, in view of the foregoing.
  13. According to the Claimant's pleadings (Memorandum of Claim), the claim for (service) gratuity covers the period between 2017 and 2022 (paragraph 3 of the Memorandum of Claim). The validity of that claim and the issue of whether the whole claim or part thereof is statute-barred can only be determined upon taking evidence. One of the contracts between the Claimant and the Respondent is shown (pleaded) to have covered the period from 5<sup>th</sup> September, 2020 to 5<sup>th</sup> September, 2022. Any employment claim stemming from such a contract cannot be said to be statute-barred, in view of Section 89 of the *Employment Act*, hence the need for taking of evidence at trial on the claim. Further, the issue of whether the Claimant's constitutional rights were violated by the Respondent can only be determined upon trial.
  14. I find no merit in the Respondent's Preliminary Objection dated 24<sup>th</sup> January, 2025, and the same is hereby dismissed with no order as to costs.
  15. Turning back to the Claimant's Notice of Motion dated 23<sup>rd</sup> September, 2024, it is deponed in the replying affidavit sworn in opposition of the application that the Respondent's letter (of admission) dated 3<sup>rd</sup> October, 2023) has not been properly produced in Court/placed before the Court as the matter is yet to go for pre-trial conference in accordance with the Court's Rules of Procedure.



16. The Respondent referred to the Court of Appeal's decision in the case of *Kenneth Nyaga Mwige v Austin Kaguta & 2 others* [2015] eKLR where the Court stated:-

“18. . . . How does a document become part of the evidence for the case? Any document filed and/or marked for identification by either party, passes through three stages before it is held proved. First, when the document is filed, the document though on file does not become part of the Judicial record. Second, when the documents are tendered/produced in evidence as an exhibit by either party and the Court admits the document in evidence, it becomes part of the Judicial record of the case and constitutes evidence; mere admission of a document in evidence does not amount to its proof; admission of a document in evidence should not be confused with proof of the document. Third, the document becomes proved, not proved or disproved when the court applies its judicial mind to determine the relevance and veracity of the contents - this is at the final hearing of the case. When the Court is called upon to examine the admissibility of a document, it concentrates only on the document. When called upon to form judicial opinion whether a document has been proved or disproved or not proved, the Court would look not at the document alone but it would take into consideration all facts and evidence on record.”

17. It is to be noted that the foregoing scenario applies in production of evidential documents in a trial; not in interlocutory proceedings as the case is in the instant case.

18. Documents exhibited in support of interlocutory applications, for whatever orders, are conventionally annexed to sworn supporting affidavits wherein they are referred to. Affidavits are themselves sworn evidence, and any party disputing a fact deponed to in an affidavit must always swear an affidavit in rebuttal, stating the reasons for disputing any such fact or annexed document. That is the essence of filing of replying affidavits in interlocutory proceedings.

19. In the present case, the Respondent did not deny having written its letter dated 3<sup>rd</sup> October, 2023, or having admitted liability over the Claimant/Applicant's salary arrears and having agreed/committed to pay. The letter is an open one. It was not written under cover of the principle of “without prejudice”. There being no dispute over the authorship and contents of the said letter, there is no issue to go for trial regarding the said letter and the sum admitted therein.

20. Can this Court entertain an application for entry of Judgment on admission before trial?

Rule 70(5) of the *Employment and Labour Relations Court (Procedure) Rules 2024* provides as follows:-

“(5) Where a suit involves a liquidated amount that is claimed and specified at the time of filing a statement of claim and the court orders that the amount claimed or part of the amount be paid to the Claimant, it may, in addition to that order, direct that interest be paid on the liquidated amount awarded at Court rates.” (Emphasis added).

21. In view of all the foregoing, and having considered written submissions filed on behalf of both parties herein, I find merit in the Claimant/Applicant's Notice of Motion dated 23<sup>rd</sup> September, 2024, and the same is allowed in the following terms:-

- a. Judgment is hereby entered for the Claimant against the Respondent in the admitted sum of Kshs 535,609.82 being the Claimant's net salary arrears.
- b. The Claimant is awarded interest on the said net salary arrears, to be computed at Court rates from the date of filing the suit herein.



- c. The suit herein shall be set down for hearing/trial regarding the other claims set out in the Claimant's Memorandum of Claim.
- d. Costs of the application shall be in the main suit.

22. Orders accordingly.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 25<sup>TH</sup> DAY OF APRIL 2025**

**AGNES KITIKU NZEI**

**JUDGE**

Order

This Ruling has been delivered via Microsoft Teams Online Platform. A signed copy will be availed to each party upon payment of the applicable Court fees.

**AGNES KITIKU NZEI**

**JUDGE**

Appearance:

Mr. Kaaya for the Claimant/Applicant

Mr. Mwangi Mugo for the Respondent

