



**Prichani v Masinde Muliro University of Science & Technology (Cause E008 of 2024) [2025] KEELRC 1119 (KLR) (4 April 2025) (Judgment)**

Neutral citation: [2025] KEELRC 1119 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT BUNGOMA  
CAUSE E008 OF 2024  
DN NDERITU, J  
APRIL 4, 2025**

**BETWEEN**

**JOSECK SIMIYU PRICHANI ..... CLAIMANT**

**AND**

**MASINDE MULIRO UNIVERSITY OF SCIENCE &  
TECHNOLOGY ..... RESPONDENT**

**JUDGMENT**

**I. Introduction.**

1. Through BS Advocates LLP, the claimant commenced this cause by way of a memorandum of claim dated 17<sup>th</sup> July, 2024 seeking for the following reliefs –

- a. Immediate confirmation and elevation of the claimant to the position of lecturer on permanent and pensionable terms with effect from 1/8/11 when the claimant completed six months of continuous employment with the respondent as per law required;
- b. Payment to the claimant by the respondent of the following emoluments that the respondent illegally denied the claimant through the claimant’s period of .....? engagement.....Kshs27,919,962/=

Broken Down As Follows –

- i. Unpaid salaries (2.8.2011 to 30.11.2024).....Kshs16,074,624/=
- ii. House allowance.....Kshs8,719,416/=
- iii. Commuter allowance.....Kshs1,439,750/=
- iv. Publishing allowance.....Kshs55,000/=



- v. Dental treatment.....Kshs176,000/=
  - vi. Book allowance.....Kshs107,000/=
  - vii. Annual leave.....Kshs154,252/=
  - viii. Acting allowance.....Kshs17,920/=
  - ix. Teaching practice allowance.....Kshs1,176,000/=
- c. Claimant further prays for this Honourable court to declare that the part-time lecturer’s policy in public universities is discriminatory, exploitative, illegal, and unconstitutional, and therefore null and void, and to order amendment of aspects of the Commission for University Education (university standards and guidelines,2014) and in particular ROG/STD/17 in so far as it is discriminatory.
- d. Costs and interest.
2. As it is the procedure, the memorandum of claim was accompanied with a verifying affidavit, a list of witnesses, a witness statement by the claimant, a list of documents, and copies of the listed documents.
  3. The respondent entered appearance through the Attorney General (AG) and filed a response to the claim dated 24<sup>th</sup> September, 2024 seeking for the dismissal of the claim with costs for lack of merits.
  4. On 21<sup>st</sup> November, 2024 the respondent filed a written statement by Benard Ooko (RW1) who later testified in support of its case during the hearing, a list of documents, and copies of the listed documents.
  5. The claimant later filed a reply to the respondent’s filed response dated 22<sup>nd</sup> November,2024.
  6. The claimant’s case came up in court for virtual hearing on 25<sup>th</sup> November, 2024 when the claimant (CW1) testified and closed his case.
  7. The defence was heard on 25<sup>th</sup> November, 2024 when RW1 testified and the respondent’s case was closed.
  8. Counsel for both parties addressed and summed up their respective client’s case by way of written submissions. Counsel for the claimant, Mr. Wasilwa, filed his submissions on 9<sup>th</sup> January, 2025 while counsel for the respondent, Mr. Tarus, filed his submissions on 10<sup>th</sup> December, 2024. The claimant’s counsel on 3<sup>rd</sup> March, 2025 filed a correction statement dated 17<sup>th</sup> February, 2025 and a reply to the respondent’s submissions dated 11<sup>th</sup> February, 2025.

## II. The Claimant’s Case

9. The claimant’s case is expressed in the memorandum of claim, the reply to the respondent’s response, the oral and documentary evidence of the claimant, and the written submissions by his counsel.
10. In his statement of claim, the claimant stated that he is an employee of the respondent and that he was engaged on 2<sup>nd</sup> February, 2011 as an Assistant lecturer in the department of mathematics and physics. He pleaded that he was initially engaged on a one-year renewable contract and was earning a monthly salary of Kshs77,158/=. He pleaded that the respondent has continuously renewed his contract and his current contract was issued on 5<sup>th</sup> December, 2023.
11. It is pleaded that pursuant to the *Employment Act* (the Act) and the collective bargaining agreement (CBA) between the respondent and the University Academic Staff Union (UASU), the claimant was



- entitled to promotion as a lecturer on permanent and pensionable basis upon serving the respondent for six continuous months and upon meeting requisite authorship and publication which the claimant has already achieved.
12. It is further pleaded that the respondent has failed to confirm the claimant and has continued to enslave the claimant on temporary employment for 14 years. It is pleaded that the contracts issued to the claimant were irregularly signed long after the claimant had rendered the services.
  13. The claimant pleaded that the respondent unequally treated him by subjecting him to unfair and discriminatory treatment as against his peers with similar qualifications who were promoted and given favourable and befitting terms.
  14. The claimant seeks for his immediate confirmation to the position of a lecturer on permanent and pensionable terms effective from 1<sup>st</sup> August, 2011 when he completed six months of continuous employment with the respondent. The claimant further seeks for accrued unpaid salaries for the period, arrears in house allowance, commuter allowance, publishing allowance, dental treatment, book allowance, annual leave, acting allowance, and teaching practice allowance.
  15. The claimant further prays for a declaration that part-time lecturers' policy in public universities is discriminatory, exploitative, illegal, and unconstitutional, and for an order for amendment of the Commission for University Education (University Standard and Guidelines), 2014 particularly provision PROG/STD/17.
  16. In his testimony in court, the claimant adopted his filed witness statement on record as his evidence-in-chief. He stated that he was an employee of the respondent from 2011. He testified that he was first engaged as an assistant lecturer, later as a tutorial fellow, and lastly as a lecturer teaching applied mathematics at the Webuye campus of the respondent.
  17. He states that he was a contracted employee in 2015, but before then, he had been engaged on a part-time basis. He stated that in 2023, his engagement was reverted to part-time without any benefits. He stated that he is entitled to salary arrears as a permanent employee until he retires, alongside allowances and remittances of pension and statutory deductions to National Social Security Fund (NSSF) and National Hospital Insurance Fund (NHIF).
  18. In cross-examination, he conceded that the policy he referred to in his claim was neither attached to the claim nor is the Commission on University Education a party to the cause.
  19. He further conceded that he currently has no contract but is working as a part-timer, and he admitted that as a part-timer he is not entitled to allowances.
  20. However, he stated that he is a member of UASU, and that he had a copy of filed CBA. He stated that based on the CBA he was entitled to automatic confirmation into permanent and pensionable terms upon completion of the probation period.
  21. He further stated that he holds a master's degree in applied mathematics and is now a PhD candidate awaiting to defend his thesis. He stated that he has worked for the respondent as a part-timer and has always been paid at the end of the semester.

### **III. The Respondent's Case**

22. The respondent's case is contained in the response to the claim, the oral and documentary evidence adduced through RW1 (an assistant registrar) and the written submissions by its counsel.



23. In the response to the claim, it was pleaded that the claimant was neither entitled to be confirmed as a permanent and pensionable employee nor entitled to the alleged unpaid salary appears set out in the memorandum claim.
24. It was pleaded that the claims by the claimant are statute-barred under Section 90 of the Act (Now Section 89 of the Act) as his claims date back to 2011, yet this cause was filed in 2024, 13 years later.
25. It is further pleaded that the respondent is not the body mandated with the policy formulation and thus the claim as filed cannot stand against the respondent.
26. RW1 in his testimony in court stated that the claimant was required to meet some conditions to be confirmed but he is yet to present a progress report. Further, he testified that part-timers are engaged on need-basis for each semester. He stated that the claimant was once on a one-year contract which was not renewed. He stated that the claimant has not attained a PhD as required to be confirmed as a lecturer and a part-timer he is not entitled to the allowances claimed.
27. In cross-examination, RW1 stated that the respondent is partly funded by the National Government and based on the current budget the university cannot engage permanent staff. He stated that the claimant has never been on probation but was always engaged on part-time basis and thus he could not be confirmed on a permanent basis.

#### **IV.Submissions**

28. The claimant's counsel submitted globally to the effect that the claimant has worked for the respondent continuously from 2011 to date. It is further submitted that under Sections 5, 35(1), 27, 37 (1) & 41 of the Act, the claimant's employment converted from casual employment to term employment. It is submitted that the respondent has discriminated the claimant, violating his rights to fair labour practices, by promoting his peers to permanent and pensionable terms and leaving him out.
29. Citing *Esther Njeri Maina v Kenyatta University* [2021] KEELRC 1457 (KLR) & *Samuel Ochieng' Ogeda v Doshi Enterprises Limited* [2017] KEELRC 1067 (KLR), it is submitted that the respondent was obligated to confirm the claimant to permanent and pensionable terms upon expiry of three months from the date of his first appointment on 2<sup>nd</sup> February, 2011. It is submitted that despite the claimant filing a complaint on this issue the respondent has failed to respond and or act.
30. It is submitted that the longevity of engagement of the claimant for 14 years is a testimony that his services are necessary for the respondent's academic programs and thus he is entitled to conversion of his engagement on permanent and pensionable terms.
31. On the other hand, counsel for the respondent identified the following issue for determination – Whether the claimant's claim is statute time-barred; Whether the claimant is entitled to be confirmed as permanent and pensionable; and, Whether the claimant is entitled to the unpaid /withheld salaries and allowances.
32. On the first issue, it is submitted that the cause by the claimant is statute-barred under the provisions of Section 90 (now Section 89) of the Act as the claimant's claim for underpayment and unpaid allowances date back to 2011 yet the cause was filed in 2024, about 13 years late. It is submitted that the claimant has not been in continuous employment of the respondent as he was offered part-time employment limited to each semester. It is submitted that the claimant is not a regular employee.
33. On the second issue, it is submitted that no legal justification has been advanced as to why the claimant should be confirmed to permanent and pensionable terms, considering that the letter dated 30<sup>th</sup> March,



2015 indicated that he could be converted if his performance was satisfactory and it made progress in his doctoral (PhD) studies statement that was neither mandatory nor obligatory to the respondent.

34. It is submitted that as of the end of 1<sup>st</sup> April, 2016 the claimant had not met the conditions for the said conversion. It is further submitted that the claimant has not adduced evidence of the alleged CBA to the effect that his employment as an external part-timer lecturer was convertible into permanent and pensionable terms.
35. It is submitted that the claimant's engagement on a part-time basis is pegged on the circular by the Commission for Education (Universities Standards and Guidelines) 2014, which has not been quashed by any court.
36. It is submitted that the claimant's employment is not subject to the application of Sections 2 and 37 of the Act since his engagement was for a fixed term limited to semesters and thus not convertible to permanent and pensionable terms.
37. On the third issue, it is submitted that the claimant, as a part-time employee, was not entitled to house allowance, commute allowance, publishing allowance, dental treatment, book allowance, annual allowance, acting allowance, and teaching practice allowance, as there is no circular entitling him to the same.
38. It is submitted that the CBA alluded to by the claimant relates only to the years from 2017 to 2021 and in any event, no evidence was adduced that the claimant is a member of UASU as to entitle him to the terms of the CBA.

#### **V. Issues For Determination**

39. The court has carefully and dutifully gone through the pleadings filed, the oral and documentary evidence tendered from both sides, and the written submissions by counsel for both parties. The following issues commend themselves to the court for determination –
  - a. Whether the cause by the claimant is statute-barred.
  - b. What is the nature of the claimant's employment with the respondent engagement?
  - c. Whether the claimant is entitled to the reliefs sought.
  - d. Who should bear the costs of the cause?

#### **VI. Limitation Of Action**

40. The respondent stated that the claimant's cause of action for underpayment and unpaid allowances arose in 2011 yet he filed his claim in 2024 and hence his claim is statute-barred under Section 89 of the Act. The claimant's case is that he has worked for the respondent since 2011 and his current contract shall expire in December, 2025. He states that his employment has been continuous with breaks after each semester.
41. To determine whether the claimant's claim is statute-barred the court must determine the nature of the employment relationship between the parties. The claimant admitted that he had been engaged by the respondent on various part-time contracts for a continuous period from 2011 to date, making him a regular employee. The respondent, on the other hand, submits that the claimant's engagement was as a part-time lecturer, and any other engagement was contractual for a fixed term.
42. The claimant has had various contracts with the respondent as follows –



No.	Type of engagement	Contract date/Year	Duration
Part-time -Assistant Lecturer	2 <sup>nd</sup> February 2011	2 <sup>nd</sup> semester 2020-2011	
Part Time assistant Lecturer	17 <sup>th</sup> October, 2011	1 <sup>st</sup> semester 2011/2012	
Part Time assistant Lecturer	12 <sup>th</sup> April,2013	1 <sup>st</sup> semester 2011/2012	
Part Time assistant Lecturer	31 <sup>st</sup> January,2014	1 <sup>st</sup> semester 2013/2014	
Part Time assistant Lecturer	24 <sup>th</sup> March,2014	1 <sup>st</sup> semester 2013/2014	
Part Time assistant Lecturer	24 <sup>th</sup> March,2014	2 <sup>nd</sup> semester 2012/2013	
Part Time assistant Lecturer	1 <sup>st</sup> April,2014	1 <sup>st</sup> semester 2013/2014	
One year contract as a Tutorial fellow Grade XI	30 <sup>th</sup> March,2015	one-year contract to 30 <sup>th</sup> March, 2016  (contract not renewed from 8 <sup>th</sup> June, 2016)	
External Part-time Lecturer (incomplete contract)	20 <sup>th</sup> January, 2016	2 <sup>nd</sup> semester 2014/2015	
External Part-time lecturer	20 <sup>th</sup> September, 2016	1 <sup>st</sup> semester 2016/2017	
External Part time Assistant Lecturer	15 <sup>th</sup> March,2018	2 <sup>nd</sup> semester 2017/2018	
External Part time lecturer(Bungoma campus)	12 <sup>th</sup> February,2019	1 <sup>st</sup> semester 2018/2019	
External part-time lecturer(main campus)	12 <sup>th</sup> February,2019	1 <sup>st</sup> semester 2018/2019	



External part-time lecturer-Bungoma	21 <sup>st</sup> May,2019	2 <sup>nd</sup> semester 2018/2019
External part-time lecturer-Webuye	21 <sup>st</sup> May,2019	2 <sup>nd</sup> semester 2018/2019
Part time tutorial fellow-Webuye	20 <sup>th</sup> August,2020	1 <sup>st</sup> semester 2019/2020
Part time tutorial fellow-Bungoma	20 <sup>th</sup> August,2020	1 <sup>st</sup> semester 2019/2020
External part-time tutorial fellow-Bungoma	13 <sup>th</sup> July,2021	2 <sup>nd</sup> semester 2019/2020
External part-time tutorial fellow-main campus	5 <sup>th</sup> July,2022	2 <sup>nd</sup> semester 2020/2021
External part-time tutorial fellow-main campus	5 <sup>th</sup> July,2022	2 <sup>nd</sup> semester 2021/2022
External part-time tutorial fellow-main campus	8 <sup>th</sup> July,2022	1 <sup>st</sup> semester 2021/2022
External part-time tutorial fellow-main campus	27 <sup>th</sup> January,2023	1 <sup>st</sup> semester 2022/2023
External part-time tutorial fellow-main campus	13 <sup>th</sup> March,2023	2 <sup>nd</sup> semester 2022/2023

43. The above appointments are very specific as to the duration and the nature of the claimant's engagement. Each contract is distinct and for a specific duration. Each preceding contract concluded upon the issuance of a subsequent contract and, after each contract, any claim by the claimant became ripe for had was a ripe cause of action if the claimant had any claim over the same.
44. The claims for salary underpayment and unpaid allowances are said to have been due to the claimant from 1<sup>st</sup> August, 2011 until 30<sup>th</sup> November, 2024. If the claimant was entitled to such claims, which the court shall consider and determine below, the said allowances were payable at the end of each month or payment cycle (semester). In law, if such entitlements were not thus paid they constitute a continuing injury under Section 89 of the Act.
45. The Court of Appeal in *The German School Society & Another v Ohany & Another* (Civil Appeal 325 & 342 of 2018 (Consolidated)) [2023] KECA 894 (KLR) in addressing what constitutes a continuing



injury cited the Supreme Court of India in *M. Siddiq v Suresh Das* [2020] 1 SCC 1 where the court observed –

What makes a wrong, a wrong of a continuing nature is the breach of a duty which has not ceased but which continues to subsist. The breach of such a duty creates a continuing wrong and hence a defence to a plea of limitation.

46. Section 89 of the Act provides that –

“Notwithstanding the provisions of section 4(1) of the *Limitation of Actions Act* (Cap. 22), no civil action or proceedings based or arising out of this Act or a contract of service in general shall lie or be instituted unless it is commenced within three years next after the act, neglect or default complained or in the case of continuing injury or damage within twelve months next after the cessation thereof.” [Emphasis added]

47. A claim based on continuing injury ought to have been filed in court within 12 months of termination of employment or cessation of the injury. The court has found that at the end of each contract, the claimant was issued with a new contract. The causes of action arose after each contract lapsed and a claim ought to have been filed within 12 months upon expiry of each such contract period. The claim relates to the period from 1<sup>st</sup> August, 2011 to 30<sup>th</sup> November, 2024. No contract has been availed relating to the period ending 30<sup>th</sup> November, 2024.

48. The court notes that the cause was filed in court on 17<sup>th</sup> July, 2024 and a period of 12 months dates back to 17<sup>th</sup> July, 2023 within which period any claim by the claimant ought to have been filed in court.

49. The court finds and holds that the only claims within the statutory limitation under Section 89 of the Act for those failing within the period from 17<sup>th</sup> July, 2023 to 30<sup>th</sup> November, 2024 only may be entertained by the court as rest of the claims are statute-barred.

50. In law, an offer meets acceptance the contract comes into force. The claimant accepted the various periodic contracts offered to him by the respondent as set out above. The acceptance was unconditional and binding to both parties.

51. All contracts issued to the claimant denote and confirm that the engagement of the claimant was part-time. The single one-year fixed-term contract adduced by the respondent dated 30<sup>th</sup> March, 2015 expired by 30<sup>th</sup> March, 2016. The claimant accepted the appointment on 2<sup>nd</sup> April, 2015. The letter dated 9<sup>th</sup> May, 2016 by the respondent refers to a letter dated 21<sup>st</sup> March, 2016 by the claimant through which he sought an extension of the contract which contract the respondent states was to expire on 2<sup>nd</sup> April 2016.

52. The respondent indicated that the Board of the respondent in a meeting held on 24<sup>th</sup> April, 2016 decided not to extend the claimant’s contract and issued him with a one-month notice until 8<sup>th</sup> June, 2016 when the periodic contractual engagement terminated. The claimant was paid salary as per the contract and gratuity under the contract as per the vouchers adduced by the respondent dated 2<sup>nd</sup> June, 2016 and 9<sup>th</sup> August, 2016 respectively. The claimant has not denied payment of salary and gratuity as pleaded by the respondent. All the subsequent contracts to the claimant were part-time engagements.

53. Under the Act, there is recognition of “piece work” which means any work the pay for which is ascertained by the amount of work performed irrespective of the time taken performance of the same. There is also the concept of “task” which means such amount of work as can, in the opinion of an authorized officer, be performed by an employee in an ordinary working day. The part-time lecturing



method used by the respondent fits more in the mould of piecework though there is a definite period within which the respondent expected the claimant to execute the task.

54. The fact that the claimant was engaged on part-time basis is further evidenced by the contracts of engagement that he adduced. He was entitled to receive pay for the work done and he did not demonstrate or prove that he was entitled to more. There was no contractual or legal basis for the per month rate applied by the claimant in the claim as his remuneration was as outlined in various the contracts that he executed for the part-time engagements based on the number of hours he taught and the specific units assigned to him in each contract.
55. The Commission for University Education (Universities Standards and Guidelines) 2014 adduced by the claimant PROG/STD/17 guideline 3 provides that academic staff may be engaged on full-time or part-time basis. There was no provision in the CBA extract availed by the claimant allowing automatic conversion of part-time lecturers or employees to permanent employees. In any event, the claimant did not adduce evidence confirming that he is a member of UASU as to be covered by the CBA.
56. Section 37 of the Act requires that a casual employee works for a continuous number of days, which amount in aggregate to the equivalent of not less than a month or performs work which in aggregate cannot reasonably be completed within a period which amounts in aggregate to 3 months or more, for casual employment to be deemed to be one where wages are paid monthly for such engagement to convert to permanent employment.
57. Section 37 (1) (a) and (b) of the Act essentially converts casual employment to regular employment, entitling an employee to terms applicable to regular employees. The claimant was not at any point a casual employee which refers to a person the terms of whose engagement provide for payment of salary or wages at the end of each day and who is not engaged for a longer period than twenty-four hours at a time. The claimant was engaged for specific periodic semesters within the respondent's programmes. His terms of engagement were contractual and specific. It is trite law that courts cannot rewrite contracts for the parties, the role of the court is to interpret the contracts and determine the rights of the parties therein.
58. The court finds that the claimant's engagement by the respondent was governed by the terms in each of the specific contracts the claimant executed with the respondents. At no point did his engagement evolve from contractual to permanent but the relationship was confined to the terms and conditions of each contract executed.

## **VII. Reliefs**

59. The Commission for University Education is responsible for the formulation of policies relating to operations of universities. The Commission for University Education (Universities Standards and Guidelines) 2014 enables universities to have a summary of the number of academic staff dedicated to their campus by category e.g. professors, assistant professors, senior lecturers etc. segregating them into full-timers and part-timers – see Pg.125- FormCUE/Acc./3, Guideline 8-Human resources).
60. The claimant alleges that the said guidelines are discriminatory, exploitative, illegal, and unconstitutional, and therefore null and void, and seeks the court to order their amendment. The commission responsible for the formulation of the said guidelines is not joined as a party to this cause and the claimant has neither proved why and how he deems regulations are discriminative. While the claimant alleged that some of his contemporaries were employed on a permanent basis, leaving him out, he did not call any of the said employees to testify as to the truthfulness of that statement or provide other evidence in support of that allegation.



61. The court finds and holds that the claimant's terms of engagement were dictated by the contracts he executed over the years and the claimant was not entitled to the alleged underpayments enumerated in the claim. The court therefore finds and holds that the cause by the claimant lacks merits and the same is dismissed with no orders as to costs.

**VIII. Orders**

- i. This cause is hereby dismissed.
- ii. Each party to bear own costs.

**DELIVERED VIRTUALLY, DATED, AND SIGNED AT KAKAMEGA THIS 4TH DAY OF APRIL, 2025.**

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**DAVID NDERITU**

**JUDGE**

