



**Karuru & 5 others v Egerton University (Cause E035 of 2023)
[2025] KEELRC 1627 (KLR) (30 May 2025) (Ruling)**

Neutral citation: [2025] KEELRC 1627 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU
CAUSE E035 OF 2023**

**J RIKA, J
MAY 30, 2025**

BETWEEN

**RUBEN KARURU 1ST CLAIMANT
JOHN MBAGARA 2ND CLAIMANT
PETER WARIGU 3RD CLAIMANT
FRANCIS NDERITU 4TH CLAIMANT
ALEX MWAURA 5TH CLAIMANT
JOSEPH MWAI 6TH CLAIMANT**

AND

EGERTON UNIVERSITY RESPONDENT

RULING

1. The Respondent filed an application dated 5th December 2024, asking the Court to strike out the Claim.
2. The application is founded on the affidavit of Janet Bii, the Respondent's Legal Officer, sworn on 5th December 2024.
3. Janet explains that the Claimants and the Respondent executed employment contracts, covering the period 11th July 2014, to April 2020.
4. This is specifically pleaded by the Claimants, under paragraph [c] of their Statements of Facts.
5. According to their pleadings, the cause of action arose in April 2020. They filed the Claim on 27th July 2023.
6. This is more than a period of 3 years, allowed under Section 90 of the *Employment Act*.



7. The Claim expired in April 2023. The Claim is therefore time-barred.
8. The Respondent prays that the Claim is struck out, with costs to the Respondent
9. The Claimants oppose the application, through a joint affidavit, sworn before Commissioner for Oaths Kipkoech Terer. The date of swearing is not clear to the Court.
10. Their position is that the contracts between them and the Respondent were term-indeterminate. They could be terminated at the request of either party. No such request was ever made. The contracts have never been terminated.
11. Section 90 of the *Employment Act* is inapplicable. The employment relationship is in continuity.
12. The Claimants state that if they pleaded that the contracts commenced on 11th July 2014, and expired in April 2020, this is an error in their pleadings, which they intended to amend.
13. They have filed an application dated 10th January 2025, seeking amendment of their pleadings and witness statement.
14. They pray the Court not to strike out their Claim.
15. Parties agreed to have the Respondent's application considered and determined on the strength of their pleadings, affidavits and submissions on record. The application was last mentioned on 29th April 2025, when the parties confirmed filing and exchange of their pleadings.

The Court Finds: -

16. The Claimants were engaged by the Respondent as Lecturers. They were to be paid Kshs. 2,000 per hour. They taught at the Respondent's Nairobi Campus.
17. Their Claim is that they were discriminated against, and denied their salaries, while other Lecturers were paid.
18. They invoke Article 41 of the *Constitution* on fair labour practices and equal pay, for work of equal value.
19. They also have pleaded under paragraph [f] of the Statement of Facts, that the employer-employee relationship with the Respondent subsists. They have not resigned, and have not received their letters of termination from the Respondent.
20. At paragraph [g], they state that they have not handed over their offices as Lecturers, to the Respondent.
21. The Court does not therefore think that their cause of action can definitively be said to have arisen in April 2020, or expired in April 2023.
22. They consider themselves to be still in employment. The Respondent has not shown that its relationship with the Claimants ended in April 2020. As part-time Lecturers, they may have taken a break in April 2020, but cannot conclusively be said to have ended their relationship with the Respondent, in April 2020.
23. Besides, they invoke other Laws and not only the *Employment Act*. They invoke the *Constitution* of Kenya, the International Labour Organization on Termination of Employment Convention 158, International Convention on Economic, Social and Cultural Rights, Universal Declaration of Human Rights, the African Charter on Human and Peoples Rights, and the Public Sector Remuneration and Benefits Policy, May 2015.



24. They have not confined their Claim to the *Employment Act*, under which the Respondent raises the defence of limitation of time.
25. Pay discrimination claims are in the nature of continuing injuries. The Court of Appeal, in *The German School Society & Another v Ohany & Another* [2023] KECA 894 [KLR], held that where a service-related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy.
26. In *David Wanjau Muhoro v. Ol Pejeta Ranching Limited* [2014] KEELRC 296 [KLR] the E&LRC held that pay discrimination occurred incrementally, and was in the nature of historical disparity, which could not be adequately redressed, by the application of law of limitation.
27. The Court does not have justification in striking out the Claim, under Section 90 of the *Employment Act*. The Claimants, even in their unamended Statement of Claim, hold that their employment with the Respondent, was never terminated. Secondly, they plead constitutional violations, including pay discrimination, violations that are not precluded by Section 90 of the *Employment Act*.

It is Ordered: -

- a. The application filed by the Respondent, dated 5th December 2024 is declined.
- b. Costs in the cause.

DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY AT NAKURU, THIS 30TH DAY OF MAY 2025.

JAMES RIKA

JUDGE

