



Thiongo v Egerton University (Employment and Labour Relations Cause E014 of 2024) [2025] KEELRC 1582 (KLR) (30 May 2025) (Judgment)

Neutral citation: [2025] KEELRC 1582 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU
EMPLOYMENT AND LABOUR RELATIONS CAUSE E014 OF 2024
AN MWAURE & AN MWAURE, JJ
MAY 30, 2025**

BETWEEN

KENNETH METHU THIONGO CLAIMANT

AND

ERGETON UNIVERSITY RESPONDENT

JUDGMENT

1. The Claimant filed a memorandum of claim dated 8th March 2024.

Claimant's claim

2. The Claimant avers that he was employed as a lecturer in the Department of Agriculture, Faculty of Agriculture on 13th May 1987.
3. The Claimant avers that he retired from his employment on or about September 2023.
4. The Claimant avers that he was earning a gross salary of Kshs.148,957.20/=.
5. The Claimant avers that he was part of Respondent's Retirement Pension Scheme member as his salary was deducted by the Respondent together with an additional contribution by the Respondent.
6. The Claimant avers that upon his retirement, he would receive his pension together with the Respondent's contribution.
7. The Claimant avers that he had taken a loan from Standard Chartered Bank of Kenya and Egerton University Sacco.
8. The Claimant avers that he had a legitimate expectation that the Respondent would have remitted to the said financial institutions to be in compliance with the MoU between the three parties.



9. The Claimant avers that the Respondent failed to remit his deduction from October 2017 to September 2023.
10. The Claimant avers due to the Respondent's failure to remit the said deduction, interest had increased on the outstanding loan arrears.
11. The Claimant avers that at the time of his retirement in September 2023, Kshs.1,970,006.50 remains unpaid dues owed to him by the Respondent.
12. The Claimant further avers that unremitted pension money owed to him by the Respondent amounts to Kshs. 2,537,193.74/=.
13. The Claimant avers that there are also deferred untaxed gross pay amounting to Kshs.1,871,637.30/=, unremitted loan deductions amounting to Kshs.526,688/= and deferred CBA arrears amounting to Kshs.98,370/=.
14. The Claimant prays judgment to be entered against the Respondent as follows:
 - a. Payment of unremitted pension deduction meant for remittance to the Respondent's retirement pension scheme from October 2017 to June 2023 amounting to Kshs. 2,537,193.74/=
 - b. Payment of unremitted standard charter bank of Kenya loan deduction in the sum of Kshs.526,688/= plus accrued interest.
 - c. Payment of deferred gross pay in the sum of Kshs. 1,871,637.30/=
 - d. Payment of deferred CBA arrears in the sum of Kshs. 98,370/=
 - e. Interest on above a, b, and c sums of money from the date of filing suit at court rate until payment in full.
 - f. Costs of the suit.
15. On 31st October 2024, parties requested court to settle the matter and failure to do so, parties were to file written submissions.

Claimant's submissions

16. The Claimant submitted that he is entitled to the claim sought as the Respondent admitted vide its witness statement dated 9th September 2024 stating it owed him his unremitted pension and withheld salary.
17. The Claimant also submitted that he is entitled to the costs of the suit and relied on Section 27(1) of the *Civil Procedure Act* which provides as follows:
 1. Subject to such conditions and limitations as may be prescribed, and to the provisions of any law for the time being in force, the costs of and incidental to all suits shall be in the discretion of the court or judge, and the court or judge shall have full power to determine by whom and out of what property and to what extent such costs are to be paid, and to give all necessary directions for the purposes aforesaid; and the fact that the court or judge has no jurisdiction to try the suit shall be no bar to the exercise of those powers: Provided that the costs of any action, cause or other matter or issue shall follow the event unless the court or judge shall for good reason otherwise order.



18. The Claimant also relied on the case of *Jasbir Singh Rai & 3 others V Tarlochan Singh Rai Estate & 4 others* [2013] eKLR where the court held that costs follow the event.
19. In *Vipingo Ridge Limited V Swalehe Ngonge Mpitta* [2022] eKLR the court stated that it did not fail to use its discretion regarding costs. Although some of the respondents' claims were disallowed, the respondents were still the successful party. This does not indicate an abuse of discretion by the trial court in awarding costs to the respondent. It was a standard case where costs followed the event.
20. The Claimant relied on the Ugandan case of *Re Ebuneiri Waisswa Kafuko* where the court held that a judge can decide that each party to bear their own costs. If no specific order is made, the general rule is that the successful party gets their costs covered. However, the judge must use discretion and consider the case's circumstances. This discretion should be exercised fairly and not against the successful party unless there is a valid reason related to the case. It is not fair to make it completely mandatory that the successful party pay costs without any misconduct.
21. In *Cecilia Karuru Ngayu V Barclays Bank of Kenya & another* [2016] eKLR the court cited the case of *Jaoko Allexander V Nairobi City Water & Sewerage Company Ltd* (2020) eKLR the court stated as follows:

“To my mind, in determining the issue of costs, the court is entitled to look at inter alia

- i. the conduct of the parties,
 - ii. the subject of litigation
 - iii. the circumstances which led to the institution of the proceedings
 - iv. the events which eventually led to their termination
 - v. the stage at which the proceedings were terminated,
 - vi. the manner in which they were terminated,
 - vii. the relationship between the parties to Article 159(2)(c) of *the Constitution*. In other words, the court may not only consider the conduct of the party in the actual litigation, but the matters which led to the litigation, the eventual termination thereof and the likely consequences of the order of costs.”
22. The Claimant submitted that he is entitled to his remuneration as stipulated under Article 41 of *the Constitution*. The Claimant also submitted that it would be unfair for this Honourable Court not to award costs as the Respondent failed to remit his dues.
 23. The Claimant urged this Honourable Court to allow his claim as he has proved his case and is entitled to the costs of the suit.

Respondent's submissions

24. The Respondent submitted that the Claimant has not proven that he made an effort to follow his pension with the proper institution and relied on the case of *Anne Chepkoech Koimur V Ergeton University* [2024] KEELRC 2818 (KLR) in support of that proposition.
25. The Respondent also submitted that this Honourable Court lacks jurisdiction on issues of pension as it does not fall within the jurisdiction as stipulated under Article 162(2) of *the Constitution* read together with Section 12(2) of the *Employment and Labour Relations Court Act*. The Respondent



relied on the case of Kenya Ports Authority V Industrial Court of Kenya & 2 others [2014] eKLR in support of that proposition.

26. The Respondent acknowledges that it has not paid the claimant his dues as the institution is facing serious financial constraints and is awaiting government support to settle the debt it owes the claimant and other staff.
27. The Respondent submitted that the Claimant should not be awarded costs due to the financial constraints it is undergoing. The Respondent relied on the case of Republic V Rosemary Wairimu Munene, Ex-parte Applicant V Ihururu Dairy Farmers Cooperative Society Ltd JR No. 6 of 2014 where the court held that the determination of costs is at the court's discretion, as outlined in the aforementioned section. The fundamental principle regarding the attribution of costs is that costs follow the event. It is important to understand that this principle is not intended to penalize the losing party; rather, it serves to compensate the successful party for the effort expended in prosecuting or defending the case. The Respondent also reiterated Section 27 of the Civil Procedure Act in support of that proposition.
28. In the case of Party of Independent Candidate of Kenya & another v Mutula Kilonzo & 2 others [2013] KEHC 5939 (KLR) the court held that it is clear from the authorities that the fundamental principle underlying the award of costs is two fold. Firstly, the award of costs is at the discretion of the trial judge. However, this discretion must be exercised based on reasons that a reasonable person could come to in reaching the same conclusion. Secondly, there is a general rule that costs should be awarded to the successful party, and this rule should not be departed from without good reason to do so.
29. In conclusion, the Respondent urges this Honourable Court to find that the claim has no merit and that each party is to bear its own costs.

Analysis and determination

30. The court has considered the pleadings and submissions by both parties, the issue of determination is whether the claim is merited.
31. In *Choitram & Another V Nazari* [1984] KECA 47 (KLR) the Court of Appeal set out what constitutes an admission as follows:

“An admission must be premised on the provisions of Order XII Rule 6 Civil Procedure Rules as it was then (now Order 13 rule 2); that the pleadings presented by a party against whom the relief is sought must be those that do not contain specific denials and no definite refusals to admit allegations; demonstration that there are allegations of facts made by one party and not traversed by the other which are deemed to be admitted; demonstration that there has been implied admission of facts inferred from pleadings in instances where the defendant has specifically failed to deal with allegations of fact in the plaint, the truth of which he does not admit or instances where a defendant has evasively denied an allegation in the plaint; demonstration that there is admission of facts discerned from correspondences or documents which are admitted or that there is an oral admission as the rules use the words “or otherwise.”

32. The court has considered a consent dated 23rd September 2024 which was filed on 4th October 2024 in the court.

Among the contents of that consent was the provision that the Respondent's witness statement dated 9th September 2024 be duly admitted.



The parties also consented that the claim be determined based on filed witness statements without calling witnesses.

33. The defence witness statement written by JANET BII of 9th September 2024 provided on paragraph 7 as follows: -

“That in the circumstances the outstanding pension due to the claimant is Kshs.2,487,425.90 that the university did not remit to the Egerton University Retirement Scheme for FY 2017-2021 due to financial distress that has been experienced and not Ksh.2,537,193/= as he had claimed (Annexed is the computation form, pension and declaration form on pending bills due to the Respondent as at June 30,2022 marked Exhibit 2a and 3b).”

34. Equally on paragraph 8 the witness stated as follows: -

“That the claimant is entitled to deferred pay of Kshs.1,167,174.22 and not Kshs.1,871,637.30 as claimed (Annexed is the tabulation of the same marked as Exhibit 4).

35. In paragraph 9 the witness has stated: -

“That the Respondent has not refused to pay the claimant her dues, but due to the financial constraints affecting the claimant and the other staff, support from the GOK on pending bills is still being awaited in-order for the university to settle the same.”

36. The witness has admitted in paragraph 10 as follows –

“That the Respondent owes the claimant Ksh.460,852 of unremitted loan deductions to Standard Chartered for the months of December 2020 to June 2021 (65836 monthly deductions*7 months.”

37. The Respondent therefore has acknowledged that it owes the Claimant his dues including his unremitted pension dues, gross pay and money deducted as his loan repayment and not yet paid to the bank.

38. Flowing from the foregoing, this Honourable Court enters judgment in favour of the Claimant against the Respondent as follows:

- a. Payment of unremitted pension deduction meant for remittance to the Respondent’s retirement pension scheme from October 2017 to June 2023 amounting to Kshs.2,537,193.74/=
- b. Payment of deferred gross pay in the sum of Kshs.1,871,637.30/=
- c. Payment of deferred CBA arrears in the sum of Kshs.98,370/=
- d. Payment of unremitted loan deductions to Standard Chartered Bank amounting to Kshs.526,688/=.

39. If there are any other pension dues owing to the claimant he should follow the right channel to follow the same from their pension.



40. The claimant is entitled to interest on the above a-d at 14% per annum from the date of this Judgment till full payment.

41. Each party will bear their costs of this suit.

Order accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAKURU THIS 30TH DAY OF MAY, 2025.

ANNA NGIBUINI MWAURE

JUDGE

ORDER

In view of the declaration of measures restricting Court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open Court. In permitting this course, this Court has been guided by Article 159(2)(d) of *the Constitution* which requires the Court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of *the Constitution* and the provisions of Section 1B of the Procedure Act (Chapter 21 of the Laws of Kenya) which impose on this Court the duty of the Court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

A signed copy will be availed to each party upon payment of Court fees.

ANNA NGIBUINI MWAURE

JUDGE

