



REPUBLIC OF KENYA



KENYA LAW
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**Morong v Moi University (Petition E008 of 2023)
[2025] KEELRC 1614 (KLR) (29 May 2025) (Judgment)**

Neutral citation: [2025] KEELRC 1614 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT ELDORET
PETITION E008 OF 2023
MA ONYANGO, J
MAY 29, 2025**

BETWEEN

EMILY JEBET MORONG PETITIONER

AND

MOI UNIVERSITY RESPONDENT

JUDGMENT

The Petition

1. Emily Jebet Morong, the Petitioner herein filed the instant Petition dated 24th August, 2023 against the Respondent Moi University, seeking the following reliefs: -
 - a. A declaration that the termination of the Petitioner's employment by the Respondent was unprocedural, wrongful, unlawful for being substantively without justification and being procedurally unfair as the Respondent failed to adhere to the threshold of fairness as provided for under section 45 of the *employment Act*, 2007.
 - b. A declaration that the termination of the Petitioner's employment and unlawful conduct by the Respondent or acts or actions of the Respondent through its management infringed the Petitioner's constitutional rights to fair labour practice under Article 41 of the *Constitution* of Kenya and the right to reasonable working conditions.
 - c. A declaration that the Respondent's actions of unlawfully, unprocedurally, and unfairly terminating the Petitioner from employment, not granting the Petitioner her statutory benefits such as not being entitled to annual leave maternity leave, house allowance and other allowances amounted to discrimination.
 - d. A declaration that the Petitioner's seasonal contracts of employment and is null and void.



- e. A declaration that the Respondent's actions of not employing the Petitioner on permanent and pensionable terms after more than 6 months of her service while it employed those that were employed after her on permanent and pensionable terms amounted to discrimination contrary to section 5 of the [Employment Act](#), 2007, Articles 10, 27, 28, and 232 of the [Constitution](#) of Kenya, 2010.
- f. A declaration that the Petitioner had become a permanent and pensionable employee of the Respondent by operation of law after having worked for the Respondent for over 10 years.
- g. A declaration that the Respondent's expectations of the Petitioner performing the same tasks as those employed on permanent and pensionable terms while she was underpaid and untimely amounted to discrimination.
- h. A declaration that the Petitioner is entitled to the payment of damages and compensation for infringement and contraventions of her fundamental rights and freedoms protected by Articles 19, 27, 28, 30, 41, 43, 47, 50 and 235 of the [Constitution](#) of Kenya, 2010.
- i. An order compelling the Respondents to pay and/or award the Petitioner her lawful dues amounting to Kshs. 6,037,114.60/=
- j. An order compelling the Respondent to pay a maximum compensation of 12 months' salary (inclusive of all allowances and benefits) based on what a permanent employee of the qualification of the Petitioner earns or equal remuneration for work of equal value in respect of unfair termination.
- k. An order compelling the Respondent to pay the Petitioner general damages for discrimination and violation of fundamental rights and freedoms guaranteed and protected by the Kenyan Constitution, 2010.
- l. An order compelling the Respondent to pay the Petitioner General damages and aggravated damages on aggravated scale under Article 41 of the [Constitution](#) of Kenya, 2010 for the oppressive, arbitrary and unconstitutional conduct, acts or actions of the Respondent against the Petitioner through its management which caused her psychological trauma, humiliation, inconvenience, loss of reputation, distress and embarrassment.
- m. An order compelling the Respondent to pay Exemplary damages for lost opportunities.
- n. An order compelling the Respondent to pay the Petitioner for the loss of prospective future earnings due to refusal by the Respondent to issue the Petitioner with a certificate of service and further due to unlawful and unconstitutional termination of the Petitioner's employment in contravention of Article 41 of the [Constitution](#) of Kenya, 2010 and Article 23 of the Universal Declaration of Human Rights being an infringement of the Petitioner's right to protection against unemployment, to right to work and legitimate expectation to work until retirement age without unlawful termination equivalent to current salary for 27 years from Petitioner's current age of 42 years to age of retirement at 60 years.
- o. An order compelling the Respondent to reinstate the Petitioner to employment as a permanent and pensionable employee with full salary, allowances, benefits and privileges thereto as from the date of dismissal to the date of reinstatement.
- p. In the alternative but without prejudice to prayer (m), a declaration that the Respondent re-engages the Petitioner in work comparable to that which the Petitioner was employed prior to her dismissal or other reasonably suitable work and on permanent and pensionable terms.



- q. An order directing the Respondent to issue to the Petitioner a certificate of service as per Section 51 of the [Employment Act](#).
- r. An order compelling the Respondent to pay the costs of the petition plus interest at court rates until payment in full.
- s. That this Honourable Court be pleased to grant such after Order or Orders as may be just and appropriate.
2. The Petition was filed together with the supporting affidavit of the Petitioner sworn on 24th August, 2023, the Petitioners Statement dated 24th August, 2023 and a witness statement of Benedictor Jemurgor dated 24th August, 2023.
3. It is the averment of the Petitioner that she was employed by Moi University as a cleaner to work in the hostels and Catering Department of the Main Campus and was issued with contracts of employment from 2011 to 2014. Thereafter the Respondent stopped issuing contracts and the Petitioner continued working without contracts until 2022 when she was issued with a contract dated 22nd February, 2022 commencing on 1st March, 2022 and expiring on 31st August, 2022.
4. The Petitioner avers that her wages were calculated on daily basis and paid at the end of the month.
5. It is the Petitioner's averment that in 2016 she advanced her studies and became a mason Grade III. That despite advancing her studies the Respondent did not revise her wages until February, 2018 when the Respondent increased her wages to Kshs. 878.05 per day. That her consolidated monthly wage was Kshs. 23,970.70 which was subjected to deductions of NSSF and NHIF.
6. The Petitioner avers that in 2018 she again advanced her studies and attained Trade Test Grade II. That her wages were however not revised upwards.
7. The Petitioner states that it was her legitimate expectation that her job was secure and that she would be treated like any other employee of the Respondent until she attained the age of retirement.
8. The Petitioner avers that she was duped to sign the contract 22nd February, 2022 in the belief that she was to get wages on time as opposed to what used to happen therebefore, and that she would be able to obtain allowances and loans. That it was further her belief that if she did not sign the contract she would be sent home.
9. The Petitioner avers that on 12th April, 2022 in the morning when she arrived at work her colleagues had not started working and were protesting due to the working conditions that they were working under. That together with her colleagues they waited for between 2 and 3 hours for the relevant authorities to go and listen to their grievances but no one did. That at around 11 am they decided to walk peacefully to the Administration Block to raise their concerns. That when they reached the Administration Block they were informed by the Security Officer that there was nobody to listen to them.
10. That later on union officials went to listen to their issues and informed them that the Vice Chancellor was away in Nairobi on official duty until Tuesday 19th April, 2022 when he was expected back in the office. The union officials urged them to disperse until the Vice Chancellor was available to address them. That they complied and went back to work.
11. The Petitioner contends that she continued with her normal duties as usual until 19th April, 2022. That at around 10 am on that day she and the other workers were recalled by their supervisor who directed them to return their tools of work and report to the Administration Block where, upon arrival, they were issued with letters dated 14th April, 2022, by the Security Department, terminating their contracts.



12. The Petitioner avers that the Shop Steward who tried to follow up their case was issued with a warning letter.
13. It is the averment of the Petitioner that having worked for the Respondent for about 11 years her employment had converted to permanent terms and she was entitled to the benefits of permanent employees by operation of the law.
14. The Petitioner avers that she was discriminated as new employees were recruited on permanent terms while she was bypassed.
15. It is her averment that the Respondent violated her rights to equality and freedom from discrimination as enshrined in Article 27 of the Constitution and section 5 of the Employment Act.
16. The Petitioner further avers that the termination of her employment was discriminatory, unfair, unprocedural and unlawful as she was not issued with a warning or granted an opportunity to be heard.
17. The Petitioner cites articles 2, 3, 4, 19,20, 21, 23,41,159, 232 and 258 as the basis for her petition.
18. The Petitioner tabulated her claim as follows:
 - a. One Month Pay in lieu of notice
Section 36 of the Employment Act
Ksh.47,508/= Ksh.47,508/=
 - b. Compensation for unfair termination
Section 49(c) of the employment Act
Ksh. 47,508 x 12 months Ksh.570,096/=
 - c. Service pay/gratuity
15/30 for every completed year of service
15/30 X 47,508/= X 6 Years Ksh.142,524/=
 - d. House allowance
From November, 2015 – April, 2022
15% x basic salary x No. of months worked
15/100x47,508 x 78 Ksh.555,843.60/=
 - e. Unpaid leave dues
21 working days per year
From January, 2011 – April, 2022
21/30 x 47,508x11 Ksh.365,811.60/=
 - f. Extraneous allowance since January, 2011 to 14th April, 2022
Total number of public holidays in 11 years=11x12=132 days
5,000 x 132 days Ksh.660,000/=
 - g. Underpayment



1. from 1st January, 2011 to 30th April, 2011
 $(205.15-182.35)=22.80$ per day.
 22.80×120 days Ksh.2,736.00
 2. from 1st May, 2011 to 31st October, 2011
 $(205.15-182.35)=22.80$ per day.
 2.80×184 days Ksh.4,195.20/=
 3. from 1st November, 2011 to 30th April, 2012
 $(205.15-182.35)=22.80$ per day.
 22.80×182 days Ksh.4,149.60/=
 4. from 1st May, 2012 to 31st October, 2012
 $(232.00-182.35)=49.65$ per day.
 49.65×184 days Ksh.9,135.60
 5. from 1st November, 2012 to 30th April, 2013
 $(205.15-182.35)=22.80$ per day.
 22.80×120 days Ksh.8,986.65/=
 6. from 1st May, 2013 to 31st October, 2013
 $(264.50 - 238.00) = 26.50$ per day.
 26.50×184 days Ksh.4,876.00/=
 7. from 1st May, 2014 to April, 2015
 $(47,508.00 - 5,218.00) = 42,290.00$ per month
 $42,290.00 \times 12$ months Ksh.507,480.00
 8. from 1st May, 2015 to 30th April, 2017
 $(47,508.00 - 5,844.00) = 41,664.00$ per month.
 $41,664.00 \times 23$ months Ksh.958,272.00/=
 9. From 1st May, 2017 to 31st January, 2018
 $(47,508.00 - 7,240.95) = 40,267.05$ per month
 $40,267.05 \times 8$ months Ksh.322,136.40/=
 10. From 1st February, 2018 to 30th April, 2022
 $(47,508.00-17,948.15)= 29,559.85$ per month
 $29,559.85 \times 51$ months Ksh.1,507,552.35/=
- Total Ksh.6,037,114.60

19. The Respondent did not file any response to the petition or participate in the same. The petition was heard on 6th November, 2024 when the Petitioner testified together with her witness Benedictor Jemurgor.



20. The Petitioner who testified as PW1 adopted her affidavit filed in support of the petition together with the documents filed therewith.
21. Benedictor Jemurgor also testified on the same day as PW2 and adopted her witness statement dated 24th August, 2023. The Petitioner thereafter filed written submissions.
22. PW2 testified that she was an employee of the Respondent and worked with the Petitioner for 12 years as a casual. She testified that she knew people who were recruited on permanent terms while they remained casuals. That such people had relatives who helped them get employed on permanent basis while the Petitioner and herself did not.

Determination

23. I have considered the pleadings, the evidence and the submissions on record. This being an undefended suit, the issues for determination are the following which I adopt from the Petitioner's submissions:
 - i. Whether there existed an employment relationship between the Petitioner and the Respondent;
 - ii. Whether the termination of the Petitioner's employment was fair; and,
 - iii. Whether the Petitioner is entitled to the remedies sought in her petition.

Whether there existed an employment relationship between the Petitioner and the Respondent

24. The Petitioner filed copies of several contracts of employment between herself and the Respondent. She further filed a copy of the letter of termination of her employment issued by the Respondent. There is therefore no doubt that there was an employment relationship between the Petitioner and the Respondent.

Whether the termination of the Petitioner's employment was fair

25. It is the averment of the Petitioner that the termination of her employment was unfair and unprocedural because she was not paid salary in lieu of notice. Having been on a fixed term contract whose term had not expired, the Petitioner was entitled to be subjected to a disciplinary process in line with section 41 of the Act. In view of the fact that she was not subjected to the disciplinary process, the termination of her employment was unfair.

Whether the Petitioner is entitled to the remedies sought in her petition

26. The Petitioner sought a total of 19 prayers as set out herein above. I will not consider each of them individually because most of them are repetitive. The bulk of the prayers seek declarations that the termination of the Petitioner's employment was unfair which I have already done above.
27. The next set of prayers seek terminal dues, compensation and/or damages. She seeks payment of one months' salary in lieu of notice which I award her at Kshs. 23,970.70 as per her employment contract dated 22nd February, 2022. Her claim for payment of the same at the rate of Kshs. 47,508 was not justified by her and is rejected.
28. The Petitioner further prayed for compensation under section 49 of the *Employment Act*. Having been in the employment of the Respondent on back to back contracts from 2011 to 2022, I award the Petitioner 12 months' salary as compensation in the sum of Kshs. 287,648.40



29. The Claim for service pay/gratuity is declined as the Petitioner was a member of NSSF and her terms of service did not provide for gratuity or service pay.
30. The prayer for house allowance is declined as the Petitioner was paid a consolidated wage.
31. The prayer for extraneous allowance was not justified or proved and is declined.
32. The prayer for underpayments was not proved and is declined.
33. The prayers for damages are declined as the Petitioner did not prove that any of her constitutional rights were violated.
34. In conclusion, the Petitioner is awarded a total of Kshs. 311,619.10.
35. The Petitioner is in addition awarded costs of her petition.

DATED, SIGNED AND DELIVERED VIRTUALLY ON THIS 29TH DAY OF MAY 2025

MAUREEN ONYANGO

JUDGE

