



**Ndubi v Kisii University & another (Cause E010 of 2024)  
[2025] KEELRC 1605 (KLR) (28 May 2025) (Judgment)**

Neutral citation: [2025] KEELRC 1605 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISII  
CAUSE E010 OF 2024  
NZIOKI WA MAKAU, J  
MAY 28, 2025**

**BETWEEN**

**NELSON NYAUMA NDUBI ..... CLAIMANT**

**AND**

**KISII UNIVERSITY ..... 1<sup>ST</sup> RESPONDENT**

**THE VICE CHANCELLOR ..... 2<sup>ND</sup> RESPONDENT**

**JUDGMENT**

1. The Claimant initiated these proceedings by filing a Memorandum of Claim dated 27<sup>th</sup> November 2024, in which he sued the Respondents seeking several reliefs. Principally he sought a declaration that he was entitled to remedies under sections 36 and 45(2) of the *Employment Act* and Article 41 of the *Constitution*, which guarantees the right to fair labour practices. He further sought a declaration that his contract of employment was deficient in essential elements, rendering it non-compliant with the *Employment Act*. In terms of compensation, the Claimant prayed for a total of Kshs. 10,221,000/- which included special damages to be assessed by the court, Kshs. 270,000/- for transportation, and Kshs. 315,000/- for accommodation—both amounts covering 90 days each year allegedly spent commuting from Kisii/Nyamira to Kericho. He also claimed Kshs. 480,000/- being 12 months' salary for unfair termination, Kshs. 33,308/- for annual leave for the 2018–2019 period, a certificate of service, interest at court rates, and any other relief the court may deem just and fair.
2. Despite the extensive list of reliefs, the memorandum itself was somewhat disjointed and difficult to follow. Nevertheless, certain key facts could be discerned. The Claimant alleged that he was employed as a part-time lecturer by the Respondent from January to December 2018 at its Kericho campus. He contended that he was constructively dismissed in January 2019 and was later issued a vague contract on 17<sup>th</sup> November 2019, which lacked clarity on critical terms such as duration, remuneration, and intervals of payment. The Claimant further asserted that during the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> semesters of the 2018–2019 academic year, he was not fairly remunerated. He claimed that the Respondent's actions —



namely the withholding of his salary and the unilateral alteration of his contract terms—amounted to violations of his constitutional and statutory rights to fair labour practices. He also maintained that no complaints had ever been raised regarding his job performance throughout his period of employment.

3. Notably, the Respondents did not enter appearance nor file any defence in response to the claim.
4. Subsequently, through an application dated 16<sup>th</sup> July 2024, the Claimant sought to have the suit disposed of by way of written submissions. This application was allowed and on 27<sup>th</sup> March 2025, the Court directed the Claimant to file and serve submissions within 14 days, after which the Respondents would have 14 days to file and serve their submissions. However, by the time of drafting this ruling, neither party had filed written submissions as directed by the Court.

### **Disposition**

5. The Claimant herein asserts that he was constructively dismissed in January 2019. The Claimant did not file his claim until 27<sup>th</sup> November 2024. Under section 90 of the *Employment Act*, a claim by an aggrieved party in a contract of employment is limited in terms of time. The said section provides in parre materia as follows:-

“... 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...

6. The Claimant therefore ought to have preferred a claim by January 2024. He filed the case in November 2024, 11 months late. Under the *Employment Act* such a claim is time-barred and incapable of leading to the resolution of the case in favour of the Claimant. The failure to file suit on time divests this Court of the requisite jurisdiction to entertain the claim. However, as the Respondents never entered appearance the Court will dismiss the suit but with no order as to costs. Suit dismissed for being time barred.

Orders accordingly.

**DATED AND DELIVERED AT KISUMU THIS 28<sup>TH</sup> DAY OF MAY 2025.**

**NZIOKI WA MAKAU, MCI Arb.**

**JUDGE**

