



**Amadi v Great Lakes University of Kisumu (Cause E071 of 2023)
[2025] KEELRC 1438 (KLR) (12 May 2025) (Judgment)**

Neutral citation: [2025] KEELRC 1438 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
CAUSE E071 OF 2023
NZIOKI WA MAKAU, J
MAY 12, 2025**

BETWEEN

ATIENO ANNE NDEDE AMADI CLAIMANT

AND

GREAT LAKES UNIVERSITY OF KISUMU RESPONDENT

JUDGMENT

1. Through a memorandum of claim dated 15th September 2023 the Claimant has sued the Respondent alleging non-payment of salary, gratuity and house allowance. She averred that she was employed by the Respondent as Vice Chancellor on a five-year contract commencing on 1st March 2016 and ending on 28th February 2021, earning a monthly salary of Kshs. 765,000/-, which comprised of: Kshs. 350,000/- basic salary, Kshs. 87,500/- gratuity, Kshs. 140,000/- house allowance, Kshs. 45,000/- security allowance, Kshs. 100,000/- for a vehicle, Kshs. 40,000/- for a driver, and Kshs. 2,500/- for “health”. She avers that she was compelled to terminate her contract two months before its expiry due to a toxic work environment. Furthermore, she claims that the Respondent failed to pay her Kshs. 577,500/- per month for several months, resulting in cumulative salary arrears totalling Kshs. 12,675,000/-. The Claimant provides the following breakdown of the claimed amount:
 - a. Salary arrears from August 2019 to December 2019 – Kshs. 2,887,500/-
 - b. Salary arrears from April 2020 to December 2020 – Kshs. 5,197,500/-
 - c. Unpaid salary for January and February 2021 – Kshs. 1,530,000/-
 - d. Unutilised leave days from 2016 to 2020 Kshs. 3,060,000/-
2. Consequently, she prays for judgment in the sum of Kshs. 12,675,000/- with interest from 1st March 2021 until payment in full. Additionally, she seeks costs of the suit and interest from the date of judgment until full settlement.



3. In response, the Respondent filed an Amended Memorandum of Response dated 5th June 2024. It admitted employing the Claimant but averred that she abandoned her duties and relocated overseas, leaving the institution in disarray. The Respondent further stated that the Claimant's contract ran from 1st March 2016 to 31st December 2020 and denied the existence of a toxic work environment. The Respondent averred that, as Vice Chancellor, the Claimant was responsible for overseeing both financial and administrative matters. It further averred that the Claimant was lawfully dismissed on 10th March 2017 following disciplinary action taken due to a breach of contract. The Respondent stated that the Claimant failed to prudently manage it resulting in astronomical losses therefore she should not benefit from her wrongdoings. Additionally, the Respondent averred that instead of complying with court orders in Kisumu CMCC No. E017 of 2020 instructing her to handover she absconded the court's jurisdiction and continued holding onto office and drawing a salary illegally. With respect to the claims for unpaid salary, the Respondent averred that the Claimant was responsible for processing and paying her own salary, which she did in full.
4. In her amended reply to the amended response to memorandum of claim dated 19th June 2024. The Claimant reiterated the contents of the memorandum of claim and averred that her alleged summary dismissal around March 2017 was a misnomer having been carried out by individuals that were alien to the Respondent's administration.
5. The case was heard extensively and the oral testimony of the Claimant and her witnesses and the Respondent's witness is captured here below.

Evidence

6. Three witnesses testified on behalf of the Claimant while one witness testified for the Respondent. The Claimant (CW1) testified that it was the Respondent —not herself—who bore the responsibility for paying her salary. She explained that, in her capacity as Vice Chancellor, she worked collaboratively with the Board of Trustees, the Senate, the Head of the Student Council, and the Board of Management in matters concerning salary payments. She further testified that salaries were never paid in full (100%) and were only disbursed when funds were available. She maintained that she visited Kenya regularly to check on the Respondent's projects and had not permanently abandoned the Respondent.
7. In cross-examination the Claimant conceded that she had not physically returned to the Respondent to conduct a formal handover. However, she clarified that she had issued a handover note to Professor George Oindo Ouma prior to her departure. She also challenged the legality of her attempted dismissal by Linda Musumba, arguing that Musumba had no authority at the time as she was no longer an officer of the university. She maintained that her termination was carried out by a rogue council and was subsequently overturned by the Board of Trustees, allowing her to complete her five-year term. The Claimant also acknowledged that she was a co-signatory to the Respondent's bank accounts, yet admitted that she never raised a formal complaint regarding non-payment of her salary.
8. The Claimant's second witness was Professor George Ouma Oindo (CW2). He testified that he served under the Claimant as Deputy Vice-Chancellor from 2018 to December 2020. He described the Claimant as diligent and professional, noting that despite her commendable performance, she faced a failed hostile takeover attempt. Ultimately, she successfully completed her tenure in December 2020. CW2 further testified that the Claimant handed over to him through the portal.
9. During cross-examination, CW2 confirmed that the Respondent's employees were hired by the governing council. Regarding the Claimant's dismissal, he stated that it allegedly occurred before he joined the Respondent. He also recounted that the Claimant officially handed over on 19th June 2019, after which he served in an acting capacity. However, he admitted that he did not possess the actual



handover notes. CW2 reaffirmed the Claimant's role as a signatory to the Respondent's financial accounts.

10. The final witness for the Claimant was Mr. Zadock Oundo (CW3), testified that he served as her Personal Assistant from 2017 to 2020. Echoing CW2's sentiments, he described the Claimant as a committed and effective leader. He added that upon her departure from the Respondent, she was still owed salary arrears and terminal dues.
11. On the Respondent's side, Professor Hazel Mumbo, the Vice-Chancellor of the University gave testimony. She recounted that the Claimant caused problems 2 years into her tenure, which led to her suspension and eventual dismissal on 6th March 2017. She testified that the Claimant neither returned to hand over nor had the authority to appoint Prof. George Oindo as her successor. Having not completed her contract, RW1 testified that the Claimant was not entitled to gratuity. She confirmed that the Claimant's monthly salary was Kshs. 350,000/-, with a gratuity of 25% of total earnings payable upon contract completion. She criticized the Claimant for failing to maintain proper financial records and ensure regular salary payments—issues that forced the Respondent to rebuild its Human Resource Department from scratch. Regarding the Claimant's alleged reinstatement, RW1 contended that the Board of Trustees had no mandate to reinstate staff. She stated that their role was limited to asset custody and appointing the Chancellor and the Governing Council. In line with this role RW1 testified that the Board of Trustees appointed Dr. Linda Musumba as Chair of the Governing Council not Dr. Kimutai as alleged by the Claimant.
12. During cross-examination, Professor Mumbo admitted that the responsibility of record-keeping lay with the employer. Nevertheless, she stressed that the Claimant failed to leave behind any documentation in her role as payroll approver. She also confirmed that the Respondent operated using manual rather than computerized systems.
13. After the hearing, both parties filed written submissions.

Claimant's Submissions

14. In support of her case, the Claimant identified the following issues for determination:
 - a. Whether the Respondent lawfully, if at all dismissed her from service around March 2017; and
 - b. Whether she is entitled to the prayers sought in the claim
15. On the first issue, the Claimant submitted that her dismissal was null and void, having been effected by a University Council that had already been dissolved. She relied on the letter dated 27th March 2017 from the Chair of the Board of Trustees, which indicated that the Council was dissolved around 1st February 2017. She also cited the documentary evidence produced showing that she continued to engage stakeholders as Vice Chancellor until December 2020, as well as the Respondent's witness testimony during cross-examination admitting that she worked continuously from March 2016 to December 2020. The Claimant further submitted that it was implausible for her to have continued serving for three years post-dismissal without any objection or action from the Respondent. She drew attention to the fact that the Respondent failed to file a counterclaim despite being granted leave to do so.
16. On the second issue the Claimant submitted that the Respondent had failed to discharge its burden under section 10(7) of the *Employment Act*, which requires an employer to prove or disprove an alleged term of employment in the absence of a written contract. Additionally, she relied on; section 74(1) of the *Employment Act* mandating an employer to maintain written records, her appointment letter showing she earned Kshs. 765,000/- per month and her testimony of inconsistency in payment of



salary resulting in accumulation of arrears. Regarding the claim for gratuity, the Claimant maintained that she was entitled to the same, as it was a contractual term that she had successfully fulfilled. She highlighted her facilitation of a virtual graduation ceremony in August 2020 and referred to CW2's testimony confirming that she served until December 2020. In support, she cited the case of *Nelson Keshei v Narok County Government & another* [2019] eKLR, which held that while gratuity is not mandatory under the *Employment Act*, it is enforceable where it forms part of the contract, a private agreement, a Collective Bargaining Agreement (CBA), or an established employer practice. In respect of the salary balances in 2019 and 2020 the Respondent submitted that they should be awarded as they were computed by Mr. Crispin Otieno an employee in the Respondent's finance department. She asserted that in the absence of records the Respondent had failed in its statutory burden of disproving the amounts.

17. With respect to unpaid salary for January and February 2021, the Claimant maintained that her contract lapsed on 28th February 2021 not 31st December 2020 as claimed by the Respondent. She asserted that through simple arithmetic it was deducible that five years from 1st March 2016 would end on 28th February 2021. In support of her position, she cited her employment letter which indicates that her contract commenced on 1st March 2016 for a five-year period.
18. Turning to unutilized leave days from 2016 to 2020 the Claimant reiterated the Respondent's lack of records to disprove the amount. She relied on *G4S Security (K) Limited v Joseph Kamau & others* [2018] eKLR, which held that unpaid terminal dues do not constitute a continuing injury as contemplated under section 90 of the *Employment Act*. Lastly, on the issue of costs, the Claimant submitted that she is entitled to costs of the suit, having issued a demand letter that the Respondent ignored. She invoked section 12(4) of the *Employment and Labour Relations Court Act*, which empowers the Court to issue such orders on costs as it deems just.

Respondent's Submissions

19. The Respondent maintained that the Claimant was not in employment for the full duration of the five-year contract. It reiterated that she was dismissed on 10th March 2017 by the Governing Council chaired by Dr. Linda Musumba — an action the Claimant admitted. It submitted that the Claimant's assertion that she remained in employment notwithstanding the dismissal was unsubstantiated. It pointed out that the Claimant's testimony that she had filed Kisumu CMCC No. 109 of 2017 to challenge her dismissal and succeeded, was introduction of evidence of an unpleaded fact. In support, it cited the case of *Raila Amolo Odinga & another v IEBC & 2 others* [2017] eKLR and *Kinyanjui Kamau v George Kamau Njoroge* [2015] eKLR, both of which discouraged the introduction of unpleaded issues during trial. The Respondent also highlighted the Claimant's failure to include this case in her amended reply to the amended response to the memorandum of claim. Further, the Respondent submitted that the Claimant's failure to produce evidence of the said case suggested that such evidence would be adverse to her case. In support, it relied on the case of *Re Estate of Mwangi Kuria (Deceased)* [2020] eKLR and *Kepha Maobe & 365 others v Benson I. Mwangi & City Council of Nairobi* [2015] KECA 244 (KLR), which held that when a party withholds evidence that is available and relevant, the only reasonable inference is that the evidence would be detrimental to their case. Regarding the Claimant's alleged reinstatement by the Board of Trustees, the Respondent submitted that no minutes or supporting evidence was produced. It emphasized that only the Governing Council, as the employing authority, had the power to reinstate the Claimant. Accordingly, the Respondent asserted that the Claimant's continued occupancy of office and drawing of a salary was irregular and could not support her claim.
20. The foregoing notwithstanding, the Respondent maintained that the Claimant, as the accounting officer in charge of finance and human resource, failed to hand over as directed. Therefore, she could



not validly claim that the Respondent failed to fulfill its duty under section 74 of the *Employment Act*. The Respondent affirmed that the Claimant's claims regarding handover correspondences were unproven, as she failed to demonstrate that the letters were ever served. It further asserted that it was implausible that letters of such importance would have gone unanswered. Additionally, the Respondent submitted that the Claimant's refusal to hand over document was inequitable. It relied on the case of *Kepha Maobe (supra)* which in citing *Macharia Mwangi Maina & 87 others v Daidson Mwangi Kagiri Civil Appeal No. 6,26 and 27 of 2011*, stated:

“This court is a court of law and a court of equity; equity shall suffer no wrong without a remedy; no man shall benefit from his own wrong doing; and equity detests unjust enrichment. This court is bound to deliver substantive rather than technical and procedural justice. The relief orders and directions given in this judgment are aimed at delivery of substantive justice to all parties having legal and equitable interest in the suit property.”

21. On the claim for unpaid salary, the Respondent submitted it should fail for lack of supporting evidence. It drew attention to the Claimant's non-production of payslips contrary to Clause 10.1 of the Human Resource Manual mandating receipt of a pay slip each month. Additionally, the salary statement for January to September 2020 was unsigned, lacked a letterhead, and was prepared by Mr. Chrispin Otieno, a person unknown to the Respondent. Furthermore, there were discrepancies between the figures in CEExh 6 and those in the memorandum of claim. The Respondent also pointed out that the Claimant never raised any complaint about non-payment during the contract period.
22. On the issue of leave, the Respondent submitted that there was no evidence to show that the Claimant was so occupied that she could not proceed on leave. Moreover, she failed to produce evidence that she had requested for the leave days to be carried forward. Regarding the claim for unpaid salary for January and February 2021 the Respondent maintained that it was explicitly provided in the contract that her term would end on 31st December 2020. As such, the Claimant could not claim payment for a period beyond the contract term. In any case the Respondent asserted that the Claimant was not at work by her own admission in testimony that she left the country on 22nd December 2020 and had not returned since. With respect to gratuity, the Respondent submitted that it was not payable due to the Claimant's conduct and failure to complete her contract. It cited her breach of financial regulations and general mismanagement, that resulted in the Respondent incurring a liability of Kshs 21,375,953.32/-.
23. In conclusion the Respondent submitted that claims for unpaid salary prior to 22nd September 2020 were time barred. It asserted that the cause of action for each month's salary accrued at the end of that month. Since the suit was filed on 22nd September 2023, any claims predating 22nd September 2020 were statute-barred under section 90 of the *Employment Act*. In support, it relied on the decision in *G4S Security Services (K) Limited v Joseph Kamau & 468 others [2018] eKLR*, in which it was held that unpaid terminal dues did not constitute a continuing injury and that claims filed after three years as envisaged by section 90 of the *Employment Act* were time barred. Additionally, it cited the decision in *Bosire Ogero v Royal Media Services [2015] eKLR*, which emphasized that limitation is a jurisdictional issue, and once a claim is statute-barred, the court lacks the jurisdiction to entertain it.

Disposition

24. The Court has considered the testimony adduced, the pleadings filed as well as the law plus authorities cited in coming to this determination. The Claimant was employed as the Vice Chancellor of the Respondent. She served the University until sometime in late 2020 when the issues precipitating this suit arose. The Claimant was the VC during the covid period and the Court takes judicial notice that there was a changed circumstance in the operation of offices and institutions of higher learning



were not spared. The Claimant asserts she served and decided to vacate her position on account of non-payment of salary. She claims sums covering salary arrears from August 2019 to December 2019 amounting to Kshs. 2,887,500/- as well as unpaid leave arrears from 2016 to 2020 amounting to Kshs. 3,060,000/-. The *Employment Act* has made provision under section 90 thereof that limits claims in respect of such demands past the 3 year period of accrual of the cause of action. In respect of the claims for salary arrears from August to December 2019, there is no possibility of recovery. Similarly, the claim for unpaid leave dues from 2016 to 2020 is not payable as the Claimant did not delineate the precise amounts owed for each year so as to bring the claim for 2020 within focus of section 90 of the *Employment Act*. The sums prayed for thus are not recoverable.

25. The Claimant claimed unpaid salaries for April to December 2020 amounting to Kshs. 5,197,500/-. Under the *Employment Act*, it is the responsibility of an employer to keep records. If the Claimant was paid salary between April 2020 to December 2020, the Respondent would have been able to produce records from the Bank showing payments were made. No such record was availed, no proof was tendered to show the Claimant was paid. The Claimant would thus be entitled to the sums under this head as she proved the Respondent did not pay wages as and when they fell due. The Claimant was engaged from March 2016 to serve for 5 years but left the Respondent's employ in December 2020. She therefore cannot claim any salary for January-March 2021. She did not offer any services to warrant payment of wages.
26. The Respondent argued in its defence that the Claimant was not entitled to wages and even gratuity as she was dismissed by the Governing Council of the Respondent. In order for the dismissal to have been valid, the Governing Council that effected the dismissal ought to have been in office legally. On the letter dated 27th March 2017 from the Chair of the Board of Trustees, it was clearly indicated that the Council was dissolved on 1st February 2017. As such, the purported dismissal was null and void. It was rather worrisome that someone dismissed in March 2017 would continue to serve the Respondent to the point of even having a virtual graduation in 2020 (on account of covid 19 pandemic). The Claimant continued to serve the Respondent per the evidence tendered in Court and earned her gratuity. The gratuity provided for in the contract of employment was not a favour to be paid if the Respondent felt like it. It was due and therefore the Claimant is entitled to the entire sum claimed as gratuity being 25% of the basic pay. The total earnings over the period in this regard were Kshs. 19,950,000/- for the 57 months she served as VC. The gratuity is therefore 25% of the sum = Kshs. 4,987,500/-.
27. The Court enters judgment for the Claimant against the Respondent for the above. The Claimant therefore is entitled only to the following reliefs –
 - a. Salary arrears from April 2020 to December 2020 – Kshs. 5,197,500/-
 - b. Gratuity – Kshs. 4,987,500/-
 - c. Costs of the suit.
 - d. Interest at court rates on the sums in a) and b) above from the date of judgment till payment in full.

Orders accordingly.

DATED AND DELIVERED AT KISUMU THIS 12TH DAY OF MAY 2025

NZIOKI WA MAKAU, MCIARB.

JUDGE

