



**Council, Kisii University & another v Ndege (Appeal
E031 of 2023) [2025] KEELRC 1292 (KLR) (7 May 2025) (Ruling)**

Neutral citation: [2025] KEELRC 1292 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
APPEAL E031 OF 2023**

JK GAKERI, J

MAY 7, 2025

BETWEEN

COUNCIL, KISII UNIVERSITY 1ST APPELLANT

VICE CHANCELLOR, KISII UNIVERSITY 2ND APPELLANT

AND

HENRY ONYANGO NDEGE RESPONDENT

RULING

1. In its Judgment delivered on 23rd October, 2024, the court directed the parties to compute the respondent's entitlements for the services rendered from 12th July, 2017 to October 2018 within 30 days for adoption by the court but after several mentions with no progressive outcome, the court found it opportune to compute the entitlements to close the matter and made it known to the respondent's counsel who was present in court on 31st March, 2025 during the last mention.
2. The decision was necessitated by the fact that none of the parties had by that date filed any tabulation of the respondent's computation.
3. The appellant did not file its computation of respondent's entitlements.
4. Equally, the respondent's counsel did not file any computation but had orally reported that he had assessed it at the sum of Kshs.1,053,816.00.
5. Notably, all appointment letters were issued by the appellant retroactively, which is attributable in the court's view, to inefficiency in the administration of the programs. With proper planning and oversight, it is possible to have a real time system where part-time lecturers have appointment letters for each semester to facilitate teaching and processing of claims.

For illustrative purposes the following suffices.



Date of Appoint Letter	Semester
8 th May, 2017	1 st April, 2016 – 30 th April, 2016
17 th October, 2017	January – April 2017
20 th February, 2017 (3 units)	May – August 2016
22 nd February, 2017 (2 units)	May – August 2016
4 th January, 2018 (4 units)	September – December 2017

6. It is unclear to the court why there were no letters for the services rendered in 2018.
The trial court found as much.
7. Creditably, the appellant filed an enormous number of examination attendance sheets.
I will highlight the relevant ones only.



Date of examination	Course Unit	Signed Invigilator(s) by	No. of candidates
19 th January, 2018	(Unclear)	ü	03
14 th January, 2018	(Plant Biochemistry)	ü	01
14 th January, 2018	(Plant, Stress & Physiology)	ü	01
28 th November, 2017	(Unclear)	ü	01
18 th November, 2017	(Chemical Processes)	ü	03
10 th August, 2017	(Pharmaceutical Chemistry)	ü	00
27 th August, 2017	(Genetic Resource Management)	ü	01
31 st July, 2017	(Ecology)	ü	01
1 st August, 2017	(unclear)	ü	01
21 st July, 2017	Vertebrate Anatomy and Physiology	ü	01
23 rd /27 th (unclear) 2017	Physiological Psychology	ü	05
26 th July, 2017	Plant and Physiology	ü	05
21 st July, 2017	Introduction to Plant Pathology	ü	01
September 2017	Parasitology	ü	02
12 th September, 2017	Food & Beverage Service Operations	ü	01
29 th July, 2017	Survey of Kingdom Plantae	ü	02

Thesis



No.	Signature by Supervisor(s)	Qualification	Registration of Candidate
1.	19 th and 20 th October, 2017 (3 Supervisors)	Diploma	HEP 04/4017/14
2.	14 th November, 2017	Bachelor of Science (Microbiology)	PSP20/70007/14
3.	1 st November, 2017	Bachelor of Science (Microbiology)	PSP20/70008/14
4.	4 th November, 2017	Bachelor of Science (Biology)	PSP14/70026/5
5.	10 th October, 2018	Bachelor of Science (Microbiology)	PSP14/70003/14

8. The foregoing demonstrates that the respondent supervised research by students at both the Diploma and degree level and was entitled to payment for the arduous task.
9. Regrettably, all the claim forms on record relate to services rendered prior to the prescribed period and are silent as to the dates when the courses were taught
10. Similarly, the summary of claims filed by the appellant have no tabulation in relation to semesters or years when of the services were rendered.
11. Since the respondent was instructing students in multiple units in a semester, some of which were as short as one month, meticulous record keeping by both parties was essential as was prompt claiming for the sum due.
12. Significantly, the class attendance sheets filed in court are too few for the classes and examination sessions conducted by the respondent, to be a reliable or reasonable basis to determine his entitlements.
13. In the court's view, the examination attendance sheets appear fairly comprehensive though inadequate but may be relied upon. The court relied on all the documents on record in ascertaining the respondent's entitlements.
14. It is trite law that it is the appellant's obligation to maintain such records as ordained by the provisions of Section 74 of the *Employment Act* and ought to have availed them as evidence of proof of payment for services rendered.
15. Strangely, the respondent had no appointment letter for 2018 yet he served up to October, 2018.
16. Documents filed by the appellant reveal that for the May – August semester 2017, the respondents claim was Kshs.145,332.00 for having taught and examined 19 units, while for the September to December semester the claim was Kshs.56,250 in respect of 4 units.
17. Finally, for the January – October 2018 period the sum is Kshs.8,000 for one unit which had 2 candidate, a total of Kshs.209,582.00.



18. Using the 16 Examination Attendance Sheets exclusively, the respondent is entitled to Kshs.98,000 for instruction only.
19. However, bearing in mind that not all Examination Attendance Sheets were availed as evidence and the appellant did not rebut the respondent's evidence that he indeed instructed students in the courses or units identified in the memorandum of claim, dated 11th February, 2020, the court awards Kshs.209,582.00 for instructions for the period 12th July, 2017 to October 2018.
20. The evidence on record also reveal that the respondent successfully supervised student research in Diploma and Bachelors degree, a total of five (5) students and deserves payment for doing so and the same is awarded as per the university scale.
21. The court was unable to trace the specific letters of appointment of the respondent as a supervisor from the dossier filed by the appellant from 12th June, 2023 to 27th March, 2025 when the last document was filed.
22. In the upshot, the respondent's entitlements are computed at Kshs.209,582.00 exclusive of research supervision fee due to him.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KISUMU ON THIS 7TH DAY OF MAY, 2024

DR. JACOB GAKERI

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 Civil 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.

DR. JACOB GAKERI

JUDGE

