



**Ndegwa v Presbyterian University of East Africa (Cause 1379 of 2016)  
[2025] KEELRC 2346 (KLR) (30 July 2025) (Judgment)**

Neutral citation: [2025] KEELRC 2346 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE 1379 OF 2016**

**JW KELI, J  
JULY 30, 2025**

**BETWEEN**

**WILLIE M NDEGWA ..... CLAIMANT**

**AND**

**PRESBYTERIAN UNIVERSITY OF EAST AFRICA ..... RESPONDENT**

**JUDGMENT**

1. Vide a memorandum of claim dated 22<sup>nd</sup> June 2016 later amended and dated 18<sup>th</sup> December 2019, the claimant sued the respondent and sought for the following Orders:-
  - a) Kshs. 398,400/- plus interest.
  - b) Costs of the suit plus interest on (i) above.
  - c) Any other relief this Honourable Court may deem fit.
2. The claimant in support of the claim filed his list of witnesses dated 18<sup>th</sup> December 2019; witness statement dated 11<sup>th</sup> December 2019; and list of documents dated 18<sup>th</sup> December 2019 with the bundle of documents attached.
3. The Respondent entered appearance through the law firm of JK Mungania & Company Advocates and filed a defence dated 5<sup>th</sup> April 2022, denying the allegations in the memorandum of claim, and challenging the jurisdiction of the court to entertain the claim on the premise that the same was filed on 22<sup>nd</sup> June 2016 more than 3 years after the alleged cause of action arose. In support of the defence, the respondent filed a witness statement of Lucy Wairimu of dated 13<sup>th</sup> June 2023.

**Hearing and evidence**

4. The claimant's case was heard before Justice Ocharo Kebira on the 31<sup>st</sup> May 2023, where he testified on oath, adopted his witness statement dated 11<sup>th</sup> December 2019 as his evidence in chief. He produced



as his evidence documents under his list of documents dated 18<sup>th</sup> December 2019 as C-exhibits 1-8. He was cross-examined by counsel for the respondent, Mungania.

5. The respondent's case was heard before me on the 12<sup>th</sup> February 2025 when Lucy Wairimu Wanjiru testified on oath, adopted her witness statement dated 13<sup>th</sup> June 2023 as her evidence in chief. She was cross-examined by counsel for the claimant, Ms. Mwangi.
6. On closure of the respondent's case the parties took directions on filing of written submissions. Both parties complained.

### **The Claimant's case in summary**

7. The Claimant pleads that he was contracted by the Respondent in June 2013 as a lecturer at an hourly rate of Kshs. 1800.00 per hour per lesson and a sitting allowance of Kshs. 2000.00 per session. Some of the duties that the Claimant performed were teaching, preparation for lectures, setting supervising and marking of exams, and presentation of results and scripts to the office. According to the Claimant, the Respondent failed to remit his dues from June 2014 to December 2013. The total outstanding dues for this period were Kshs. 437,800.00 comprised of 124 hours taught in diploma/certificate courses; 102 hours taught in degree courses; and 15 and a half hours for six faculty meetings. Through a letter dated 11<sup>th</sup> August 2014, the Claimant demanded payment of his outstanding dues but to no avail. The Claimant also states that the aforesaid amounts remain unpaid to date, save for Kshs. 40,000.00 which was settled. The Respondent has also failed to provide him with proof of remittance of his statutory deductions.

### **Respondent's case in brief**

8. On its part, the Respondent first raised an issue of jurisdiction. It took the position that the present claim is time barred pursuant to Section 90 of the Employment Act 2007, as the same was filed more than 3 years after the alleged cause of action arose. Further, the Respondent denies that there existed an employer-employee relationship between it and the Claimant, for the reason that Thika Education Centre was not a teaching centre of the Respondent since the two had never signed a Memorandum of Understanding (MOU) in order to designate Thika Education Centre as one. Indeed, the Respondent denies having any dealings with Thika Education Centre. In any event, even in the legitimate teaching centres of the Respondent, employees are paid by the respective centres, rather than the main university. The Respondent argued that no letter of appointment was issued by it to the Claimant, and he has never been an agent, representative or employee of the Respondent. They also state that the Respondent has never offered a course in counselling psychology. They denounce the student attendance list produced by the Claimant, and aver that the listed students have never been enrolled as students of the Respondent and neither did they graduate from it.

### **Determination**

#### **Issues for determination**

9. The claimant identified the following issues for determination in the suit-
  - a. Whether there existed an employment relationship between the claimant and the respondent.
  - b. Whether the claimant was entitled to the reliefs sought.
10. The respondent adopted the same issues as the claimant and the court will proceed on the same thus:-
  - a. Whether there existed an employment relationship between the claimant and the respondent



- b. Whether the claimant was entitled to the reliefs sought.

## **Whether there existed an employment relationship between the claimant and the respondent**

### **The claimant's submissions**

11. Section 2 of the *Employment Act* defines an employee to mean "a person employed wages or a salary and includes an apprentice and indentured learner". On the other hand, an employer is defined to mean "any person, public body, firm, corporation company who or which has entered into a contract of service to employ any individual and includes the agent, foreman, manager or factor of such person, public body, firm, corporation or company.
12. Under Sections 2, 8 and 9 of the *Employment Act*, 2007, an employment contract may be established either in orally or in writing, and expressed or implied through conduct. Courts have consistently held that an employment relationship can be inferred where there is clear evidence of engagement and performance of duties, even in the absence of a written contract.
13. In the case of Samuel Wambugu Ndirangu vs 2NK Sacco Society Limited [2019] eKLR, the Court had this to say in regards to the ingredients that are necessary to determine the existence of an employer employee relationship: "A review of the elements above reveals that in order for a positive determination of the existence of the employer-employee relationship there must be the selection and engagement of the employee, proof of payment of wages, the power of dismissal and finally, the power to control the employee's conduct."
14. Further, the Court in the case of Christine Adot Lopeyio vs Wycliffe Mwathi Pere [2013] eKLR, spelt out various tests to determine the nature of an employer-employee relationship in a contract of service, thus: "In most cited authorities in this regard from various jurisdictions, several tests have been applied to distinguish between what comprise 'employment' as against what constitutes 'service' in case of contracts of service as contrasted with contracts for service. They include the following:-
  - a. The control test whereby a servant is a person who is subject to the command of the master as to the manner in which he or she shall do the work.
  - b. The integration test in which the worker is subjected to the rules and procedures of the employer rather than personal command. The employee is part of the business and his or her work is primarily part of the business.
  - c. The test of economic or business reality which takes into account whether the worker is in business on his or her own account, as an entrepreneur, or works for another person, the employer, who takes the ultimate risk of loss or chance of profit.
  - d. Mutuality of obligation in which the parties make commitments to maintain the employment relationship over a period of time. That a contract of service entails service in return for wages, and, secondly, mutual promises for future performance. The arrangement creates a sense of stability between the parties. The challenge is that where there is absence of mutual promises for stable future performance, the worker thereby ceases to be classified as an employee as may be the case for casual workers." It is evident from the statutory definition of an employee and the precedents set by the courts that the existence of an employer-employee relationship is determined not merely by the existence of a formal contract, but by the engagement and performance of duties by the employee.



15. In the instant case, the evidence presented by the Claimant clearly establishes that he was under the exclusive control of the Respondent in the performance of his duties and had been fully integrated into the Respondent's operations. The Claimant provided evidence of allocation of units through the letter dated 12th September, 2013 which bears the Respondent's logo, letterhead, email, and website domain. Additionally, class attendance sheets also reflect the Respondent's letterhead, email, and website domain as well as a payment cheque being confirmation of salary/wages paid to the Claimant. These documents indicate that the Claimant was clearly engaged by the Respondent and performed his duties under its authority. That the Respondent, cannot evade liability by simply denying its connection to the Claimant and we wish to rely on the case of *Casmir Nyankuru Nyaberi vs Mwakikar Agencies Limited* (2016) eKLR, where the Court held that;- "This Court is fully aware that it is the responsibility of an employer to document the employment relationship and in certain respects, the burden of proving or disproving a term of employment shifts to the employer". In *Peter Wambugu Kariuki & 16 Others v Kenya Agricultural Research Institute* [2013] eKLR, the court ruled that where an employer benefits from an employee's services, it cannot deny the existence of an employment relationship. The Claimant taught courses, supervised exams, and contributed to the academic activities of the institution. As such, the Court should find that there existed an employment relationship between the parties. Further, as a general rule, a principal is bound by such acts as are within an agent's authority, whether defined in a contractual document, appointment terms, or inferred from conduct. The agent's actions must be within the course of their employment within the scope of the authority conferred by the principal, or otherwise presumed implied where necessary.
16. In this case, the claimant submits that the Thika education Centre acted within the apparent authority of the Respondent. The letter of allocation of units and class attendance sheets both bear the Respondent's branding and details, creating the reasonable impression that it was operating under the Respondent's authority. The Claimant relied on this representation, performed his duties, and the Respondent benefited from his services.
17. The claimant invited the Court to take judicial notice of the fact that the Respondent, in its own public and official brochure, though not formally tendered as evidence, explicitly listed Thika Centre - Elijah Kagiri Memorial as one of its accredited teaching centers further corroborating the Claimant's position that the Thika Centre was part of the Respondent's institutional framework. The same brochure also listed other recognized campuses under the Respondent, including those located in Kikuyu, Nairobi (St. Andrews Church), Githunguri (Ayub Kinyua Memorial Church), Nakuru, Chogoria, and Kisii Town. The claimant submitted that the Respondent cannot now disclaim liability, having allowed an entity to operate under its name and apparent authority.

### **The respondent's submissions**

18. The respondent denied existence of employer-employee existed between the parties. It asserted that plaintiff was not an employee of the respondent and therefore, this claim is unwarranted. The plaintiff claims that he was an employee of the Respondent but fails to forward any proof of direct employment by the respondent. Instructively there is no letter of appointment tendered as evidence by the plaintiff. The cheque tendered as evidence as proof of payment and dated 15th of August 2013 by the plaintiff was drawn up by the PCEA Elijah K. Memorial church, Thika Parish. It is crystal clear that is a different entity from the Presbyterian University of East Africa. Furthermore, the letter authorizing the plaintiff to teach courses at a campus in Thika and dated 12th September 2013 is not a communication by the Presbyterian University of East Africa. The same is signed by Rev. Julius N.Mbugua who is not an agent of Presbyterian University of East Africa. Additionally, that the letters produced by the claimant have the letterheads markedly different from those of the Respondent. The Respondent's



email address is vc@puea.ac.ke whereas that of Thika center is puea@pceathika parish.org; the website for the respondent is www.puea.ac.ke whereas that of Thika center is www.pceathikaparish.org, the Respondent's motto is "finding new paths" whereas that of Thika center is "a Christian transformative center".

19. The respondent submitted that the foregoing documents/letters indicate that the claimant was not engaged by the Respondent but a separate entity altogether and therefore Thika Education Center did not act with authority of the respondent. That there is no evidence adduced by the plaintiff showing an employment relationship between the plaintiff and the defendant. In Kenya Union Of Commercial Food And Allied Workers V Mwana Black Smith Limited [2013] KEELRC 502 (KLR), the court was categorical that, "The Court must therefore be fully satisfied that it actually exists. A Claimant claiming employment rights must prove the existence of an employment relationship." There is no evidence produced by the Plaintiff of an employment relationship with the defendant.
20. The respondent submitted that the University has Memoranda of Understanding with any of its satellite campuses, but it has no memorandum of understanding with the institution in question. Additionally, in any instance where the university has a memorandum, the duty to remunerate the workers lies with the campus. In the case of Joseph Munene Murage v Salome Ndung'u [2019] eKLR the court held that:- "The determination of the other heads of claims advanced by the Claimant will depend on whether the Court finds that there was an employment relationship."
21. Any consideration by this court must follow a determination that there was an employer-employee relationship between the parties. The plaintiff has not tendered any evidence linking the Presbyterian University as an employer of the Plaintiff. In the absence of evidence, the court is mandated to strike out the case. The court in Monica Kanini Mutua v Al-Arafat Shopping Centre & another [2018] KEELRC 960 (KLR) stated as follows: "In the present case the only documents submitted by the claimant are demand letters from Kenya Scientific, Research International, Technical and Institutions Workers Union (KSRITA IWU) and from counsel for the claimant. She also submitted a document with the logo of City Council Of Nairobi Under The Title "to Whom It May Concern." The said documents do not establish any employment relationship between the claimant and the 1st respondent, which is fundamental in a claim of unfair termination of employment." That in the absence of a document expressly stating that there was an employer-employee relationship, there is no evidence on record of an employer-employee relationship. That in the absence of such a relationship, there is no claim against the respondent and the case should be dismissed.
22. In the absence of any evidence establishing a relationship between the two, the case necessary fails. As decided in Kaitano v Western Mills Ltd (Cause 217 of 2017) [2022] KEELRC 13 (KLR), "This could only be deduced to mean that indeed it was true the claimant was not an employee of the respondent but that of Jokali Handling Ltd. The Court having so found, the respondent therefore becomes non-suited against the claimant. The Court will therefore not delve into other claims against the respondent and proceed to dismiss the suit against the respondent with costs." In dismissing the case of Kimani v Kenya Bus Management Limited (Cause E1025 of 2021) [2023] KEELRC 2413 (KLR) (6 October 2023) (Judgment), the court was of the view that "Since proof of existence of an employment relationship is the foundation of a case for unlawful termination, the Court cannot determine the fairness or otherwise of a termination from employment without this foundation."

## Decision

23. The foundation of any claim of unfair termination is the existence of employment relationship. The claimant had in original suit sued PCEA Thika Education Center but amended the claim to state he was contracted by the respondent, the Presbyterian University of East Africa (paragraph 4 of the



amended memorandum of claim dated 18<sup>th</sup> December 2019). In his witness statement dated 11<sup>th</sup> December 2019 at paragraph 1 the claimant stated that ‘On or about June 2013, I was contracted by the respondent to carry out the services of a lecturer.’ In support of his case the claimant produced demand letter dated 11<sup>th</sup> August 2014 addressed to PCEA Thika Education center/ PCEA Thika Parish, claims for payment addressed to the coordinator Thika Education Center, examinations results for diploma titled Presbyterian University of East Africa Thika Center, unconfirmed minutes dated 8<sup>th</sup> June 2013 to discuss the PUEA Thika course structure where his name appeared in those present as the curriculum advisor. The court noted that in the AOB of the said minutes it was stated as follows with some comments inserted in ink- ‘Min 04/06/13 – A.O.B.

- i. The lecturers were informed that their appointment letters will be given to them after the Board has been appointed. The management was waiting for communication from the main campus.
- ii. Other programs for the Thika campus were suggested e.g. Education, Leadership, Theology, and Criminology to be offered at certificate, diploma and degree level.
- iii. It was agreed that the PUEA identity is "Christian leadership" and courses offered should portray that image.
- iv. Members suggested that there should be a team-building conference for all the lecturers i.e. part time & school based.
- V. The members agreed to meet on July 11<sup>th</sup> -2013 at 2.00pm (Thursday) at the university - Thika to distribute the courses for the next session so that they can prepare in advance.
- vi. They said that CAT 1 should be administered by 1<sup>st</sup> July CAT 2 by 4<sup>th</sup> Aug. This will give enough time to the students to prepare for the exam.” There was note in ink to effect that communication from main campus was pending. (PAGE 10-12 OF CLAIM)

The claimant produced as proof of salary payment cheque for the sum of Kshs. 40320/- drawn by PCEA Elija K Memorial Church. (PAGE 14 OF CLAIM)

The claimant further produced what appeared to be class attendance lists with letterhead “the Presbyterian University of East Africa- Thika Center ( A Christian Transformative Center) with email indicated as puea@pceathikaparish.org .

The claimant further produced a demand letter by his advocates addressed to PCEA Thika Education Center.”

24. On amendment of the claim, fresh summons were issued to the respondent who filed a statement of defence and denied having employed the claimant and stated the claimant was employed by PUEA Education Center which had no relation with the respondent. In witness statement of RW1, Lucy Wairimu and stated as follows:-

- “ 1. I am the Human Resource Manager at the Presbyterian University of East Africa (PUEA) and as such manage all personnel issues of the University.
2. PUEA has Nine (9) ODeL Teaching Centres namely: Tala, GETTI, Nakuru, Rubate, Rafiki, Vihiga, Suba, Chogoria and Globoville and Thika Education Centre is not one of them.
3. PUEA did not have any dealings whatsoever with Thika Education Centre, in respect of the services offered by the Centre.



4. For PUEA to establish a Centre, a Memorandum of Understanding (MOU) has to be prepared and signed by the Centre and the PUEA in this case, there is no MOU between the Thika Educational Centre and PUEA.
5. In the Centres, where an MOU exists, the employees working at the Centres are employed and paid by the Centre not the Main University/Campus. So even if, Thika Education Centre were a Centre of PUEA, it is the Centre's responsibility to pay the workers.
6. Thika Education Centre does not appear in any records of the University.
7. Indeed, no letter of appointment was issued to the claimant by the University.
8. The Thika Centre Coordinator, one Rev. Julius N. Mbugua, the Claimant herein, has never been an agent representation or an employee of PUEA."

During cross-examination the claimant told the court that the employer was the university under contract dated 12<sup>th</sup> may 2013 and signed by Mr, Julius Mbugua the academic registrar of the centre. I perused the list of documents by claimant o 18<sup>th</sup> December 2019 and did not find the said contact.

9. That PUEA has never offered a course in counselling psychology and the attached attendance list of students have never been PUEA students nor have they graduated from PUEA as happens with students from other Centres."

25. Having evaluated the evidence before the court, I found no contract of employment of the claimant as alleged was produced, that there was no iota of any proof of relationship between the Presbyterian University of East Africa- Thika Center (A Christian Transformative Center) under which the claimant appeared to have worked and the respondent. The claimant produced as proof of salary payment a copy of a cheque for the sum of Kshs. 40320/- drawn by PCEA Elija K Memorial Church. (page 14 of Claimant's bundle of documents). At the hearing the claimant said he was paid vide the said cheque in respect of the service he had offered at the university. The court finds that the documents produced and relied on by the claimant were no evidence of the existence of agency legal relations between the said Thika Center and the respondent. The cheque was evidence of who the employer was and it was not the respondent. The court finds that the claimant dragged the respondent to court without basis and knowing very well who is employer was. The entire claim, for lack of proof of employer employer-employee relationship between the parties was based on sinking sand. The court was persuaded by the decision in *Monica Kanini Mutua v Al-Arafat Shopping Centre & another* [2018] KEELRC 960 (KLR) stated as follows,: "In the present case the only documents submitted by the claimant are demand letters from Kenya Scientific, Research International, Technical and Institutions Workers Union (KSRITA IWU) and from counsel for the claimant. She also submitted a document with the logo of City Council Of Nairobi Under The Title "to Whom It May Concern." The said documents do not establish any employment relationship between the claimant and the 1st respondent, which is fundamental in a claim of unfair termination of employment." In the instant case, the claimant submits that in the unproduced brochure of the respondent, the Thika Center was mentioned as accredited teaching center. The claimant knew that the said brochure was not produced as evidence before the court. Even if it had been produced, that cannot be evidence to prove principal agency relationship. A brochure is not a legal document. Anyway the document was not evidence before the court and the less said about it, the better. In the upshot the court finds that there was no prove of employment of the claimant by the respondent or any agency relationship.



26. The court further holds that the claims for payment of wages were for December 2013 while the claim was filed on 15<sup>th</sup> July 2016. These were continuing injury claims and thus ought to have been filed within 12 months under section 90 (then and no 89) of the *Employment Act*.

### **Conclusion**

27. The entire claim fails consequently for lack of proof of employee employer-employee relationship between the claimant and the respondent. The claim is dismissed with costs to the respondent.

28. It is so Ordered.

**DATED, SIGNED, AND DELIVERED IN OPEN COURT AT NAIROBI THIS 30<sup>TH</sup> DAY OF JULY, 2025.**

**J.W. KELI,**

**JUDGE.**

In The Presence Of:

Court Assistant: Otieno

Claimant: Ms. Mwangi h/b Macharia

Respondent: Wachera h/b Mungania

