



**Okiro v Multimedia University of Kenya (Cause E666 of 2023)
[2024] KEELRC 351 (KLR) (23 February 2024) (Judgment)**

Neutral citation: [2024] KEELRC 351 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E666 OF 2023
SC RUTTO, J
FEBRUARY 23, 2024**

BETWEEN

ABRAHAM OBWOCHA OKIRO CLAIMANT

AND

MULTIMEDIA UNIVERSITY OF KENYA RESPONDENT

JUDGMENT

1. The Claimant initiated the suit herein vide a Statement of Claim filed on 2nd August 2023, through which he avers that he was employed as a part-time lecturer at the Respondent University with effect from 2016. The Claimant further avers that the Respondent has not paid his salary in the sum of Kshs 1,424,000/= for the years 2021 and 2022.
2. It is the Claimant's case that he has attempted to resolve the dispute amicably but the Respondent has failed to cooperate. He further avers that in an attempt to resolve the issue, he engaged the firm of Nyandoro & Company Advocates who wrote a demand letter to the Respondent detailing the claims of salary payment. The Respondent responded vide a letter dated 15th December 2023 in which they agreed to pay the Claimant's salary in six monthly installments from January 2023 until June 2023 but failed to do so.
3. On account of the foregoing, the Claimant prays for Judgment against the Respondent in the sum of Kshs 1,424,000/= being unpaid salary, together with interest and costs of the suit.
4. The Respondent neither entered appearance nor filed a Defence despite being served with the Notice of Summons and Statement of Claim. In this regard, the Claimant filed an Affidavit of Service sworn by Jacob Ouma Okello on 18th August 2023, confirming service upon the Respondent. Annexed to the Affidavit of Service is a copy of the Notice of Summons bearing the stamp of the Respondent.



5. Being satisfied with the return of service, the Court directed that the matter proceeds as an undefended cause. Subsequently, the matter was set down for formal proof hearing on 17th October 2023, during which the Claimant testified in support of his case.
6. In his testimony before Court, the Claimant reiterated the averments contained in his Statement of Claim. He further produced the bundle of documents filed together with the Statement of Claim as exhibits before Court.
7. Thereafter, the Claimant filed written submissions which I have considered.

Analysis and Determination

8. To my mind, the singular issue for determination is whether the Claimant is entitled to the reliefs sought.
9. In support of his case, the Claimant exhibited a copy of a letter dated 15th December 2023 from the Respondent's Vice Chancellor addressed to the firm of Nyandoro & Company Advocates whom he had engaged at the time. In the said letter, the Respondent's Vice Chancellor, Amb. Prof. Festus Kaberia, states that the University is amenable to paying the Claimant the amount owed in six equal monthly installments from January 2023 up to June 2023. This proposal was rejected by the Claimant who in turn proposed that the said amount be paid in three equal monthly instalments.
10. In response, a Mr. Wilson Kagwe from the Respondent University proposed vide an email dated 16th March 2023 to pay the amount owed in four equal monthly installments. Mr. Kagwe added that the University is committed to ensuring that the matter is settled amicably. This proposal was accepted by the Claimant through his advocate in an email of 16th March 2023.
11. As it came to be, the Respondent did not honour the proposal hence the Claimant through another letter dated 6th June 2023, demanded the amount due and indicated his intention to sue should the amount remain outstanding.
12. As stated herein, the Respondent did not file a Defence nor participate in the hearing. Therefore, the Claimant's claim was not controverted. Further, there was no evidence that the outstanding amount had been settled at the time of writing this Judgment. This is despite the Court granting the parties more time to settle the dispute on 18th December 2023.
13. As it is, the Respondent has not denied that the Claimant taught at the University as a part-time lecturer and that he was not paid salary in 2021 and 2022.
14. Under Section 17(1) of the *Employment Act*, an employer is required to pay the entire amount of wages earned by or payable to an employee in respect of work done by the employee in pursuance of a contract of service. Indeed, this is a cardinal rule in any employment relationship.
15. Further, Section 17 (10) of the *Employment Act* provides for a penalty in the event an employer fails to make payment of or to tender wages earned or payable to an employee in accordance with Section 17 (1).
16. It is thus clear that in failing to pay the Claimant salary for the services rendered, the Respondent breached the contract of service as well as a mandatory statutory provision.
17. Besides the Respondent has not proffered any justification for withholding the Claimant's salary.
18. Accordingly, I arrive at the inescapable conclusion that the Claimant is entitled to the sum of KShs 1,424,000/= being unpaid salary in respect of 2021 and 2022.



Orders

19. To this end, I enter Judgment in favour of the Claimant against the Respondent as follows:
- a. An award of Kshs 1,424,000/= being unpaid salary in 2021 and 2022.
 - b. Interest shall apply on the amount in (a) at court rates from the date of filing the suit until payment in full.
20. As the Claimant was self-representing, the Respondent shall bear the costs of the Claim limited to the actual expenses incurred by the Claimant in terms of filing.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 23RD DAY OF FEBRUARY, 2024.

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STELLA RUTTO

JUDGE

Appearance:

For the Claimant In person

For the Respondent No appearance

Court Assistant Millicent Kibet

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 had 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.

STELLA RUTTO

JUDGE

