



Ombega v Kenyatta University (Employment and Labour Relations Cause E010 of 2023) [2024] KEELRC 901 (KLR) (25 April 2024) (Ruling)

Neutral citation: [2024] KEELRC 901 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU
EMPLOYMENT AND LABOUR RELATIONS CAUSE E010 OF 2023**

HS WASILWA, J

APRIL 25, 2024

BETWEEN

KEPHA OMBEGA CLAIMANT

AND

KENYATTA UNIVERSITY RESPONDENT

RULING

1. Pursuant to the judgement of this Court delivered on the 24th October, 2023, the Court directed the parties to do calculations of dues owed to the claimant and submit to this Court. In the alternative that the court would determine the figures as per the evidence on record if parties fail to agree.
2. Parties were granted several months to discuss and agree on the figures, however on 14th March, 2024, the parties reported that the reconciliation of figures was not fruitful and urged this Court to do the calculation. It's based on this disagree that this Court will now embark on the calculation of the award.
3. In the claim, the claimant wants to be paid for 18 units taught, each at a flat rate of Kshs 80,500 and transport allowance of Kshs. 102,000 all adding upto Kshs. 1,470,500. However, during hearing he admitted to having some items repeated such as (d) &(e) and (i) &(k) respectively. He attributed this to clerical error.
4. The Respondent on the other hand submitted that the items repeated such as (d) &(e) and (i) &(k) should be removed from the list. He stated that the claimant did not teach item(h) BAC 300 for 2021-2022 and item (p) BAC 101 for 2018-2019. The Respondent also stated that they paid for items (m),(o) and (q) being BAC 819 of 2018-2019, BAC 815 of 2018-2019 and BAC 101 of 2018-2019.
5. On the below, items, the Respondent averred that the class did not meet quorum and the pay ought to be pro-rated. These classes include;-
 - i. Item(a)BAC 406-2020-2021-Semester 2-had 12 student.



- ii. Item(b)BAC 406-2020-2021-Semester 1-had 8 student.
 - iii. Item (c) BAC 408-2021-2022-Semester 2 had 7 student.
 - iv. Item (d) BAC 408-2020-2021-Semester 2-had 12 students.
 - v. Item (f) BAC 408-2018-2019-Semester 2- had 12 student.
 - vi. Item (g) BAC 300-2019-2020-Semester 1 had 3 student.
 - vii. Item (i)BAC 300-2020-2021-Semester 1 had 3 student.
 - viii. Item (j)BAC 300-2021-2022-Semester 1 had 12 student.
 - ix. Item(l) BAC 407-2019-2020-Semester 2 had 10 students
 - x. Item(n)BAC 819-2018-2019-Semester 1 had 3 students.
6. By a letter dated 31st October, 2023, the firm of Tombe & Company Advocates, acting for the claimant, wrote to the Respondent’s advocates Lawrence Mungai and Company Advocates, deleting the two units repeated and highlighting 16 units taught, the years taught and payments calculated as per quorum attained in line with the internal memo of 15th April, 2019 . In this regard the 16 units were captured as follows.
- i. BAC 101..2018-2019..Semester 1..Kshs.80,500...9 students
 - ii. BAC 819..2018-2019..Semester 1..Kshs.80,500...3 students
 - iii. BAC 408..2018-2019..Semester 2..Kshs. 80,500..12 students
 - iv. BAC 815..2018-2019..Semester 2..Kshs. 80,500..21 students
 - v. BMS 101..2018/2019.. Semester 2..Kshs .80,500..10 student
 - vi. BAC 819..2018-2019..Semester 3..Kshs. 80,500..6 students
 - vii. BMS 101..2018/2019.. Semester 2..Kshs.40,250..8 students
 - viii. BAC 300..2019-2020..Semester 1..Kshs.56,350..14 students
 - ix. BAC 300..2021-2022..Semester 2..Kshs.40,250..7 students
 - x. BAC 407..2019-2020..Semester 2..Kshs.56,350..10 students
 - xi. BAC 300..2020-2021..Semester 1..Kshs.12,075..4 students
 - xii. BAC 406..2020-2021..Semester 1..Kshs.40, 250..8 students
 - xiii. BAC 408..2020-2021..Semester 2..Kshs.56,350..12 students
 - xiv. BAC 406..2020-2021..Semester 2..Kshs. 12,075..4 students
 - xv. BAC 300..2021-2022..Semester 1..Kshs. 56,350..12 students
 - xvi. BAC 408..2021-2022..Semester 2..Kshs. 40,250..7 students
7. On this table, the claimant stated that since the internal Memo of 15/4/2019, was communicated in April, the classes earlier taught such as items (1) to (v) in paragraph 6 above are not affected by the quorum requirement as such should be paid in full. He then calculated the other units as per the memo



and arrived at Kshs 893,500. He added transport allowance of Kshs 96,000 and marking fees of Kshs. 7350, all adding up to Kshs 996,900.

8. The Respondent on the other hand through its advocates, produced a bank outward presentation transaction report from its bank Equity showing a total of Kshs. 523,000 was paid to the claimant through his KCB Bank account number 1125978791 for the period between March, 2018 and September, 2021.
9. In response to the said statement, the claimant, through his advocates, wrote another letter dated 12th February, 2024 stating that the claimant's statement, now attached, does not show the payment of monies in item 1 and 2 of Kshs 28,065 each. On the other payment, it is stated that the money received was for work done in another campus.
10. The claimant maintains that the evidence that was to be tabled before this court was on the payments of Kshs 442,750 allegedly made to the claimant as indicated in the letter drawn by the Respondent dated 3rd January, 2023.
11. From the Memorandum of claim dated 20th January, 2023, the claimant had not sought for payment of BMS. 101 taught in 2018/2019 in the second semester and BMS 101 taught in year 2018/2019 in third semester being item (v) and (vii) respectively at paragraph 6. Therefore, that that claim for these two classes must fail.
12. With regard to item (i)-(iv), the claimant stated that since the internal memo of 15th April, 2019 had not come in force, he ought to be paid the full amount regardless of the quorum. The quorum issue was communicated by an internal Memo dated 2nd April, 2019 and the letter of 15th April, 2019 is a letter clarifying its contents and provides for quorum as follows; -

Undergraduate programmes
15 students and above- 100%
10-14 students.....70%
5-9 student.....50%
Below 5 student.....15%

Postgraduate programmes
5 students and above...100%
3-4 students.....70%
1-2 students.....25%
13. In light of this memo and considering that the same is dated 2nd April, 2019, all payment for units undertaken before the memo are to be made in full regardless of the quorum, therefore that items (i) to (iv) should be paid in full.
14. BAC 819, Masters class taught in 2018/2019 for third semester had 6 students and since it's a master class, the quorum was met and the claimant should be paid in full.
15. With regard to the other items being number (viii) to (xvi), the calculations have been drawn as per the memo and in consideration of the number of students in attendance.
16. The claimant also sought for transport reimbursement of 96,000 for 16 Units, which claim was not challenged as much by the Respondent. However, since two units have been removed from the lists for



the reason that they were not pleaded in the Claim, the units remaining are 14 and thus, the claimant should be paid transport for 14 units ; $14 \times 6000 = \text{Kshs } 84,000$

17. On the examination marking fees, the claimant had not sought for this in the Memorandum of claim, thus the claim cannot be sought at this stage.
18. The Respondent alleged to have paid Kshs 523, 000 to the claimant into his KCB account and exhibited an outward presentation transaction from equity bank and a confirmation letter from the said bank dated 9th February, 2024, confirming the said money was paid into the claimant's Account. The claimant on the other hand challenged payment of Kshs 28,065 paid on 13/3/2018 and 7/5/2018 stating that it is not reflected in his bank statement exhibited herein. Further that the other payment received was for work done in another Campus, but did not tender any evidence in support of the allegations.
19. The bank statement exhibited by the claimant is for the period between 1/9/2018 to 30/9/ 2021, hence the payment of monies received for the objected dates were not produced by the claimant. On that basis, I am persuaded that the Respondent paid the said Kshs 532,000.
20. In conclusion, the claimant is awarded the claim as follows;-
 - i. Payment for 14 units taught Kshs 772,800.
 - ii. Transport..... Kshs. 84,000
Total..... Kshs 856,800
 - iii. Less 523,000 paid
Grand total Kshs. 333,800

RULING DELIVERED VIRTUALLY THIS 25TH DAY OF APRIL, 2024.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

