



**Musyoki v Lukenya University (Cause E002 of 2023)  
[2024] KEELRC 2833 (KLR) (15 November 2024) (Judgment)**

Neutral citation: [2024] KEELRC 2833 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MACHAKOS  
CAUSE E002 OF 2023  
B ONGAYA, J  
NOVEMBER 15, 2024**

**BETWEEN**

**ATHANAS MUIA MUSYOKI ..... CLAIMANT**

**AND**

**LUKENYA UNIVERSITY ..... RESPONDENT**

**JUDGMENT**

1. The claimant filed the memorandum of claim on 19.04.2023 through Messers Wambui Muiruri & Associates Advocates. The claim is for non-payment of salary arrears. There is no dispute that the respondent employed the claimant by the letter of appointment dated 08.04.2019 as a part-time lecturer in the department of education during the April 2019 semester. The respondent thereafter employed the claimant on various contracts based on the semesters and he taught as assigned in the capacity of a part-time lecturer. The claimant's claim is for Kshs. 943,760.00 as particularised and for the period April 2019 to September 2022. The claimant further pleaded as follows:
  - a. The respondent designs to deduct 90% PAYE while the claimant states that the payment is subject to 5% withholding tax because he was contracted to provide professional services.
  - b. The respondent has breached the claimant's right to fair and prompt payment of wages.
2. The claimant prayed for judgment against the respondent for:
  - a. Salary arrears of Kshs.943, 760.00.
  - b. A declaration that the claimant's fees or salary should be subjected to 5% withholding tax and not 30% PAYE applicable to full-time employees.
  - c. A valid Kenya Revenue Authority withholding tax certificate over the period April 2019 to September 2022.



- d. General damages.
  - e. Interest and costs.
3. The respondent's case is based on the amended reply to memorandum of claim filed on 19.02.2024 through MNA Law Africa LLP. The respondent admitted that it employed the claimant as a part time lecturer from April 2019 to September 2023 and the terms of engagement varied each semester based on whether the mode of study was School Based Program or Full-time Program. The pay per credit hour for a maximum of 39 hours was Kshs. 1, 200.00 per hour. Further, the claimant was allocated Kshs. 4,000.00 for Full Time Programs when he was required to appear physically at the University. The contracts specified the units to be taught per semester and applicable terms.
4. The respondent further pleaded as follows:
- a. The claimant taught for 9 semesters between April 2019 to September 2022 and his salary arrears for April 2019 to September 2019 duly paid.
  - b. Transport allowance is due only when on Full Time Program and required to physically attend at the University.
  - c. Parties tried to compromise the dispute and the respondent was under financial constraints. The compromise efforts collapsed when the statement of claim was served on 19.04.2023.
  - d. It is the respondent's statutory duty to deduct 30% income tax by way of PAYE.
5. The parties testified to support their respective cases. The respondent filed the final submissions. The claimant failed to file and serve final submissions. The Court has considered the material on record and returns as follows:
- a. As submitted for the respondent parties were in a contract of service. The claimant has not established the basis of the claim that 5% withholding tax and not PAYE is applicable. On account that the parties were in a contract of service and not a consultancy, it appears to the Court that PAYE and not withholding tax is deductible. It is found, accordingly.
  - b. The claimant has not rebutted the respondent's case that the contracts provided for the specific terms and that Kshs. 4,000.00 applied only when the claimant was expected to physically attend at the University. The Court upholds the submission made for the respondent thus "3.5.5 The Respondent therefore submits that the total amount owed to the claimant inclusive of taxes is Kshs.679, 200.00. The Respondent further submits that it owes the Claimant a total of 6 semesters worth of transport allowances of Kshs.24,000.00, and therefore the total amount owed to the Claimant in salaries and allowances is Kshs. 679, 200.00 and not Kshs. 943, 760.00 as alleged by the claimant." The Court finds accordingly and in absence of the claimant filing submissions, each party will bear own costs.
- 6 In conclusion, the suit is hereby determined with orders:
1. The respondent to pay the claimant Kshs. 679, 200.00 less due PAYE by 15.12.2024 and failing interest to run thereon at Court rates from the date of filing the suit until full payment.
  2. The respondent to deliver to the claimant due documents showing the remission of the deducted PAYE.
  3. Each party to bear own costs of the suit.



4. The Deputy Registrar to cause return of the court file to Machakos Sub-registry forthwith.

**SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS FRIDAY 15<sup>TH</sup> NOVEMBER 2024.**

**BYRAM ONGAYA**

**PRINCIPAL JUDGE**

