



**Njoroge v Moi University (Cause E091 of 2022)  
[2024] KEELRC 2806 (KLR) (14 November 2024) (Judgment)**

Neutral citation: [2024] KEELRC 2806 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA  
CAUSE E091 OF 2022  
M MBARÚ, J  
NOVEMBER 14, 2024**

**BETWEEN**

**KELVIN NJOROGE ..... CLAIMANT**

**AND**

**MOI UNIVERSITY ..... RESPONDENT**

**JUDGMENT**

1. The respondent employed the claimant as a lecturer at a public university established and registered under the *Universities Act*. Employment was from July 2013 at a salary of Ksh.56, 000 per month. The claimant was required to teach in the following areas;
  - a. Business Law I;
  - b. Business Law II;
  - c. Banking Law;
  - d. Labour Law and Industrial Relations;
  - e. Company Law;
  - f. Agribusiness Business; and
  - g. Employee Relations.
2. In January 2020 when the new semester began, the claimant noticed that he had not been allocated any teaching unit without any explanation.
3. The claim is that the claimant’s work performance was exemplary and he did his work diligently. Despite seeking an audience with the respondent about the non-allocation of work, there was no



response. This resulted in unfair termination of his employment without justification. He was not paid for work done for 14 months or terminal dues.

The claimant is seeking payment of the following;

- a. Unpaid salaries for 14 months Ksh.784,000;
  - b. Unpaid leave for 8 years Ksh.448,000;
  - c. Notice pay Ksh.56,000;
  - d. House allowance at 15% for 8 years Ksh.806,400;
  - e. Service pay at 15% for 8 years Ksh.806,400;
  - f. 12 months compensation Ksh.672, 000.
4. The claimant filed his bank statement to demonstrate that the respondent paid him a monthly salary.
  5. The claimant testified in support of his case that he was employed by the respondent in the year 2013 in the Mombasa campus where he worked diligently until January 2020 when he was not allocated any duties despite reporting to work as required. He noticed that his teaching units had been allocated to a third party. This led to unfair termination of his employment without any notice, hearing or any reasons being given.
  6. The claimant testified that he was employed full-time under contractual terms. He was not issued a letter of appointment, human resources policy, or manual to guide him in his duties. A timetable was shared with his name and indicated the units. The respondent kept the details, which have not been filed herein.
  7. Upon teaching, he would make his payment claim using the students' making sheets and score sheets. For 14 months he was not paid for work done. He did not take annual leave, house allowance or service pay for 8 years of service.
  8. In response, the respondent has made mere denials and that it had no obligations, legally or otherwise with the claimant and the claim should be dismissed.

The respondent filed the following documents;

- a. HR Policy manual;
- b. Moi University statutes;
- c. Moi University Policy on part-time lecturing including postgraduate guidelines updated.

No witness was called.

9. At the end of the hearing, the parties agreed to file written submissions. Only the claimant complied and filed written submissions.
10. The claimant submitted that he was employed full-time by the respondent as a lecturer. He produced his bank statements to demonstrate the employment relationship.
11. The respondent has not disputed that he was allocated teaching units he did his work diligently and submitted the supporting records for his work performance.
12. For the period of employment, the respondent failed to give the claimant a contract of service as required under Sections 9 and 10 of the [Employment Act](#). The documents produced by the respondent



were never served on the claimant during his employment contrary to the provisions of Section 10(6) and (7) of the *Employment Act*. The claims made are justified and should be awarded. The claimant relied on the case of *Wafula v Gurdit Singh Shop* [2022] eKLR; *Abigail Jepkoskei Yator & another v China Hanan International Co. Ltd* [2018] eKLR.

### Determination

13. As noted above, the response by the respondent comprises mere denials. The filed work records are not given a foundation under the response. This denies the court a clear response to the claims made.
14. The Court of Appeal in the case of *Job Kilach v Nation Media Group Ltd, Salaba Agencies Ltd & Michael Rono* [2015] KECA 846 (KLR) held that mere denials do not constitute a good defence. A mere denial denies the court crucial material upon which a matter can be assessed and a conclusion drawn as held in *Raghibir Singh Chatte v National Bank of Kenya Limited* [1996] KECA 99 (KLR).
15. In this case, the claimant's case that he was an employee of the respondent is not controverted. He submitted evidence of payment of salaries and teaching units he was assigned. The duty to file the employment contract, letter of appointment or work records is on the employer as required under Section 10(6) and (7) of the *Employment Act*. Upon the respondent being served with the claim, in response, as the employer, the duty to file all work records rested on it as held in the case of *Mwamchera & 33 others v Kaluworks Limited* [2024] KEELRC 799 (KLR).
16. This duty was not discharged. The court must believe the claimant.
17. The claimant claims that his employment was unfairly terminated without any notice, hearing or payment of terminal dues. He discharged his burden as required under Section 47(5) of the *Employment Act* as held in the case of *Tendeti v Kiesta Industrial Technical Services Limited* [2024] KEELRC 873 (KLR) and *Kingoo v Nairobi Plastics Limited* [2023] KEELRC 236 (KLR) that upon the employee claiming there is unfair termination of employment, the employer has the burden to justify the reasons leading to termination of employment.
18. The response comprising mere denials and no witness was called, the court must believe the employee. The claimant's employment was terminated unfairly contrary to the provisions of Sections 35, 41 and 43 of the *Employment Act*. This resulted in unfair termination of employment under the provisions of Section 45 of the Act and under Section 49, he is entitled to the remedies sought.
19. However, each claim must be interrogated on the merits and the applicable law.
20. Notice pay is due where employment is terminated without due process. The claimant was earning Ksh.56, 000 and this is due under Section 35 of the *Employment Act*.
21. The claimant worked for the respondent for 8 years. There is no record of any poor performance. An award of 8 months gross pay in compensation is hereby found justified at Ksh.56,000 x 8 = Ksh.448,000.
22. On the claim for untaken leave days, Section 28 of the *Employment Act* gives this as a right. However, this being a continuing injury, the law caps accumulation of annual leave to 18 months only unless the employee can demonstrate that he applied for leave and was allowed to carry forward the earned days. The respondent did not file any work records on how the leave days were allocated. In this case, the claimant is only entitled to 33 leave days at Ksh.61, 600.
23. On the claim for house allowance, employment was not regulated under a written contract. The claimant was not earning a minimum wage under which house allowance is allocated.



24. On the claim for service pay, this is due under Section 35(5) and (6) of the *Employment Act*. This accrues when the employer fails to secure the employee through a social and medical fund or payment of statutory dues to this effect. The respondent did not file any work records on how the wage paid of Ksh.65, 000 was distributed and whether there were statutory deductions and payments to NSSF and NHIF.
25. For the 8 years of service, the claimant is entitled to service pay of 15 days for each full year worked all at ksh.224, 000.
26. On costs, the claim is successful and with good foundation. Costs are due.
27. Accordingly, judgment is entered for the claimant against the respondent in the following terms;
  - a. Employment was terminated unfairly;
  - b. Compensation Ksh.448,000;
  - c. Notice pay Ksh.56,000;
  - d. Leave pay Ksh.61,600;
  - e. Service pay Ksh.224,000;
  - f. Costs of the suit.

**DELIVERED VIA TEAMS VIRTUAL PLATFORM THIS 14<sup>TH</sup> DAY OF NOVEMBER 2024.**

**M. MBARŪ**

**JUDGE**

