



**Esevwe v University of Nairobi (Cause 1090 of 2018)  
[2023] KEELRC 701 (KLR) (24 March 2023) (Judgment)**

Neutral citation: [2023] KEELRC 701 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE 1090 OF 2018  
B ONGAYA, J  
MARCH 24, 2023**

**BETWEEN**

**FRANK ESEVWE ..... CLAIMANT**

**AND**

**UNIVERSITY OF NAIROBI ..... RESPONDENT**

**JUDGMENT**

1. The claimant filed the statement of claim on June 28, 2018 through Omongo Gatune & Company Advocates. The claimant's case is as follows. He is at material times an employee of the respondent. By a referral form dated December 19, 2017 by the respondent's Chief Medical Officer the claimant was referred to Chiromo Lane Medical Center for admission for severe depression. The claimant has exhibited the referral form. Upon advice by the respondent's doctor, the claimant was admitted at Chiromo Lane Medical Center on January 2, 2018 and upon discharge he was required to settle a medical bill of Kshs 126,620.00 being hospital charges and consultation fees and he has exhibited the hospital invoices. The claimant presented to the respondent a hospitalisation claim form dated January 7, 2018 duly approved by the respondent's Health Services the same January 8, 2018. The claimant's case is that the respondent has maliciously declined to settle the claim by barring his access to staff on-line portal; terming the claimant as unauthorised staff, hiding the claimant's medical file, declining to supply him with prescribed drugs, and refusing to refund the claimant's medical claim. The claimant claimed the Kshs 126,620.00. he states that despite demand the respondent has refused to settle the claim. He prayed for judgment against the respondent for:
  - a) A declaration that the respondent's refusal to process the claimant's refund is unwarranted, discriminatory, and unfair in the circumstances.
  - b) General damages for suffering and loss of amenities.
  - c) Special damages Kshs 126, 620.00.



- d) Costs of the suit.
  - e) Interest.
  - f) Any other further relief the honourable court may deem just to grant,
2. The respondent filed the memorandum of response which was undated as drawn and filed by KTK Advocates. The respondent's case is that the claimant defied his transfer to Kibwezi, absconded duty and declined to engage in any activity touching on his terms of contract of employment with the respondent. On February 7, 2018 he proceeded on unauthorised leave and he is not qualified for the refund of the medical claims. The respondent stated that the claimant was not entitled to the reliefs sought and therefore, the suit be dismissed with costs.
  3. The claimant testified to support his case. The respondent's witness (RW) was Harrison Akala, Acting Deputy Registrar, Industrial Relations. The final submissions were filed for the parties. The Court has considered all the material on record and returns as follows.
  4. The evidence is that at all material time the claimant and the respondent were in employment relationship. The claimant was transferred to Kibwezi work station. RW confirmed the claimant reported as transferred and took leave and reported from leave in November 2017. RW testified that on November 17, 2017 the claimant requested for permission to travel to Nairobi to processes certain things. Thereafter he did not report back to Kibwezi and never informed the respondent about the business he had gone to undertake in Nairobi. His absence was noted and per policy he was emplaced on unauthorised absence and therefore he could not access services under his contract of service. In February he filed for the medical bill claim, the unauthorised leave having been imposed around February 12, 2018 as the claimant had filed the claim on February 13, 2018. In cross-examination RW testified thus,

“As at December 19, 2017 he was an employee. He was at his duty station. I see referral form page C.9. It is on December 19, 2017. It was December 19, 2017. He was away not at his duty station. He was referred by University on December 19, 2017. He was admitted. I see page C.13. He applied for refund on January 7, 2012. It was approved by referral Doctor....”

By that testimony the court returns that as at the time the claimant made the claim, the unauthorised leave had not been imposed. Imposition of unauthorised leave cannot therefore be relied upon to justify the denial to refund the claim. The court returns that there is no established reason to deny the claimant's claim which was due under the prevailing contract of service and duly approved by the prescribed respondent's health services and doctors. The special damages as claimed will be awarded.
  5. It is submitted for the claimant that Kshs 1, 000,000.00 be paid as aggravated damages under section 12 of the *Employment and Labour Relations Court Act, 2011*. However, it appears to the court that the claimant's case was primarily based on the respondent's failure to honour a contractual obligation under the contract of service and the award of the special damages is found sufficient. In any event there was no prayer for aggravated damages. The refusal to pay is found discriminatory and unfair as in breach of the contract of service and denying the claimant entitlements that other respondent's employees in similar circumstances would enjoy as an entitlement.
  6. The court has noted the submissions for the respondent that the claimant was not entitled to the claim by reason of the provisions of the collective bargaining agreement but which was not pleaded at all as it appears to the court that such line of submissions was outside the pleaded respondent's case and evidence.



7. In conclusion judgment is hereby entered for the claimant against the respondent for:
- a. Payment of Kshs 126, 620.00 by May 2, 2023 failing interest to be payable thereon at Court rates from the date of filing the suit until full payment.
  - b. The declaration that the respondent's refusal to process the claimant's refund is unwarranted, discriminatory, and unfair in the circumstances.
  - c. The respondent to pay the claimant's costs of the suit.

**SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS  
FRIDAY 24<sup>TH</sup> MARCH, 2023**

**BYRAM ONGAYA**

**PRINCIPAL JUDGE**

