



Ogola v Maasai Mara University Council (Employment and Labour Relations Cause 59 of 2019) [2023] KEELRC 676 (KLR) (16 March 2023) (Judgment)

Neutral citation: [2023] KEELRC 676 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU
EMPLOYMENT AND LABOUR RELATIONS CAUSE 59 OF 2019**

**HS WASILWA, J
MARCH 16, 2023**

BETWEEN

PROF. FREDRICK ODHIAMBO OGOLA CLAIMANT

AND

MAASAI MARA UNIVERSITY COUNCIL RESPONDENT

JUDGMENT

1. The Claimant sued the Respondent Vide a memorandum of claim dated September 5, 2019 which was Amended on the October 31, 2019, alleging that the Respondent has refused to remit his statutory deductions to the pension scheme for six months, failed to pay him; 186 pending leave days, teaching part time for self-sponsored student, July and part of August salary, CBS tranche 2017, subsistence allowance and failed to reimburse some medical claim for the year 2015. He prayed for the following reliefs; -
 - i. That the honorable court be pleased to issue orders to the respondent to remit the deducted money for pension scheme to the Maasai Mara University staff retirement Benefits Scheme as required by law being Kshs. 300,000, with interest which these monies could have earned had the Respondent remitted as required.
 - ii. Pending annual leave for 186 days of Kshs 1,931,641.
 - iii. Unpaid part time teaching of Kshs. 1,176,750.
 - iv. Unpaid supervision fees of Kshs 105,000.
 - v. July and part of August, 2017 salaries of Kshs 300,000.
 - vi. Medical claims for 2015 downwards of Kshs 3,526,641.



- vii. The respondent to pay the money claimed for herein with interest at court rate starting when the claimant's resignation was accepted on June 16, 2017 until payment in full.
- viii. The respondent to pay costs of this Suit.

Claimant's case.

2. The claimant stated that he was employed by the respondent on the October 7, 2011 in the position of associate professor in the school of Education. His work entailed lecturing Diploma courses, Degree, Masters and PHD programs, for both school based and part time students.
3. His place of work was either in Maasai Mara University main campus, Nairobi Campus(KEMI) mainly for PHD students and Narok campus. Later on the Narok town campus and Nairobi campus were closed following a directive from Commission of University Education.
4. The claimant resigned from the respondent's employ by his letter of May 10, 2017, which was accepted by the University, through its vice chancellor by the letter of June 16, 2017. He then cleared from the University between July 20, 2017 and September 15, 2017. Prior to resigning, the claimant wrote to the deputy vice chancellor on the May 10, 2017 explaining the work payment he is claiming from the university. Thus the claim before court relate to self-sponsored students for the period between 2013 and May 10, 2017 when the claimant resigned. These payments remained due and on March 18, 2018, the claimant wrote a demand letter, seeking to be paid all the outstanding sum of money.
5. On June 25, 2018, while the claimant was perusing through his documents he noticed that the Kshs, 50,000 that had been deducted from his pay slip for a consecutive period of six months to be remitted to the self-contributory pension scheme had not been remitted to the pension scheme, therefore that the respondent should be compelled to remit that money to him.
6. On October 8, 2017, the claimant wrote another remainder letter, addressed to the respondent's Finance officer, demanding to be paid for the work done on part time basis, amounting to Kshs 1,176,750. After several request and demands, the claimant resorted to retaining an advocate to pursue the claim on his behalf which advocate issued a demand letter on the July 2, 2018.
7. The claimant maintained that it earned every single coin it is demanding and the refusal by the Respondent to pay him his dues is in breach of their contract of employment. He urged this court to allow the claim as prayed.
8. During hearing, the claimant testified as CW-1 and stated that he is the former employee of the respondent and now lives in Egerton area within Nakuru County. He adopted his stement dated 5.9.2019, then produced the document dated 31.10.2019 as his exhibits. He urged this court to allow the claim and compel the Respondent to pay him his dues.

Respondent's case.

9. The respondent entered appearance October 2, 2019 and filed a response to claim on the December 8, 2022, denying the entire claim but admitted to employing the claimant as their employee.
10. It is averred that the circumstances that led to the resignation of the claimant disentitled him to any work payments claim. He added that it is the claimant that breached the contract of employment and that he has not approached the court with clean hands.
11. The respondent did not call and witness in support of its case.



Claimant's Submissions.

12. The claimant submitted from the onset that the respondent admitted to employing him and since it alleged that the claimant did not approach court with clean hand, they ought to have furnished this court with particulars of their allegation and the reason why the claimant should not be paid his dues. It was argued that since the objection by the respondent was not substantiated or backed up with any evidence, the claimant's relief should be allowed as prayed.
13. On the reliefs sought, it was submitted with regard to claim for pension not remitted that section 19 of the *Employment Act* allows an employer to deduct any dues from the employee to be remitted to pension scheme or provident fund. On that note, the claimant submitted that since the claimant did not deny deducting the said money, the same is due and should be paid to the claimant.
14. On pending annual leave pay, the claimant submitted that an employee is entitled to annual leave as stated in section 28 of the *Employment Act*. He argued that no records have been produced by the respondent to suggest that the claimant ever took his leave days as such that they are due and the Respondent ought to be compelled to pay for the same.
15. On unpaid part time teaching and supervision fees, the claimant submitted that the claim is supported by exhibit marked PF. 00i to PF. 00 viii attached to Memorandum of claim that goes to prove that he taught the Respondent's self-sponsored student and supervised, therefore ought to have been paid for the same which was not paid to date. To support this argument, the claimant relied on the case of *Kalura Hussein Noor and another v Kaderdian Hajee Essak Limited* [2016] eKLR where the court relied on the case in Industrial Court at Nairobi, Cause Number 1813 of 2011 between *David Wanjau Muhoro v. Ol Pajeta Ranching Limited* [2014] e-KLR, where the Court held that;

“where the salary of an Employee remains in arrears, or remains underpaid, recovery of the arrears or the underpayments, is not to be defeated by limitation under section 90 of the *Employment Act*; all accrued benefits must be paid to the Employee on termination; arrears of salary and underpayments of salary involve a default of a continuing nature by the Employer, and time would only start running from the date of cessation of the continuous default.”
16. On that basis, the claimant submitted that the respondent is withholding his dues without any lawful excess contrary to section 25(i) of the *Employment Act* and urged this court to allow the claim as prayed with costs.
17. I have examined all evidence and submissions before me. The claim is for payment of his dues earned as he taught and deduction for remittance to his pension scheme which were never remitted.
18. The claimant vide his evidence proved that what was due was never paid.
19. The Respondent opted not to call any witness to adduce their side of the story.
20. It is my finding that the claimant's case remained uncontroverted and is proved as prayed.
21. I enter judgment for the claimant as follows:-
 1. 300,000/= deducted for his pension scheme and not remitted.
 2. Unpaid part time teaching of kshs.1,176,750/=
 3. Unpaid supervision fees of kshs.105,000/=



4. July and part of August 2017 salaries of kshs.300,000/=

Total = 1,881,750/=

Less statutory deductions

5. The respondent will pay costs of this suit plus interest at court rates with effect from the date of this judgment.

DATED, SIGNED AND DELIVERED IN OPEN COURT THIS 16TH DAY OF MARCH, 2023.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

Maina Ngaruiya for Respondent – absent

Awuor for Claimant – present

Court Assistant – Fred

