



Ouko (Suing as Representative of the Estate of Prof Billy Lusi Chek, Deceased) v Uzima University College (Cause 58 of 2019) [2023] KEELRC 1278 (KLR) (31 May 2023) (Judgment)

Neutral citation: [2023] KEELRC 1278 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
CAUSE 58 OF 2019**

S RADIDO, J

MAY 31, 2023

BETWEEN

MONICA OUKO (SUING AS REPRESENTATIVE OF THE ESTATE OF PROF BILLY LUSI CHEK, DECEASED) CLAIMANT

AND

UZIMA UNIVERSITY COLLEGE RESPONDENT

JUDGMENT

1. Prof Billy Lusi Chek (deceased) was employed on a one-year renewable contract as an Associate Professor in 2012 by Uzima University College (the Respondent). The contract was renewed with effect from 2 November 2015.
2. The Respondent did not pay the deceased remuneration regularly or promptly and on 15 January 2019, he gave notice of resignation.
3. Consequently, the deceased sought legal advice and his advocates made a formal demand for salary arrears of Kshs 23,547,500/- on 28 February 2019.
4. On 26 March 2019, the Respondent requested the deceased to provide certain records so that it could ascertain and agree on the arrears.
5. The dispute over the arrears was not resolved and the deceased sued the Respondent on 21 June 2019, seeking the arrears of Kshs 3,547,500/-.
6. The Respondent filed a Response on 9 July 2019 denying owing arrears of Kshs 23,547,500/-. In the Response, an admission was made of arrears amounting to Kshs 1,408,326/70.
7. The deceased passed away before the Cause could be heard and on 14 December 2021, the Court granted Monica Ouko (legal representative) leave to substitute the deceased as the Claimant.



8. Upon grant of the leave, the legal representative filed an Amended Memorandum of Claim on 31 May 2022.
9. When the Cause came up for hearing on 14 June 2022, the Court directed the parties to attempt an out-of-court settlement.
10. The parties did not agree and the hearing commenced on 6 December 2022, when the legal representative testified and the hearing was adjourned to 20 December 2022 for the Respondent's case.
11. The Respondent's case did not proceed on 20 December 2022, as the Court was informed the witness had been involved in a road accident.
12. The Court postponed the hearing to 30 January 2023.
13. The Respondent's witness was heard on the scheduled date, after which the Court again gave the parties another opportunity to settle out of Court. No settlement was reached and the hearing continued on 18 April 2023.
14. The Claimant filed her submissions on 11 May 2023 (should have been filed and served before 5 May 2023) and the Respondent did not file its submissions.
15. The Court has considered the pleadings, evidence, and submissions.

Limitation

16. The cause of action advanced by the deceased and later taken over by the legal representative arose in the course of an employment relationship.
17. In that regard, section 90 of the *Employment Act*, 2007 becomes implicated. The section sets out a limitation of 3 years (and 12 months in cases of continuing injury).
18. The Cause was filed on 21 June 2019, and the heads of claims advanced were salary arrears for January, March, April, July and October 2015, January, February, March, May, July and October 2016, and January, February, March, June and September 2017.
19. In light of the prescribed limitation period, the claims for salary arrears prior to 21 June 2016 are caught up by the prescription, and the Court does not have the jurisdiction to award the same.
20. In other words, the Court can only competently consider the claims for arrears from October 2016 to September 2017.

Arrears from October 2016 to September 2017

21. An employer is under a statutory obligation under section 17 of the *Employment Act*, 2007 to pay an employee the entire wages when the same fall due. The payment should either be in cash or to an account with a bank or building society.
22. Section 18 of the *Act* prescribes when the wages should be paid and section 20 of the *Act* requires the employer to issue an itemised pay statement (popularly called a pay slip) at the time of payment of wages or before the payment.
23. The aforesaid statutory framework suggests that in cases of dispute, the employer should provide records of payments.
24. The Claimant did not plead with sufficient detail to enable the Court to ascertain the monthly arrears for the months the Court has the competence to adjudicate over.



25. Nevertheless, the Respondent produced copies of records showing that the deceased was paid some arrears of salary. It also admitted owing arrears of Kshs 1,408,326/70 in paragraph 8 of the Response.
26. In a supplementary list of documents filed on 27 January 2023, the Respondent acknowledged arrears of Kshs 757,923/10.
27. Considering the Respondent's admission in paragraph 8 of the Response, and further documents filed on 2 December 2022 (a schedule showing an outstanding balance of Kshs 757,293/10 as of that date, and admitted into evidence), the Court will enter judgment for the said sum on admission as of 2 December 2022.
28. The Court also notes that the Respondent paid the Claimant Kshs 200,000/- on 2 February 2023, which amount should be deducted from the acknowledged sum.

Conclusion and Orders

29. Flowing from the above, the Court finds and declares:
 - i. The claims prior to 21 June 2016 are statute-barred.
 - ii. The Respondent has admitted owing Kshs 757,293/10 as of 2 December 2022.
 - iii. The Respondent paid the Claimant Kshs 200,000/- on 2 February 2023.
30. Consequently, judgment is entered for the Claimant in the sum of Kshs 557,293/10.
31. The award to attract interest at court rates from 21 June 2019.
32. The Claimant to have costs.

DELIVERED VIRTUALLY, DATED, AND SIGNED IN KISUMU ON THIS 31ST DAY OF MAY 2023.

RADIDO STEPHEN, MCIARB

JUDGE

Appearances

For Claimant Mr Sala instructed by Sala & Mudany Advocates

For Respondent Mr Gwada instructed by Peter M. Warindu & Co. Advocates

Court Assistant Chrispo Aura

