



**Wanjaria v St Paul's University (Cause 509 of 2018)
[2023] KEELRC 1583 (KLR) (30 June 2023) (Judgment)**

Neutral citation: [2023] KEELRC 1583 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 509 OF 2018**

**J RIKA, J
JUNE 30, 2023**

BETWEEN
JOSEPHINE WANGARI WANJARIA CLAIMANT
AND
ST PAUL'S UNIVERSITY RESPONDENT

JUDGMENT

1. The Claimant filed her Statement of Claim on April 11, 2018.
2. She avers that she was employed by the Respondent University as an Assistant Lecturer, for an initial period of 6 months, on July 22, 2011. She earned a basic monthly salary of Kshs 50,682; house allowance of Kshs 34,500; and commuter allowance of Kshs 10,000.
3. She was to oversee the establishment of the Respondent's Department of Education, in accordance with the Respondent's Strategic Plan.
4. She oversaw the establishment of the first class of 5 Students, on August 5, 2011, following stakeholder engagement with various Head Teachers, within Limuru Sub-county.
5. She was paid salary for the month of August 2011, as a part-time Lecturer in the class of 5, among other Lecturers.
6. By December 2011, the Respondent had established the first full class in the Department. The Claimant discharged several roles. She was a Driver, Marketer, Clerk, and Coordinator. It was the understanding of the Parties that the Department had not picked up adequately, to employ more staff.
7. Under the guidance of the Claimant, the Respondent established Nakuru and Machakos campuses, by December 2011. At the end of year luncheon in December 2011, the Vice-Chancellor recognized the Claimant's work, in the establishment of these campuses.



8. She wrote academic programs for the teaching processes, in consultation with other Universities and peers. She was still lecturing in, and running the Department of Education, while pursuing her PhD course.
9. She was granted a responsibility allowance on or about July 27, 2012. She was joined by another Lecturer Dr Suleiman Mwangi in November 2013, who left after 1 year.
10. Around November 15, 2013, the Claimant was relieved of her duties as the Coordinator in the Department of Education, but continued to serve as an Assistant Lecturer.
11. On April 2, 2014, she was promoted as a Lecturer, earning a basic monthly salary of Kshs 82,451; and house allowance of Kshs 52,900.
12. By January 2015, the Department had developed and employed 2 other Lecturers. As soon as they were employed, the Respondent dismissed the Claimant, on the allegation that her Master's Degree from American World University, was not recognized in Kenya. She had been misled by the Respondent to apply for an Assistant Marketing job based on her background, but was not successful. She was released to the Respondent, and advised to hand over her docket.
13. She wrote to the Deputy Vice-Chancellor, forwarding her Post- Graduate Diploma Certificate in Counselling Psychology, to show that she qualified to teach undergraduates in the Department of Education. There was no response.
14. In March 2016, she defended her thesis. She contacted the Deputy Vice-Chancellor, expressing her desire to return to work. On January 17, 2017, the Vice-Chancellor advised her to apply for a part-time role as a Lecturer. She did so but there was no response.
15. She avers that the decision to dismiss her was unfair and unlawful. She was not heard. Due process was not observed. There were 2 other top management staff with the same qualifications as the Claimant, who were not affected. She prays for Judgment as follows:
 - a. Declaration that the letters dated January 27, 2015 and February 12, 2015 issued by the Respondent to the Claimant, are null and void ab initio, and a permanent stay and withdrawal of the said letters seeking to terminate the Claimant's services. [be granted?].
 - b. Full terminal benefits and compensation comprising-
 - i. 3 months' salary in lieu of notice at Kshs 569,643.
 - ii. 12 months' salary in compensation for unfair termination at Kshs 1,031,772.
 - iii. Annual leave at Kshs 36,763.
 - iv. House allowance subject to annual increment of 17% at Kshs 742,716.
 - v. Traveling allowance at Kshs 120,000.
 - vi. Responsibility allowance at Kshs 432,000.
 - vii. Medical allowance at Kshs 70,000.
 - viii. 10% monthly basic salary for Staff Pension Fund at Kshs 103,177.

Total... Kshs 3,106,071.

Add statutory deductions...Kshs 586,044



Total claimed ...Kshs 3,692,115.

- c. Compensatory damages for unlawful termination.
 - d. Interest from the date of filing the Claim.
 - e. Costs.
 - f. Any other suitable relief.
16. The Respondent filed its Statement of Response on June 19, 2018. It is conceded that the Claimant was employed by the Respondent as an Assistant Lecturer, on September 1, 2011. She was confirmed as an Assistant Lecturer on fulltime basis, on August 1, 2012. Her remuneration is not contested. She was upon confirmation, mandated to coordinate the Respondent's Education Program. She was paid a responsibility allowance.
 17. She was engaged as a part-time Lecturer for the school-based class in August 2011, in the Department of Education, as she awaited her official reporting date in September 2011, as an Assistant Lecturer. She was never engaged as a Driver, and other jobs she undertook, were within her job description. The campuses in Nakuru and Machakos were established by the Respondent, in May 2011 and September 2012. This was without the guidance of the Claimant. There were Coordinators appointed by the Respondent in establishing the campuses. The Claimant was not one of them.
 18. Part of her role was to write academic curriculum, lecture, coordinate all Education programs, and market the Master's program. She was paid a responsibility allowance for this.
 19. She was not relieved of her duty as Coordinator of the Education Department; she left at her own request, through a letter dated August 19, 2013. The Respondent granted her request through a letter dated November 25, 2013.
 20. Her promotion on April 2, 2014, was on the understanding that she held a Master's Degree, from a University recognized by the Commission of University Education [CUE].
 21. CUE evaluated her Master's Degree from American World University. CUE cast doubt on the credibility of this University. The Respondent requested the Claimant to present her Master's Degree Certificate duly certified by CUE. She did not supply such a Certificate. She has not exhibited one, in support of the Claim filed herein.
 22. Termination of her contract was fair and lawful. She was not qualified to lecture. The reason justifying termination was explained to her. She was heard. Had the Respondent retained the Claimant, it would have exposed itself to sanctions by CUE.
 23. There was a vacancy in the Marketing Department for a Marketing Assistant. She was encouraged by the Respondent to apply. She did so on January 30, 2015, but was unsuccessful on interview. On January 10, 2017, she forwarded her PhD certificate from Kenyatta University, to the Respondent. She was advised to apply for a part-time teaching job in the relevant Department. This did not mean that she would be engaged automatically, without undergoing interview and verification of academic certificates. Her PhD was based on a flawed Master's Degree and did not cure the concerns raised by CUE.
 24. Procedure was fair. She was given 6 months to avail a certified copy of her Master's Degree, which she did not avail. There was no other Staff with a Master's Degree from the American World University. Her terminal dues and provident dues were duly paid.



25. The Respondent prays that the Claim is dismissed with costs.
26. The Claimant gave evidence, as did the Respondent's Registrar James Mururi, on November 22, 2022, when the hearing closed. The Claim was last mentioned before the Court on March 2, 2023, when Parties confirmed filing and exchange of their Closing Submissions.
27. The Claimant described herself as a retired Teacher, from the County of Kiambu. She adopted her Witness Statement and Documents, exhibited as number 1-19. She restated that her academic certificates were in conformity with the CUE requirements. Termination was unfair and unlawful.
28. Cross-examined, she told the Court that promotion, did not depend on having a Master's Degree. She did not say that she held a Master's Degree, on recruitment. She had the necessary qualifications. She agreed that the Deputy Vice-Chancellor wrote to her, informing her about the requirement by the CUE. She did not supply her Master's Degree Certificate. She said she had the necessary qualifications. The CUE required a Master's Degree, or its equivalent. She holds a post-graduate Higher Diploma in Counselling Psychology, from the National University of Ireland.
29. There was no ground to justify dismissal. She did not expose the Respondent to sanctions from the CUE. She was clearly qualified to teach. She worked for 3 ½ years. She claims annual leave. She claims house allowance, travel allowance and responsibility allowance. All were part of her contract. Allowances are shown in the pay slips. The Respondent paid statutory dues. She was not paid terminal dues on clearance. There is a discharge form, signed in the presence of a Witness. She signed the form, so as to be able to claim pension contribution. The Respondent did not pay 10% of its contribution.
30. Redirected, the Claimant told the Court that the discharge form does not include what she claims in these proceedings. She had asked for pension dues, to enable her finance her PhD course. She never presented the Master's Degree to the Respondent. She consulted the Deputy Vice-Chancellor, and told her that, she had realized that the American World University, was not accredited. The Claimant was not taken through other proceedings subsequently.
31. James Mururi adopted his Witness Statement and Documents filed by the Respondent, exhibited as number 1-18. He restated that the Claimant was unable to produce her Master's Degree Certificate, when required to do so, in accordance with CUE regulations. She was given 6 months to comply. She did not. There was a valid reason to justify termination of her contract. The Respondent risked sanctions from CUE, in light of the Claimant's non-compliance. CUE regulates academic staff. Dismissal of the Claimant was well-grounded. She did not have pending leave days. Her salary was all-inclusive, as shown in her pay slips. Statutory deductions were submitted monthly. Terminal dues were paid.
32. Cross-examined, Mururi confirmed that the Claimant was interviewed by the Respondent, on recruitment. He did not recall what were the requirements for the position. There was no dispute at the beginning. It became an issue following evaluation by CUE. She had been assigned various responsibilities by the Respondent. CUE wrote saying the University in the US, which issued the Claimant Master's Degree, was of an unknown status. The burden shifted on the holder of the Degree, to establish authenticity. The Respondent had initiated Bachelor of Education in Early Childhood Course. The Claimant had been assigned responsibility for the Course. She was an Assistant Lecturer. CUE wished to establish her ability, to oversee the Course. Pay slip shows what the Claimant was paid her dues. Leave allowance was paid annually, not monthly. Mururi did not know what the Claimant was paid on termination. Discharge form relates to pension, not terminal dues.
33. Redirected, Mururi told the Court that the burden of proving the validity of the Claimant's Master's Degree, was on the Claimant. She failed to prove this. The Respondent does not owe her any claim.



34. The issues are: whether the Claimant's contract was terminated for valid reason [s]; whether fair procedure was followed; and whether she merits the prayers sought. The relevant law is contained in Sections 41, 43, 45, 47 and 50 of the Employment Act, and Section 12 of the Employment and Labour Relations Court Act.

The Court Finds: -

35. The Claimant was appointed by the Respondent as an Assistant Lecturer, with effect from September 1, 2011. Her letter of appointment is dated September 22, 2011. Her remuneration is stated in the letter of appointment, and is not contested. The contract was to last a period of 6 months.
36. It was renewed with effect from 1st September 2012. Her remuneration was enhanced. Renewal was communicated in a letter dated July 2, 2012. At the same time, she was given additional responsibility, the coordination of all Education Programs, in the University. She was to also coordinate marketing of the Master's Degree Program.
37. She was paid a monthly responsibility allowance of Kshs 15,000 for coordinating the Education Programs; Kshs 10,000 for coordinating marketing of the Master's Degree Program; and Kshs 5,000 telephone allowance. This was effective August 1, 2012.
38. Contrary to the position adopted by the Respondent, the record indicates that the Claimant was appointed as a Coordinator for the Nakuru Campus, on May 23, 2011; and Coordinator for Machakos Campus, on September 1, 2012.
39. And contrary to the Claimant's position that she was pushed out of her role as Coordinator in the Education Department, by the Respondent, there is a letter dated 19th August 2013 from her to the Vice-Chancellor, in which she voluntarily relinquished her role as the Coordinator. She undertook to continue lecturing and marketing diligently. The Respondent acceded to her request, in its letter dated November 25, 2013.
40. The Claimant presented a Master's Degree Certificate to the Respondent from a University named American World University. A copy exhibited by the Claimant, shows the Degree was in the field of Education with specialization in general education. The Certificate issued in 2009.
41. The Respondent proposed to establish a Bachelor of Education [Early Childhood Development and Education] Program, and submitted its proposal to the regulator, Commission for University Education, for evaluation and approval, on April 14, 2014.
42. CUE wrote back to the Respondent, advising that the Respondent had addressed most of the concerns raised by CUE, but that the proposed Program did not have an appropriate academic leader. It was the advice of the CUE that the leader should at least be a Senior Lecturer, with requisite doctoral qualifications in Early Childhood Development and Education.
43. CUE advised further that the Program required other academic staff for its support, and that the staff proposed for this role, the Claimant herein, did not have the requisite qualification in Early Childhood Development and Education. Her Master's Degree, CUE advised, appeared to be from a questionable University, American World University. CUE asked the Respondent to confirm this University's accreditation status.
44. The Respondent wrote to the Claimant on June 26, 2014, asking her to supply information on her alma mater's accreditation status. She was to supply copy of her Master's Degree, certified by CUE.



45. For a period of 6 months, the Claimant was unable to authenticate the bona fides, of her alma mater, American World University.
46. On January 27, 2015, the Respondent, terminated her contract as a Lecturer, on the ground that the Master's Degree she had presented, in securing the position, was invalid.
47. The Respondent offered the Claimant a non-teaching opportunity, through the letter of termination. She was told she could apply for the position of Assistant Marketing Officer. She was informed that should she apply for the marketing job successfully, her existing terms would be adjusted, to suit her new role.
48. The Claimant wrote to the Respondent on January 30, 2015, expressing her interest in the marketing job.
49. This offer and acceptance of a new non-academic position, would suggest, in the respectful view of the Court, that the Parties had agreed that the Claimant could not continue lecturing, in light of the matters raised by the CUE, on the accreditation status of the American World University, which conferred upon her the Master's Degree. The Claimant did not complain at this point, that her contract as an Assistant Lecturer, was terminated unfairly and unlawfully. She agreed with her Employer, that she did not meet the CUE standards, to continue discharging the role of an Assistant Lecturer. She did not have a valid Master's Degree. She accepted the soft landing proposed by the Respondent- non-academic position.
50. Redirected by her Advocate, the Claimant told the Court that she consulted the Deputy Vice-Chancellor, and told her that she realized her Master's Degree was not from an accredited Institution.
51. There was no need for other proceedings, because the Parties were in agreement that the Claimant did not have a valid Master's Degree. It would not be necessary to hold a disciplinary hearing, because there was no outstanding issue, to be enquired into. Parties were agreed that the Claimant did not meet the regulatory standards, and the Claimant was ready to take a non-teaching job. Separation from the teaching role was mutual, and imposed on the Parties, by CUE.
52. Other explanations by the Claimant in the course of the hearing, that she was qualified to lecture; that she had been assigned multiple roles by the Respondent over the years; that the Respondent did not ask for a Master's Degree Certificate at the point of recruitment; or that her Irish Diploma was equivalent of a Master's Degree, appear to the Court immaterial, in light of her concession that she did not obtain her Master's Degree from an accredited University. Only CUE could have determined that her Irish Diploma, was equivalent of a Master's Degree.
53. In *Mwaniki v. Registered Trustees of the Sisters of Mercy [Kenya] t/a Mater Misericordiae Hospital & 2 others* [Cause E573 of 2020] [2023] KEERC 917 [KLR] [20th April 2023], the Court upheld transfer of the Chief Nursing Officer to another role, once the Employer found out that the Chief Nursing Officer, did not hold a Master's Degree, in accordance with the regulatory standards. It was held that the Employer was not estopped from raising the concern, on the ground that the Employer did not raise the concern, at the time it recruited the Claimant. To hold a Master's Degree was a regulatory requirement, and the Employer was bound to correct the error, or risk exposure of regulatory sanctions. The reasoning in the above cited decision applies on all fours, to the present dispute.
54. The Claimant exhibited a PhD Certificate from Kenyatta University, showing that she was awarded Doctor of Philosophy [Special Needs Education] on December 16, 2016. Her argument is that she would not have been admitted for the PhD program, if her Master's Degree was questionable.



55. The Court would agree with the Respondent on this aspect. The admission to Kenyatta University, and conferment of the PhD degree, did not cure the infirmities raised on the Claimant's American Master's Degree. Only Kenyatta University would be in a position to explain the circumstances of the Claimant's conferment of the PhD degree. The Claimant was required to get validation of her Master's Degree from CUE, which she did not do in a long period of 6 months. She was likely already enlisted at the Kenyatta University at the time the issue of her American Degree was raised by CUE. It is likely the issue was not raised during her learning and graduation at Kenyatta University.
56. Termination was mutual, and the acquisition of the PhD degree only gave the Claimant the possibility of re-joining the Respondent, as evinced by the Parties' exchange of correspondence, in January 2017. The Claimant asked to be allowed to do part-time teaching, stating that she hoped the Respondent had confirmed her qualification and subsequent eligibility to teach. In her view, she had ceased to teach, because she was not eligible, but acquisition of the PhD, made it possible for her return to teaching part-time. Reflective of the mutual understanding of their relationship, the Claimant's former Employer, the Respondent herein, wrote back on January 17, 2017, advising the Claimant that as the Parties awaited an opening for full-time teaching, the Claimant could apply for part-time teaching with the relevant departments. But Parties do not seem to have agreed on a way back for the Claimant, probably because the concerns of the CUE remained unresolved, and in December 2017, the Claimant issued a demand letter to the Respondent, paving way for these proceedings.
57. The Claim has no merit. The prayers sought are declined. Parties agreed that the Claimant did not hold a valid Master's Degree to continue lecturing. She conceded this, and applied unsuccessfully, for a marketing role. Her acquisition of a PhD degree from Kenyatta University in 2016, came after termination, and did not cure the inadequacy that led to termination of the lecturing contract. Despite the best efforts of the Parties to continue in an employer-employee relationship, the regulatory requirements kept them apart. There was no need to hold a disciplinary hearing, as the Parties were agreed on the reason justifying termination. It is ordered that the Claim is dismissed, with no order on the costs.

DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY VIA E-MAIL, AT NAIROBI, UNDER PRACTICE DIRECTION 6[2] OF THE ELECTRONIC CASE MANAGEMENT PRACTICE DIRECTIONS, 2020, THIS 30TH DAY OF JUNE, 2023.

James Rika

Judge

