



**Maina v Kenyatta University (Petition 133 of 2018)
[2023] KEELRC 2009 (KLR) (27 July 2023) (Ruling)**

Neutral citation: [2023] KEELRC 2009 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
PETITION 133 OF 2018
MN NDUMA, J
JULY 27, 2023**

BETWEEN

ESTHER NJERI MAINA APPLICANT

AND

KENYATTA UNIVERSITY RESPONDENT

RULING

1. The applicant filed a Notice of Motion application dated March 31, 2023 praying for an order in the following terms:-
 1. Spent
 2. Spent
 3. That the Court reviews its Ruling dated March 23, 2023 Paragraph 31 and substitutes the paragraph with the following orders:-
 - a. An order that the respondent has not fully complied with the Honourable Court's decree issued on April 15, 2020 as the employment letter issued to the petitioner does not bear an effective date whereas it is clearly indicated on the decree that the petitioner is a Permanent and Pensionable employee effective from the date of judgment, being April 15, 2020.
 - b. An Order compelling the respondent to comply with the judgment/decreed given by the Honourable Court on April 15, 2020 and issue the petitioner with a letter of employment detailing the effective date of her Permanent and Pensionable terms as at April 15, 2020.



2. The application is premised on the grounds set out on the face of the notice of motion and in the supporting affidavit of the applicant the summary of which is that the respondent has provided the applicant with a letter of employment pursuant to the judgment and decree of Hon Wasilwa J dated April 15, 2020 but has not put an effective date on the letter. That failure to put the effective date will cause the petitioner loss and damage by way of salary and pension due and owing to the claimant. That in the Ruling of the Court dated March 23, 2023, the Court made an error on the face of the record at paragraph 31 of the ruling by stating that the respondent has complied with the orders of the Court giving the applicant a job at an appropriate level on Permanent and Pensionable basis. The applicant states that this statement is not entirely correct because the said letter does not bear an effective date as directed by the Court in its judgment.
3. That the Court should review its Ruling to direct the respondent to put an effective date in the letter of appointment.
4. The application is opposed vide grounds of opposition dated April 12, 2023 in which the respondent states that there must be an end to litigation. That the applicant has not provided to the court facts that would entitle the Court to exercise its discretion to review its Ruling in terms of Rule 33 of the *Employment and Labour Relations Court (Procedure) Rules, 2016*, by correcting an apparent error on the face of the record. That the application is based on mis-apprehension of the law.
5. The respondent further filed a replying affidavit sworn to by Professor Godfrey Mse, the Deputy Vice Chancellor (Administration and Finance) of the Respondent in which he deposes that the application is frivolous and incompetent. That the application is an appeal disguised as an application for review. That there is no basis for the Court to specifically direct that the contract of employment given to the claimant in compliance with the judgment of the Court should have an effective date of April 15, 2020. That the said judgment had been stayed pending appeal, and the stay remained in place upto November 4, 2022.
6. That the respondent proceeded to implement the orders of the Court once the appeal was concluded in favour of the applicant and offered the petitioner Permanent and Pensionable employment.
7. That the application lacks merit and it be dismissed with costs.
8. The Court has carefully considered its Ruling dated March 23, 2023 and the judgment of Wasilwa, J dated April 15, 2020 which judgment the Court directed it be complied with by granting the applicant a Permanent and Pensionable contract of employment.
9. When the application was canvassed, the matter of effective date of the contract was not reflected in the Ruling. However, it is a matter of law; and common sense that a judgment of the Court is effective from the date of the judgment itself and the decree for implementation is also effective from the date of judgment.
10. In a subsequent Ruling by Wasilwa, J dated July 30, 2020, the judge had stated at paragraph 34 of the Ruling that:-

“On April 15, 2020, *vide* this Court’s judgment, the Court affirmed the position of the applicant as Permanent and Pensionable and also ordered that she be issued with a contract of employment detailing that position.”
11. The Court has now had the benefit of perusing the contract of employment given to the applicant pursuant to the judgment of the Court. This contract was not before the Court when it made its Ruling on March 23, 2023. The said contract dated January 9, 2023 written by Professor Paul Okemo,



Acting Deputy Vice Chancellor (Administration) appoints the applicant as a Clerk Typist Grade III/ IV on Permanent and Pensionable terms in the School of Agriculture and Environmental Science (Kutus Campus) and places the applicant on six (6) months' probation.

12. The letter has an apparent omission on its face because it does not indicate the effective date of the appointment.
13. Since the appointment was done so as to comply with the Judgment of the Court dated April 15, 2020, the said letter did not fully implement the decision of the Court. The judgment of the Court did not also provide that the applicant be placed on probation because she had already worked for the respondent for many years.
14. The Court finds that the Ruling of the Court was remiss by failing to give clarity on those two matters which had not been fully canvassed before it at the time having not had the advantage of perusing the letter of appointment which has now been placed before Court.
15. Accordingly, the Court finds that the application for review has merit and the Court allows the application and amends paragraph 31 of its Ruling dated March 23, 2023 by adding that the contract of employment given to the applicant pursuant to the judgment of the Court should be with effect from the date of judgment being April 15, 2020 and that the applicant having worked for the respondent for a long period of time in similar capacities at the position to which she has now been appointed on Permanent and Pensionable terms should not be placed on probation as this contradicts the judgment of the Court dated April 15, 2020.
16. The respondent to bear the costs of the suit.

DATED AND DELIVERED AT NAIROBI (VIRTUALLY) THIS 27TH DAY OF JULY, 2023.

MATHEWS N. NDUMA

JUDGE

Appearances

Applicant in person

Mr. Thuo for Respondent

Ekale – Court Assistant

