



**Odhiambo v Rongo University (Cause 65 of 2019)  
[2023] KEELRC 1788 (KLR) (20 July 2023) (Judgment)**

Neutral citation: [2023] KEELRC 1788 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU  
CAUSE 65 OF 2019  
CN BAARI, J  
JULY 20, 2023**

**BETWEEN**

**EDWARD OMBADO ODHIAMBO ..... CLAIMANT**

**AND**

**RONGO UNIVERSITY ..... RESPONDENT**

**JUDGMENT**

1. The Claimant's Memorandum of Claim is dated 24<sup>th</sup> June, 2019, and filed on 18<sup>th</sup> July, 2019. The Claimant seeks an order for payment of unpaid salary, service charge and costs of the suit.
2. The Respondent filed a Response to the Memorandum of Claim on 15<sup>th</sup> August, 2019, wholly denying the Claimant's claim, save only to the admission that he was contracted to offer part time lecture services.
3. The Claimant's case was heard on 31<sup>st</sup> October, 2022, where he testified in support of his case, adopted his witness statement and produced documents filed as his exhibits in the matter.
4. The Respondent did not call a witness in support of its case, and chose not to cross-examine the Claimant on his testimony despite their Advocate being present at the hearing.
5. None of the parties filed submissions in the matter even after being allowed time to do so.

**The Claimant's Case**

6. The Claimant's case is that he was employed by Respondent on 13<sup>th</sup> September, 2017, as a part time lecturer at a salary of Kshs. 1000/- per contact hour. He further states that one contact hour was equivalent to a one hour lecture or two tutorial hours or three practical session hours.
7. The Claimant states that he served the Respondent diligently until 3<sup>rd</sup> May, 2019, when he decided not to renew his part time contract.



8. It is his case that the Respondent did not pay him salary for the term of his contract, and that he was only paid Kshs. 41,598 which was a transport allowance.
9. The claimant seeks orders against the Respondent for payment of his unpaid salaries for September, 2017 to May, 2019 all totaling to Kshs. 617, 400/-.
10. In his testimony before Court, the Claimant told the Court that he had since been paid a total of Kshs. 379,348.60 out of the total claim of Kshs. 617,400/- and now only seeks to be paid the remaining balance of Kshs. 238,051.4/-

### **The Respondent's Case**

11. The Respondent's case is that it contracted the Claimant as a part time lecturer.
12. The Respondent admitted the Claimant's averments in paragraph 4 of his claim, which is that the Claimant served diligently and did not renew his contract when it expired on 3<sup>rd</sup> May, 2019.

### **Analysis and Determination**

13. I have considered the pleadings and the Claimant's testimony. The single issue that crystalizes for determination is whether the Claimant is entitled to the reliefs sought.
14. The Claimant herein testified on oath, adopted his witness statement and produced documents filed in support of his case. Although the Respondent filed a statement of response to the Claimant's claim, it did not call any witness. The statement of response thus in my view amounts to nothing in the absence of a witness and the same not having been a sworn statement.
15. The Respondent's Advocate, though present in court during the hearing chose not to cross-examine the Claimant on his evidence. The Claimant's claim was thus undefended. In *Monica Kanini Mutua v Al-Arafat Shopping Centre & another* [2018] eKLR, the Court held that in an undefended claim, it is trite that the claimant establishes all the facts of his claim and prove that he was an employee of the Respondent.
16. The Claimant produced in evidence various part time contracts of employment between himself and the Respondent issued in the year 2018, for various study units. The contracts thus confirm that the Claimant was in the employ of the Respondent.
17. Also produced before court, are twelve (12) claim forms that the Claimant filled to claim for units taught at various times in the term of his contract. Nothing shows that any of the claims were honoured.
18. Further, email exchanges between the Claimant and the Respondent's Vice Chancellor were also produced indicating that the Claimant actively pursued payment of his dues, but which were not paid.
19. The Claimant's evidence was not controverted and for this reason, I return that the Claimant has proved his case against the Respondent. (see *Herman Ilangarwa Shidakwa v Armati Security Solutions Limited* [2019] eKLR)
20. Consequently, I find and hold that the Claimant has proved his case, and is entitled to the reliefs sought as follows: -
  - i. Payment of unpaid salaries at Kshs. 238,051.40/-
  - ii. Costs of the suit and interest until payment in full.



21. It is so ordered.

**SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS  
20TH DAY OF JULY, 2023.**

**C. N. BAARI**

**JUDGE**

**Appearance:**

**N/A for the Claimant**

**N/A for the Respondent**

**Christine Omolo- C/A**

