



REPUBLIC OF KENYA



**KENYA LAW**  
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**Omondi v Moi University (Cause 328 of 2017)  
[2023] KEELRC 1691 (KLR) (13 July 2023) (Judgment)**

Neutral citation: [2023] KEELRC 1691 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT ELDORET  
CAUSE 328 OF 2017  
MA ONYANGO, J  
JULY 13, 2023**

**BETWEEN**

**ANNE OLAL OMONDI ..... CLAIMANT**

**AND**

**MOI UNIVERSITY ..... RESPONDENT**

**JUDGMENT**

1. The Claimant vide a statement of claim dated 23<sup>rd</sup> October 2017 seeks the following orders:-
  - a. An order that the Respondent pays the Claimant remuneration/ terminal dues in the sum of Kshs 999,050 with interest till payment in full made up of;
    - i. Kshs 735,750 for lecturing
    - ii. Kshs 17,400 for setting examinations
    - iii. Kshs 1,900 for marking examinations
    - iv. Kshs 244,000 for transport allowance
  - b. Costs of this suit and interest till payment in full
  - c. Such other, further, additional, incidental and/or alternative reliefs or remedies as the Honourable court shall deem just and expedient to grant in the circumstances.
2. In the statement of Claim, the Claimant avers that in December 2013, she was employed by the Respondent as an external part-time lecturer to lecture Education courses at the Respondent's campus at Mogotio in Baringo County and continued lecturing in each of the subsequent school based sessions until August 2016 when the Respondent closed the said campus without any official communication whatsoever to the Claimant thereby bringing the Claimant's engagement to an abrupt end.



3. The Claimant avers that in September 2015, she was employed by the Respondent as an external part-time lecturer to lecture regular Diploma in Education students at the Respondent's Campus at Nakuru town in Nakuru County and she lectured at the said campus upto December 2016.
4. It is the Claimant's case that as per the terms of her employment, she lectured the Respondent's Bachelor of Education students in 12 different courses for 36 hours per course over 21 days each school –based session between December 2013 and August 2016 at Mogotio Campus for which she was entitled to be paid at the rate of Kshs 1,000 per hour; that she lectured the Respondent's diploma in education students in 8 other courses for 45 hours per course between September 2015 and December 2016 at the Respondent's Nakuru Campus for which she was entitled to be paid at the rate of Kshs 750 per hour; set examinations for each of the undergraduate course she lectured for which she was entitled to be paid at the rate of Kshs 1,000 per paper, set examinations for each Diploma in Education course she lectured for which she was entitled to be paid at the rate of Kshs 600 per paper and that the Claimant marked examinations for each course she lectured for which she was entitled to be paid at the rate of Kshs 20 per script.
5. The Claimant also averred that she was entitled to be paid a transport allowance at the rate of Kshs 1000 per day for lecturing at the Respondent's Mogotio Campus and was further entitled to be paid a transport allowance at the rate of Kshs 4000 per month for lecturing at the Respondent's Nakuru Campus.
6. The Claimant further contends that despite her employment with the Respondent having ended sometime in December 2016 the Respondent has not paid even a single cent.
7. The Respondent entered appearance and filed its response to the Claim on 31<sup>st</sup> January 2018. The Respondent denied in toto that it ever employed the claimant. The Respondent averred that there has never been an agreement made between the claimant and the Respondent with regard to the mode of remuneration since there exists no contract of employment between them and the claimant.
8. The Court was urged to dismiss this claim with costs to the Respondent.
9. The claim was heard on 12<sup>th</sup> April 2023 where each side presented oral evidence.
10. The Claimant testified in support of her case as CW1 and adopted her witness statement dated 23<sup>rd</sup> October 2017 as her evidence in chief. She stated that she used to record her attendance at both Mogotio and Nakuru campus and that she used to sign forms issued by the class representative at the end of every teaching session.
11. The Claimant testified that in Mogotio, her supervisors were Professor Catherine Kiprop and after she left, Dr Zipporah Komen took over. She stated that in Nakuru campus, her direct supervisor was Prof Anne Kisilu. According to the Claimant, she communicated on email from time to time with the said supervisors as that was the mode of communication since she rarely got formal letters.
12. It was the Claimant's further testimony that she used to fill claim forms and leave them behind at the university offices. It was her evidence that she was never given any service forms. The only form issued to her was for the courses that she had been allocated.
13. On cross examination, CW1 stated that she worked in Mogotio campus from December 2013 to August 2016 when the campus closed and in Nakuru campus between September 2015 to December 2016.
14. The Claimant testified that she was never issued with any letter of appointment by the Respondent despite her teaching and setting exams and that payments were made as per the University's policy.



15. The Respondent called Mr Benjamin Mutuku who testified as RW1. He adopted his witness statement dated 20<sup>th</sup> December 2021 as his evidence in chief. He further adopted all documents filed in the Respondents list of documents as his evidence in chief.
16. On cross examination, RW1 told Court that once a person is engaged as a part time lecturer, the said person fills a part time form and together submits certificates and ID; that it is taken for approval by the Dean and then referred to the department to approve, it is then taken to the Deputy Vice Chancellor to approve before the said forms are returned to RW1 to process the letter of offer. That, it is the role of the university to prepare the agreement after the part timer has filled the forms.
17. When referred to letter dated 12<sup>th</sup> June 2016 which formed part of the Claimant's documents and had been addressed to the Claimant allocating her teaching subjects, RW1 stated that he was not aware of the said letter. RW1 when questioned about the documents he produced in court, confirmed that the said documents were not signed nor stamped as it was printed from the data base. He however stated that he signed the documents on the last page.
18. After the close of the Respondent's case, the court directed parties to file written submissions. The Respondent filed its submissions on 30<sup>th</sup> May 2023 whereas the Claimant's submissions were filed on 12<sup>th</sup> June 2023. I have considered these submissions in writing this judgment.

### **Determination**

19. I have considered the pleadings and evidence before me at length. I have also considered the submissions on record. The main issues that fall for my determination are;
  - i. Whether a contract of employment existed between parties herein
  - ii. Whether the claimant is entitled to the orders sought.
20. On the first issue, the Claimant maintained that she was employed by the Respondent as a part time lecturer at Mogotio and Nakuru campus. She produced is the email correspondences between herself and her supervisors and also the letter dated 12<sup>th</sup> June 2016 addressed to the by the head of department, Dr David Wanyonyi allocating the Claimant work.
21. The Claimant further produced evidence that she set and marked exams among them question papers and mark sheets.

Moi University

Tel Eldoret (0321)43001-8/43620

Box 3900

Fax No. (0321) 43047

Eldoret, Kenya

School Of Education

Dept. Of Curriculum, Instruction And Educational Media

12<sup>th</sup> June 2016

Allocation Of Part Time Classes, Moi University, Nakuru Campus

REF: Anne C. Olal Omondi



Id No: xxxx

The following courses have been allocated to you at Moi University, Nakuru Campus in 2015/2016 academic year. These include;

1. DSE 194 History of Kiswahili
2. DSE 195 Oral Literature
3. DSE 197 Theories of Kiswahili Literature
4. DSE 295 Kiswahili Novel

You are requested to sign the service agreement forms in our School of Education office to show acceptance and commitment. Your cooperation in teaching and examination of the courses will be highly appreciated.

Thank you

Yours Faithfully,

Signed

Dr David Wanyonyi

Head Of Department

22. RW1 in his testimony distanced himself from the above letter. From the said letter, that was signed by the head of department DR Wanyonyi and which also has the Respondent's stamp, it is clear from the evidence on record that the Respondent engaged the Claimant for part time lecturing services and as such there was an employer- employee relationship between the parties.
23. This is further supported by the printout of email correspondences between the Claimant and her supervisors and particularly the email from Dr Catherine Kiproop on 12<sup>th</sup> January 2014 of the course outline and the emails from Komen Zipporah on 20<sup>th</sup> August 2016 and 23<sup>rd</sup> August 2016 on exams.
24. In the case of *Casmur Nyankuru Nyaberi v Mwakikar Agencies Limited* (2016) eKLR, the court stated;-
  8. The jurisdiction of the Employment and Labour Relations Court as far as employment matters are concerned is limited by the existence of an employment relationship as defined in law and the Court must always satisfy itself on this account before proceeding any further.
  11. This Court is fully aware that it is the responsibility of an employer to document the employment relationship and in certain respects, the burden of proving or disproving a term of employment shifts to the employer. This does not however release the Claimant from the burden of proving their case. Even where an employment contract is oral in nature, the Claimant must still adduce some evidence whether documentary or viva voce to corroborate their word. More importantly, where an employee believes that the employer has in its possession some documents that would support the case of the employee, that employee is obligated to serve a production notice.”
25. According to the *employment Act* it is the duty of an employer to reduce a contract of employment into writing. Section 9(3) of the *Employment Act* specifically provides:  
Copy section 9(3) of *employment Act*



26. Further section 2 of the *Employment Act* defines a contract of service to mean an agreement, whether oral or in writing...copy definition of service in sec. 2 of the act
27. In the instant case, it is clear from the documents filed by the Claimant especially the email correspondence between her and supervisors that there was a contract of service between the Claimant and the Respondent.
28. The Claimant prayed for Ksh. 999,050 made up as follows Copy i-14 of prayers
29. The claimant gave a breakdown of the amount claimed at paragraphs 8(a) to (g) of the claim which was not contested by the Respondent who only denied the existence of an employment relationship between it and the Claimant.
30. I have carefully considered the breakdown of the payments together with the undergraduate part-Time payments form attached to the Claimants bundle which states the rate of payments including teaching allowance at Ksh.1000per hour, setting and marking at Ksh.1000 for setting and Ksh.20/- per script for marking, transport and accommodation allowance. These rates are as per the Moi University Policy on Part- Time Lecturing (Undergraduate 2013 & Post graduate 2014) produced by the Claimant which at Table 5 of page 10 thereof sets out the rates for part time payments for undergraduate programmes as follows:

**Copy table 5**

31. The policy further sets out rates for transport and accommodation. The tabulation by the claimant is in line with the rates set out in the policy.
32. I therefore award the Claimant the sum of Ksh. 999,050 as prayed.
33. The Respondent shall further pay the Claimants costs for this suit.
34. Interest shall accrue from date of filing suit until payment in full.

**DATED, SIGNED AND DELIVERED AT ELDORET**

**ON THIS 13TH OF JULY, 2023**

**MAUREEN ONYANGO**

**JUDGE**

