



**Khanda v Maseno University (Cause E013 of 2022)
[2023] KEELRC 2435 (KLR) (12 October 2023) (Judgment)**

Neutral citation: [2023] KEELRC 2435 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
CAUSE E013 OF 2022
CN BAARI, J
OCTOBER 12, 2023**

BETWEEN

JACKSON ZEDEKIAH KHANDA CLAIMANT

AND

MASENO UNIVERSITY RESPONDENT

JUDGMENT

1. The Claimant's claim is dated 14th March, 2022, and filed in Court on the same date, wherein, the Claimant seeks payment of Kshs. 554,400 on account of teaching services provided to the Respondent. He further prays for an award of costs of the suit and interests thereon.
2. The Respondent filed a Statement of Defence on 21st April, 2022, wholly denying the Claimant's claim. The Respondent subsequently filed an Amended Statement of Defence dated 12th July, 2022.
3. A notice of Preliminary Objection filed on 25th October, 2022, by the Respondent was determined vide a ruling rendered on 26th January, 2023, paving way for the hearing of the case.
4. The matter was heard on 12th July, 2023, when both parties presented their witnesses. The Claimant testified in support of his case, adopted his witness statement and produced a list and bundle of documents filed in support of his case.
5. The Respondent presented one Modester Sindani, its Assistant Registrar to testify in support of its case. Ms. Sindani adopted her witness statement and produced documents filed as exhibits in support of the Respondent's case.
6. Both parties closed their cases on this first hearing. Submissions were filed for both parties.



The Claimant's Case

7. The Claimant states that he was appointed as a part-time lecturer at Maseno University, the Respondent herein, on 8th June, 2018. It is his case that this appointment was only for the first semester.
8. The Claimant further states that although he continued serving in the same position in the second semester, the Respondent did not issue him with a letter of appointment despite him asking for the same.
9. It is his case that the Respondent did not pay him Kshs. 352,800 for the first semester and Kshs. 201,600 for the second semester making a total of Kshs. 554,400, despite demanding for the payment vide letters presented in evidence before court.
10. In his testimony before Court, the Claimant told the Court that he was contracted for the academic year 2018/2019 and 2017/2018, but that the issue before the Court occurred in the year 2017/2018.
11. It is his evidence that he taught a total of 7 units in the first semester being CIT 303, CIT 109, CIM 113 and UCI 203-3 units, and in the second semester he also taught 7 units.
12. It is his position that he taught, evaluated and marked examinations, but the appointment letter was issued after delivering the exam results. He states that the letter issued indicated unit UCI- 203 as one unit yet it was 3 units, and that he gave the letter back to the Respondent for corrections, but that the corrections was not effected.
13. It is the Claimant's case that the letter of appointment for the 1st Semester is dated 8/6/2018, while the one for the second semester one is dated 28/7/2020.
14. The Claimant states that he has repeatedly followed up on his payment from the Respondent, including through his Advocate, but the efforts were futile.

The Respondent's Case

15. The Respondent states that the Claimant was engaged as a part-time lecturer and issued with two appointment letters.
16. It is the case of the Respondent that for one to be paid, they needed to attach an appointment letter, a teaching timetable, a schedule class attendance and register and proof of grading. It is its case that Lecturers are not paid if they do not teach.
17. It is the Respondent's case that the failure to pay the Claimant was due to his failure to submit the requisite documents in his possession to facilitate processing of his payments.
18. The Respondent states that the unit on Desktop Publishing Techniques UCI 203, was for only one unit and not 3 as alleged by the Claimant.
19. The Respondent states that it is not aware of any lectures conducted or course allocated to the Claimant for UCI 204 in the second semester of 2017/2018 academic year, and that the Claimant only intends to obtain money through a fraudulent scheme.
20. On cross-examination, RW1 told the Court that the Claimant was allocated the units, but that she could not confirm if he taught the units.
21. It was RW1's further testimony that the Respondent had no complaints about the Claimant's work delivery.



22. The Respondent prays that the Claimant claim be dismissed with costs.

The Claimant's Submissions

23. It is the Claimant's submission that the Respondent engaged him through letters dated 8th June, 2018 and 20th July, 2020. It is his submission that the Respondent further engaged his services on diverse occasions, and renewed contracts for part-time lecturers without issuing formal appointment letters to the Claimant.
24. The Claimant further submits that the Respondent in its witness statement by Modester Sindani, admitted that he was appointed and contracted by the Respondent to offer teaching services at their institution, and that he taught the allocated units, administered exams and delivered results but was not paid. The Claimant relied in *Joseph Paul Otieno v Rongo University Cause no. 299 of 2017* and the case of *Godfrey Allan Tolo v Tobias Otieno* where the Court found that the Respondent was in breach of contract.

Analysis and Determination

25. The issues that arise for determination in the matter are: -
- i. Whether the Claimant has proved his case on a balance of probability.
 - ii. Who bears the costs of the suit.

Whether the Claimant has proved his case on a balance of probability

26. *Mativo J* cited with approval Lord Denning in *Miller v Minister of Pensions* [1942] 2 ALL ER 372 and opined thus on the burden of proof:
- “The(standard of proof).....is well settled. It must carry a reasonable degree of probability..... If the evidence is such that the tribunal can say ‘we think it more probable than not’ the burden is discharged, but if the probabilities are equal, it is not.”
27. Again, in *Hellen Wangari Wangechi v Carumera Muthini Gathua* [2005] eKLR,, the Judge stated:
- “It is a well-established rule of evidence that whoever asserts a fact is under an obligation to prove it in order to succeed. As observed above, the Appellant made allegation in the plaint, hence she was under an obligation to support the allegation.....”
28. The Claimant's case is that he was engaged to provide part time lecture services and which he claims to have provided but was not paid. The Respondent did not deny engaging the Claimant to provide the services and its only issue is that it is the Claimant that did not follow the laid down procedure for processing part-time claims, hence the non-payment.
29. Although the Respondent disputes the units assigned to the Claimant and for which the Claimant claims, the court record is awash with correspondences from the Claimant requesting the Respondent to rectify errors in the appointment letters relating to the units assigned, vis-a-vis those he taught to enable him place his claims for the services rendered, but that the Claimant neither rectified the letters to reflect the correct units taught by the Claimant, nor in anyway informed the Claimant why the errors were not corrected.
30. In *Christine Kalama v Jane Wanja Njeru & another* [2021] eKLR Civil Appeal E018 of 2020, the Court while citing the cases of *Re H (minors) sexual abuse; standard of proof* {1996} AC 563 and 505



for the *Home Department v Rebman* {2003} 1 AC 153. The House of Lords laid down a series of guiding principles on standard of proof as follows:

- (1). Where the matters in issue are facts, the standard of proof required in non-criminal proceedings is the preponderance of probability, usually referred to as the balance of probability.
 - (2). The balance of probability standard means that the Court must be satisfied that the event in question is more likely than not to have occurred.
 - (3). The balance of probability standard is a flexible standard. This means that when assessing this probability, the Court will assume that some things are inherently more likely than others.”
31. The Claimant produced a course allocation time table which indicates that he was assigned the courses in dispute, a teaching time table, exam time tables, examination mark sheets and signed students’ class attendance lists as prove that he met his part of the contract, while the Respondent on its part, did not adduce any evidence to controvert the Claimant’s.
32. In my view, the Claimant has by the evidence adduced before this Court, proved his case on a balance of probability, and I so hold.
33. In the premise, the Claimant’s claim is allowed in the following terms: -
- i. That the Respondent pays the Claimant Kshs. 554,400
 - ii. The Claimant is awarded costs of the suit and interest until payment in full.
34. Orders accordingly.

SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT KISUMU THIS 12TH DAY OF OCTOBER, 2023.

CHRISTINE N. BAARI

JUDGE

Appearance:

Mr. Migosi present for the Claimant

Ms. Rama present h/b for Ms. Akinyi for the Respondent

Christine Omolo- C/A

