



**Mwawasi v Kenya Methodist University (Cause EOO7 of 2020)  
[2022] KEELRC 3848 (KLR) (29 July 2022) (Judgment)**

Neutral citation: [2022] KEELRC 3848 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA  
CAUSE EOO7 OF 2020**

**B ONGAYA, J  
JULY 29, 2022**

**BETWEEN**

**SAMUEL MWACHIRO MWAWASI ..... CLAIMANT**

**AND**

**KENYA METHODIST UNIVERSITY ..... RESPONDENT**

**JUDGMENT**

1. The claimant filed the memorandum of claim on October 19, 2020 through Litoro & Omwebu Advocates. The claim was that the respondent employed him as a part time lecturer and he worked in 2014 and 2015. He claimed the due wages but unpaid, being a sum of Kshs. 1, 692, 000.00, interest, costs of the suit, and, any other relief the Court deems just and fit to grant.
2. The respondent filed the memorandum of response on January 26, 2021 through Patricks Law Associates. The respondent pleaded that it had never employed the claimant as a part time lecturer as was alleged by the claimant. In alternative, the claimant had been paid all his wages. The claimant denied the Court's jurisdiction and pleaded it would raise a preliminary objection.
3. The claimant filed an amended memorandum of claim on February 4, 2021 to plead that the cause of action arose in Mombasa. The amended response was filed on 29.10.2021. It was further pleaded that the claimant's computation of class hours and payment rate was wrong and exaggerated. Further, he did not teach for 45 hours per course unit as claimed at a rate of Kshs. 3, 000.00 per hour. The claim of Kshs. 1, 692, 000.00 amounted to unjust enrichment. A reply to the response was filed on October 29, 2021 stating that the response was a sham, bare denial, vexatious, frivolous, and disclosed no reasonable defence.
4. By consent on June 9, 2022 it was ordered the suit be determined on the basis of pleadings, documents on record, and final submissions. Parties filed final submissions.



5. The Court has considered the pleadings and the documents and returns that the suit must fail. The claim is with respect to alleged unpaid wages for 2014 and 2015. The claimant alleges he was a part-time lecturer and the Court takes it that his last time at work would be not later than December 31, 2015 – the date the continuing injury ceased. Under section 90 of the *Employment Act*, 2007 the general time of limitation is 3 years and, only 12 months from cessation of a continuing injury like in the instant case. The suit having been filed on October 19, 2020, it was obviously time barred under section 90 of the Act. The suit will collapse. The Court has taken up the issue of time barring on its own motion and there will be no orders on costs. In any event, the claimant failed to testify to strictly prove the liquidated damages that were claimed and prayed for. The respondent alluded to the point when it was pleaded that the Court lacked jurisdiction but the point was never urged - even in the final submissions.
6. In conclusion, judgment is hereby entered for the respondent against the claimant for dismissal of the suit with no orders on costs.

**SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT MOMBASA THIS FRIDAY 29<sup>TH</sup> JULY, 2022.**

**BYRAM ONGAYA**

**JUDGE**

