



**Nyokabi v Multimedia University of Kenya (Cause E733 of 2021)
[2022] KEELRC 3897 (KLR) (29 July 2022) (Judgment)**

Neutral citation: [2022] KEELRC 3897 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E733 OF 2021**

**K OCHARO, J
JULY 29, 2022**

BETWEEN

ANNE NYOKABI CLAIMANT

AND

MULTIMEDIA UNIVERSITY OF KENYA RESPONDENT

JUDGMENT

1. This suit was initiated by a statement of claim dated September 3, 2021. The claimant prays for –
 - (a) A declaration that the respondent’s continued withholding of the claimant’s dues is unjustified, unlawful, unfair wrongful and/or illegal
 - (b) The respondent be ordered to release the unpaid salary totalling to KShs 1,040,000
 - (c) Damages for unjustified, unlawful, unfair and wrongful and illegal withholding of salary
 - (d) Damages for breach of contract
 - (e) Damages for loss, humiliation, emotional distress and financial strain suffered by the claimant.
 - (f) Aggravated and exemplary damages
 - (g) Cost of the suit
 - (h) Interest at courts rate
 - (i) Any other appropriate relief as the honourable court may deem fit to grant.
2. Contemporaneously with the filing of the statement of claim, the claimant filed her witness statement, and a list of documents dated September 3, 2021, under which she filed the documents that she intended to place reliance as her documentary evidence.



3. The claimant served the respondent with summons to enter the appearance together with the statement of claim on the October 4, 2021 at its office, court process which it duly received.
4. Despite the service, the respondent failed to enter appearance to the summons and file a response to the statement of claim, consequently, on the April 24, 2022 the court directed the matter to proceed as an undefended claim.
5. When the matter came up for hearing, the claimant sought, and the court allowed that reliance be placed on her pleadings, witness statement [as her evidence in chief] and the filed documents [as her documentary evidence] for the determination of this matter.

The Claimant's Case

6. The claimant stated that she came into the employment of the respondent in May 2012 as a part-time lecturer in the faculties of media and communication, marketing and management and computing and information technology, teaching 1st, 2nd, 3rd and 4th year students the various fields under the diploma and degree courses, that they were undertaking during the material time.
7. The claimant averred that the terms of engagement were spelled out in the contracts of service signed by the deans of the faculties. Initially, the contracts would be issued to her prior to the start of the material semesters, however starting July 2017, the respondent started delays in releasing the contracts, sometimes releasing the same after completion of the teaching assignment.
8. The claimant stated that the letters of engagement would spell out the terms of engagement for the various relevant times *inter alia*, the semester in question, the number of units to be taught, the period of the syllabus was to cover, the minimum contract hours, the number of continuous assessment tests to be given to students and the number of such tests to be administered, the time and duration of university exams, and the time within which she was to process and present the examination results to the relevant departments.
9. She stated that dues for each semester were indicated in each letter of engagement, and were payable in instalments, 1st payment being 40% after six weeks of the semester, 2nd payment of 30% after 12 weeks, and 3rd payment of 30% after processing of exams and presenting the same. She confirmed that the respondent paid all her dues upto April 2019.
10. Through an email, she was engaged for the period May to August 2019 to lecture 3rd and 4th year bachelor of journalism students for an agreed amount of KShs 160,000. The engagement was later on confirmed through a contract of service dated February 20, 2020. Despite dully discharging her contractual obligations under the above stated engagement, the respondent didn't pay her the stated amount or any amount thereof or at all.
11. Through an email dated September 6, 2019 the respondent engaged her services to lecture [part - time] first year Bachelor of Film and Animation Introduction to Literature during their September to December 2019 first semester. For the services rendered, the respondent failed to pay agreed remuneration of KShs 80,000.
12. The claimant stated that under a contract of service that was initiated through an email dated 6th September, and formally executed on the March 4, 2020, the respondent further engaged the claimant to lecture [part-time] its 1st-year first-semester Bachelor of Journalism and first-year first-semester Bachelor of Applied Communication, students during that semester that ran from September to December 2019, at an agreed remuneration of KShs 240,000. Despite dully undertaking her



obligations under the contract, the respondent failed and or neglected to pay her the said sum at the agreed time or at all.

13. The claimant was further engaged to teach the respondent's, 4th year Bachelor of Journalism and Advanced Investigative Journalism, 1st year Bachelor of Applied Communication, and 1st year Bachelor of Film and Animation, students during their 1st semester that was to run from January to April 2020. Though the semester was unexpectedly interrupted by the emergence of the Covid-19 pandemic, she eventually did fully discharge all that was expected of her under the contract of service when normalcy set in. The respondent was under duty to pay her Kshs 160,000, but it didn't.
14. By an email dated October 4, 2020, the respondent employed her to teach its 1st year students, Bachelor of Journalism; Introduction to Literature [course code MFU 2114] , Bachelor of Applied Communication; Introduction to Literature (course code MFU2114), Bachelor of Film and Animation; Introduction to Literature (course code FCU100), Bachelor of Business and Information and Technology; Communication Skills (course code 2111), Bachelor of Procurement and Logistics Management; Communication Skills (course code 2111). She covered all the units online, processed examinations and presented the results thereof to the relevant departments. The respondent was supposed to pay her KShs 400,000, which sum it never paid.
15. The claimant asserted that the failure by the respondent to pay her the remuneration as and when it fell due or at all was a breach of its contractual obligations, which as a result subjected her to humiliation, emotional distress and financial loss and strain. The respondent's conduct, the subject matter of this suit was an infringement of her constitutional rights and more specifically the right to fair labour practice.
16. The claimant states that through a memo dated March 11, 2021 the respondent purported to reduce the earned part time lecturer salaries by 20% in breach of the contract of service. Any attempt to unilaterally reduce the contract sum amounted to an unfair labour practice by the respondent.
17. The claimant avers that she tried all means to have the matter resolved which efforts were in futility and the respondent finance department only acknowledged owing the claimant KShs 600,000 and proposed a settlement plan of KShs 10,000 per month which was not acceptable to the claimant.

Determination

18. From the pleadings, and evidence on record, the following issues for determination emerge;
 - a) Whether the respondent withheld the claimant's dues unlawfully and illegally.
 - b) Whether the respondent breached the claimant's constitutional right to fair labour practice.
 - c) Whether the claimant is entitled to the reliefs sought or any of them.
 - d) Who should be condemned to shoulder the costs of this suit?

Whether The Respondent Withheld The Claimant's Remuneration Unlawfully And Illegally

19. The claimant stated and placed before this court documents to demonstrate that the respondent engaged her at various times under various contracts to render lecturing services to its students. The claimant pleaded that the respondent failed and or neglected to pay her entitled and accrued remuneration under the contracts between May 2019 to February, 2021. The accrued sum was specifically pleaded as KShs 1,040,000. The claim for this amount was in nature a special damage. As required, the claimant specifically pleaded for the same, and looking at the documents presented specifically proved the same.



20. The respondent did not file any response to the claimant's statement of claim consequently, the averments therein remained unchallenged, the liquidated claim inclusive.
21. Payment of remuneration to an employee who has rendered services under a contract of service is a statutory duty on the part of the employer and, right of the employee. It is vitally important that the contractually agreed remuneration be paid as and when it falls due pursuant to the stipulations of the contract between the employer and the employee. Any delays concerning payment of remuneration or a default in payment of the same amount to a breach of the duty to remunerate, both under the law and the contract of employment.
22. This court has held before that it can also amount to a repudiation of the contract of employment which may justify constructive dismissal.
23. In conclusion, the respondent withheld the claimant's remuneration for the above stated period, to the extent pleaded, and unlawfully.

Whether The Respondent Breached The Claimant's Constitutional Right

24. Withholding an employee's salary for a long period as did the respondent herein did not only cause social and economic hardship and thus constituted a breach of the employer's obligation under the law, but also had the unpleasant effect of consigning the employee to a state of slavery or servitude contrary to article 30[1] of the Constitution, 2010. It also amounted to subjecting the employee to work under unreasonable working conditions in contravention of article 41 [2][a] of the Constitution.
25. Article 41[1] of the Constitution of Kenya states that every person has the right to fair labour practices. However, I venture to say that this right is incapable of a comprehensive and conceptually coherent definition. What is "fair" will always depend on the circumstances of a particular case and involves value judgement. An unfair practice in general would mean one that is capricious, arbitrary or inconsistent. It is not difficult to state that the respondent's conduct of withholding the claimant's salary, falls under this general meaning.
26. The upshot of the foregoing being this court's finding that the claimant's constitutional rights were breached in the manner hereinabove brought out.

Whether The Claimant Is Entitled To The Reliefs Sought Or Any Of Them

27. Having found that the claimant's claim for a declaration that the respondent withheld her salary unlawfully, and that her entitlement to the liquidated claim was proved, the court hesitates not to award her the sum sought, KShs 1,040,000.
28. The claimant is equally entitled to general damages for the breach of her constitutional rights hereinabove found to have been breached. I assess the damages in the sum of KShs 100,000. The costs of this suit shall follow the event, they shall be in favour of the claimant.
29. Keeping in view the whole purpose of granting interest on judgement amounts- to compensate the successful party for loss suffered while money that it was entitled to was kept out of her or his hands by the other party, this court orders that the salary arrears shall attract interest at court rates from the various dates when they fell due under the various contracts of service till full payment. The general damages shall attract interest at court rates from the date of this judgement till full payment.
30. In the upshot, judgement is hereby entered in favour of the claimant in the following terms;
 - [a]. Withheld salary, KShs 1,040,000.



- [b]. General damages for breach of her constitutional rights, KShs 100,000.
- [c]. Interest at court rates on the withheld salary from the various dates when it fell due under the various contracts of service till full payment, and on the general damages from the date of this judgement till full payment.
- [d]. Costs of this suit.

READ, SIGNED AND DELIVERED THIS 29TH DAY OF JULY, 2022.

OCHARO KEBIRA

JUDGE

In Presence of

Ms. Watetu holding brief for Ms Ndungu for the claimant.

