



**Imbuga v Jomo Kenyatta University of Agriculture and Technology
(Cause 95 of 2019) [2022] KEELRC 1233 (KLR) (21 July 2022) (Ruling)**

Neutral citation: [2022] KEELRC 1233 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 95 OF 2019**

**L NDOLO, J
JULY 21, 2022**

BETWEEN

MABEL IMBUGA CLAIMANT

AND

**JOMO KENYATTA UNIVERSITY OF AGRICULTURE AND
TECHNOLOGY RESPONDENT**

RULING

1. By a judgment delivered on January 24, 2020, O.N Makau J directed the Respondent to calculate and pay to the claimant her exit package in accordance with the Terms and Conditions of Service obtaining before establishment of the Salaries and Remuneration Commission (SRC) by the [Constitution of Kenya](#), 2010.
2. In a subsequent Notice of Motion dated March 5, 2020, the claimant asked the court to find and hold that she was entitled to the judgment sum of Kshs. 9,012,821.
3. In a ruling dated February 11, 2021, the Trial Judge gave the following orders:
 - a. The respondent is directed to compute and pay to the claimant any outstanding arrears of her monthly package less any items paid erroneously;
 - b. The respondent is directed to compute and remit any arrears of pension contributions erroneously unremitted due to computation based on any other figures less than the basic salary of Kshs. 744,078 per month;
 - c. The respondent is directed to henceforth and so long as the claimant remains in its service, pay or accord the claimant with the following monthly package:
 - i. Basic salary Kshs. 744,078



- ii. House allowance 94,080
 - iii. Domestic servants (gardener & watchman) 55,140
 - iv. Commuter allowance 18,000
 - v. Pension contribution based on basic salary of Kshs. 744,078
 - vi. Telephone and utility expenses
 - vii. Utility vehicle
4. There was disagreement between the parties regarding the actual decretal sum payable to the claimant and on April 27, 2021, the claimant filed an application seeking the following orders:
 - a. That the court do find and hold that the Respondent herein, Jomo Kenyatta University of Agriculture and Technology, through its Vice Chancellor, Professor Victoria Ngumi is in contempt of the court orders issued on January 24, 2020 and February 11, 2021;
 - b. That the said respondent be subsequently committed to civil jail for a period not exceeding 6 months pending compliance with the orders of the court;
 - c. That the respondent be denied audience before the court in this matter until and unless it purges the contempt of court committed herein;
 - d. That the respondent be ordered to pay for the costs of this application together with accrued interest.
5. The application is supported by the claimant's own affidavit and is based on the following grounds:
 - a. That on January 24, 2020 and February 11, 2021, the court issued orders in favour of the claimant, directing the respondent to comply with the orders and pay the claimant all her lawful dues;
 - b. That despite having been in court on February 11, 2021 and having been duly served with the orders, the respondent has elected to disobey the court orders and has failed to fully pay the claimant her dues;
 - c. That the claimant's Advocates have written to the respondent requesting it to have regard to the court orders but there has been no response except disobedience;
 - d. That it is the plain and unqualified obligation of every person against or in respect of whom an order is made by a court of competent jurisdiction to obey it unless and until that order is varied, discharged and/or set aside;
 - e. That the Respondent's actions herein are an upfront attack on the integrity of the judicial process and the rule of law, which actions must not be countenanced.
6. In response to the claimant's application, the respondent filed a replying affidavit sworn by its Registrar-Administration, Dr. Rose Githu on September 21, 2021.
7. Dr. Githu depones that following the judgment of the court dated January 24, 2020, the respondent computed the amount payable to the claimant and found that the claimant had been overpaid by Kshs. 2,428,899. However, the claimant made an application dated February 27, 2020 seeking an order for payment of Kshs. 9,012,821, rendering the issue of the amount payable to the claimant for determination by the court.



8. Dr. Githu further depones that following the ruling delivered on February 1, 2021, clarifying the figures to be used in computing the amounts payable to the claimant, the claimant furnished the respondent with her computation.
9. Upon receiving the claimant's computation, the respondent did its own computation which it furnished to its Advocates for onward transmission to the claimant's Advocates for consideration.
10. The respondent denies that it has disobeyed the court order of February 11, 2021 pointing out that it did compute the amount payable to the claimant as per the ruling of the court.
11. The respondent contends that the claimant has received substantial dues, some of which have been overpaid due to payments made on the basis of the 2014 exit package instead of the 2003 exit package.
12. Dr. Githu points out that by letter dated May 4, 2021, the claimant's Advocates had confirmed the sum of Kshs. 9,977,889 as being due and owing to the claimant as tabulated by the respondent.
13. According to the respondent, this sum had been duly paid to the claimant, less statutory deductions.
14. Regarding overpayment, Dr. Githu depones that the sum declared and paid out to the claimant in the June 2021 payroll was overstated by the sum of Kshs. 870,708.
15. The respondent terms the claimant's application as frivolous and vexatious as the claimant is claiming an uncertain sum of money, which if ascertained, can be recovered by way of execution.
16. The claimant filed a supplementary affidavit on October 5, 2021, stating that pursuant to the order of the court issued on June 21, 2021, directing the respondent to pay her the undisputed sum of Kshs. 9,977,889 the respondent paid her Kshs. 7,997,169.
17. The claimant depones that the respondent has failed to pay her the sum of Kshs. 2,389,601 comprised of the following:
 - a. Underpayment of house allowance (January 2019-June 2019) Kshs. 122,190
 - b. Electricity bills for August 2019-February 2021 310,000
 - c. Telephone bills for August 2019-February 2021 155,000
 - d. Leave allowance for 2019, 2020 and 2021 1,750,428
18. The claimant further claims a refund of the sum of Kshs. 990,360 deducted from her salary for June 2021 on account of 'pension extra' which the claimant states is unknown to her.
19. By a letter dated February 16, 2022, the claimant forwarded copies of statement bills relating to electricity and telephone usage to the respondent.
20. Dr. Githu states that the respondent is ready and willing to reimburse the claimant upon being furnished with receipts in respect of electricity and telephone together with the statements, which are the proper accounting documents.
21. Dr. Githu further states that having exited office in 2018, the claimant is not entitled to book, research and leave allowance under the 2003 exit package for the period 2019/2020. Dr. Githu therefore claims that the claimant had been overpaid by the sum of Kshs. 867,796.
22. Dr. Githu swore a further affidavit on April 25, 2022, reiterating that the claimant had been paid the sum of Kshs. 9,977,889 less statutory deductions.



23. Dr. Githu asserts that the only outstanding issue is with respect to electricity and telephone utility expenses, which are subject to production of actual receipts by the claimant.
24. The claimant's application is informed by alleged failure by the respondent to pay certain components of the award issued by O.N Makau J in his judgment of January 24, 2020 and subsequent ruling of February 11, 2021.
25. In considering a contempt application, such as the present one, the court must ask what the alleged contemnors were required to have done (see *Hadkinson v Hadkinson* [1952] All ER, *Alken Connections Limited v Safaricom Limited & 2 others* [2013] eKLR and *Katsuri Limited v Kapurchand Depar Shah* [2016] eKLR)
26. Having looked at the parties' pleadings in this application, alongside the judgment and ruling rendered by my brother Judge, I have formed the opinion that what is before me is a disagreement on tabulation of the award granted to the claimant. I did not see any positive order issued by the court that could form the basis of a contempt application.
27. In the result, the claimant's application dated April 27, 2021 is disallowed.
28. Each party will bear their own costs.
29. Orders accordingly.

DELIVERED VIRTUALLY AT NAIROBI THIS 21ST DAY OF JULY 2022

LINNET NDOLO

JUDGE

Appearance:

Ms. Guserwa for the Claimant

Mr. Lutta for the Respondent

