



REPUBLIC OF KENYA



KENYA LAW
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**Maina v Kenyatta University (Petition 133 of 2018)
[2022] KEELRC 4859 (KLR) (29 September 2022) (Ruling)**

Neutral citation: [2022] KEELRC 4859 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
PETITION 133 OF 2018
MN NDUMA, J
SEPTEMBER 29, 2022**

BETWEEN

ESTHER NJERI MAINA CLAIMANT

AND

KENYATTA UNIVERSITY RESPONDENT

RULING

1. The dispute between the parties is protracted and has been a subject of various rulings and a judgment delivered on April 15, 2020 by Hon Wasilwa J in which the court declared that the applicant was a permanent and pensionable employee of the respondent and directed the respondent to issue the applicant with a contract of employment.
2. The respondent aggrieved by the decision of this Court filed an appeal to the Court of Appeal being Civil Appeal No 261 of 2020.
3. In a ruling dated July 30, 2020, Hon Wasilwa dismissed an application by the applicant seeking to have the respondent found in contempt of court for not paying the applicant salary.
4. The court however found that the respondents were bound to keep paying the applicant's salary and when it falls due and that she should be issued with a letter of contract, once the COVID 19 pandemic was over.
5. The dispute between the parties now, arose upon a transfer of the applicant from Nairobi, Kenyatta University campus. The applicant protested the transfer on account of the medical condition of her children, who she alleged suffer disability and were currently under various medical attention by doctors situated at Nairobi and that she would be unable to avail them such services if she was to be moved to Kitui campus.



6. The respondent on the other hand while admitting that the applicant served as a secretary, stated that her services had been transferred to Kitui campus following the relocation of the entire department which she served from Nairobi to Kitui. The respondent had also not paid salary to the applicant for several months and this was also the subject of the application.
7. The court issued a notice to show cause to the Registrar administration, Mr Nderitu Gikaria to appear in court and explain why the orders of the court were not being adhered to by the respondent.
8. Mr Gikaria appeared before court on October 12, 2021 and he explained that the respondent had no problem with paying the applicant arrear salary and indeed, the arrear salary due to the applicant was paid.
9. Only one issue remained unresolved being that the centre in which the applicant served having been transferred to Kitui, the respondent had difficulties retaining the applicant at Nairobi. The registrar told the court that the whole agriculture sector which carries the budget under which the applicant was paid had moved to Kitui hence the dilemma. That the applicant served the chairperson of the department as a secretary and cleaner and therefore her services had wholly moved to Kitui campus.
10. The applicant contested that allegation stating that all non-teaching staff, except her were not transferred to Kitui. The applicant stated that she has served the respondent since the year 2009 in different departments and there was no difficulty in placing her in any other department at Nairobi.
11. The applicant stated that there are indeed vacancies for secretaries at the main campus, since some secretaries have retired.
12. The registrar sought time from the court to resolve the issue of placing the applicant amicably. Meanwhile the respondent asked to be allowed to examine the children of the applicant and to receive previous medical records to ascertain whether or not the conditions they suffered could not be attended to in Kitui once the applicant has been transferred. This issue of the children has not been resolved to date and has remained an obstacle to the resolution of the dispute.
13. The applicants have pleaded medical confidentiality with respect to the medical records for the minors requested by the respondent. The record requested were eventually provided to the respondent but the issue has not been resolved.
14. Having considered the depositions and submissions by the parties, the court is satisfied that the applicant has sufficient reasons to request the respondent to retain her services at the Nairobi campus and not move her to Kitui where her minor children with disability, may not find adequate medical and education facilities whilst living with their mother in Kitui.
15. The respondent had shown sufficient good will to resolve this dispute and the court is satisfied retaining the applicant at Nairobi campus is possible and within the ability of the respondent to do so without occasioning the respondent undue hardship.
16. The balance of convenience based on the facts before court is to allow the application and direct the respondent to
 - (a) Retain the services of the applicant at the Nairobi, Kenyatta University campus and not transfer her to Kitui, agricultural centre as earlier intended.
 - (b) Pay the salaries of the applicant as and when they fall due.
17. The Court notes that the issues canvassed herein are not *res-judicata* and are not affected by the pending appeal at the Court of Appeal in Civil appeal No 261 of 2020 between the parties.



18. The respondent to pay the costs of the suit.

DATED AND DELIVERED AT NAIROBI (ONLINE THIS 29TH DAY OF SEPTEMBER, 2022.

MATHEWS N. NDUMA

JUDGE

Appearances

Mr. Njoroge for Applicant

Mr. Thuo for Respondent

Ekale – Court Assistant

