



REPUBLIC OF KENYA



**Olwande & 2 others v Kisii University (Cause 1 of 2020)
[2022] KEELRC 12785 (KLR) (28 September 2022) (Judgment)**

Neutral citation: [2022] KEELRC 12785 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
CAUSE 1 OF 2020
S RADIDO, J
SEPTEMBER 28, 2022**

BETWEEN

GEORGE FRED OLWANDE 1ST CLAIMANT

MARGARET APONDI ULAKA 2ND CLAIMANT

JUDITH AKOTH OCHIENG 3RD CLAIMANT

AND

KISII UNIVERSITY RESPONDENT

JUDGMENT

1. George Fred Olwande, Margaret Apondi Ulaka and Judith Akoth Ochieng (the claimants) sued Kisii University (the respondent) on January 6, 2020, alleging breach of contract (failure to pay accrued salaries) and unfair termination of employment.
2. The respondent filed a response on February 5, 2021, prompting the claimants to file a reply on March 3, 2021.
3. The cause was heard on March 29, 2022 and May 23, 2022. The claimants and a legal officer with the respondent testified.
4. The claimants filed joint submissions on August 29, 2022 (should have been filed/served before July 15, 2022), and the respondent on September 9, 2022.
5. The court has considered the pleadings, evidence, and submissions.

Breach of contract

6. The respondent engaged the claimants as part-time lecturers in 2015. The appointment letters set out the rate of remuneration.



7. Under the prevailing policies/procedures in place, the claimants were expected to make claims for payment using a prescribed form accompanied by copies of appointment letters and examination attendance sheets before processing and approvals by the accountant (examinations section), Accountant (claims section), Chair of Department, Campus Director, Dean of Faculty and Deputy Vice-Chancellor.
8. The claimants testified that despite presenting their claims for payment using the prescribed forms for processing and payment, the respondent had failed to make the payments (the claimants testified that they did not keep copies of the forms and requisite attachments and therefore could not produce them in court).
9. The respondent's position was that payments were not made because the claimants had not lodged any claims in respect of the claims now placed before the court.
10. The claimants did not clearly plead the periods for which they claimed they worked and for which the respondent failed to process payments.
11. The periods were also not set out in the witness statements produced and adopted as part of the evidence.
12. The only copy of the claim form produced in court was by the 2nd claimant. It was incomplete, and the dates were not clear.
13. In the court's view, the dates were crucial. The same would have enabled the respondent and court to establish if limitation was implicated.
14. Even during oral testimony, the claimants gave general details of the relevant times. These claims were special damages, which required strict proof.
15. The court has no sufficient evidence to find the respondent liable for breach of contract.

Unfair termination of employment

16. Section 47(5) of the *Employment Act, 2007* has placed a burden upon an employee to demonstrate at the first instance that an unfair termination of employment occurred.
17. Despite asserting that they were unfairly terminated from employment, the claimants did not put any evidence before the court to support the assertion.
18. In fact, the records produced in court show that the claimants were on fixed-term contracts, and it is more probable that the contracts expired by effluxion of time.
19. The court declines to find unfair termination of employment.

Conclusion and Orders

20. The claimants did not prove their claims, and the cause is dismissed with costs.

DELIVERED THROUGH MICROSOFT TEAMS, DATED AND SIGNED IN KISUMU ON THIS 28TH DAY OF SEPTEMBER 2022.

RADIDO STEPHEN, MCI Arb

JUDGE

Appearances



For Claimant E.A. Ochieng & Co. Advocates
For Respondent Nyamurongi & Co. Advocates
Court Assistant Chrispo Aura

