



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU

CAUSE NO. 299 OF 2017

JOSEPH PAUL OTIENO.....CLAIMANT

VERSUS

RONGO UNIVERSITY.....RESPONDENT

JUDGMENT

1. Joseph Paul Otieno (the Claimant) sued Rongo University (the Respondent) on 6 July 2017, alleging breach of contract (payment of retainer and transport allowance).
2. The Respondent filed a Statement of Defence on 17 July 2017, and the Cause was heard on 17 November 2020 and 8 December 2020. The Claimant and an Assistant Registrar with the Respondent testified.
3. The Claimant filed his submissions on 10 February 2021 (should have been filed by 8 January 2021), while the Respondent filed its submissions on 17 February 2021.
4. The Court will adopt the Issues as identified by the Respondent, viz:
 - (i) Whether the Claimant was retained as a part-time lecturer by the Respondent?
 - (ii) Compensation.
 - (iii) Who bears the costs?

Contractual relationship

5. The Respondent's case was that it retained the Claimant as a part-time lecturer to handle four-course units from 2013 to 2014.
6. The Claimant had on his part contended that the Respondent employed him from August 2012 to April 2014.
7. To show that he was working for the Respondent, the Claimant filed a copy of a Lecturer Attendance Sheet for October 2012, Marked Examination Delivery Form for 2012 to 2013, Examination Attendance Lists dated 24 April 2014, 28 April 2014, an undated Mark Sheet, Course Outline for 15 April 2013 to August 2013 and a contract dated 27 May 2014 offering him the position of part-time lecturer for the academic year 2013 to 2014.
8. The Claimant also filed a copy of his bank statement.
9. Section 9 of the Employment Act, 2007 places the burden of preparing a written contract on the employer. The Respondent issued a contract to the Claimant, which provided that it would apply retroactively.
10. The Claimant produced documents demonstrating that he had a contractual relationship with the Respondent as early as October 2012. The Respondent did not disown the documents.
11. In light of the documents and the provisions of section 10(7) of the Employment Act, 2007, the Court is satisfied that the Claimant was retained by the Respondent from August 2012.

Breach of contract

12. The copy of the contract produced by the Claimant set out the rates of pay and entitlement to transport allowance.
13. The Claimant testified that he was owed Kshs 546,000/- on account of a retainer fee and Kshs 112,000/- being transport allowance.
14. In computing the retainer, the Claimant used a factor of Kshs 3,300/-. The factor was obviously not correct as the contract provided for Kshs 1,000/-per hour.
15. Using the correct factor, the Claimant would be entitled to a retainer of Kshs 160,000/-.
16. The Claimant pleaded that he served for 8 semesters and at the rate of Kshs 10,400/- should have been paid transport allowance of Kshs 83,200/-. The evidence was not rebutted.
17. The Respondent, as the employer and custodian of employment records, did not produce any records to show when and how much the Claimant was paid.

Without the Respondent's rebuttal, the Court finds that the Claimant proved his case to the required standard.

Conclusion and Orders

19. The Court finds that the Respondent was in breach of contract, and the Claimant is awarded:

i) Retainer	Kshs 160,000/-
ii) Transport allowance	Kshs 83,200/-
TOTAL	Kshs 243,200/-

20. The award to attract interest at court rates from 6 July 2017 until full payment.

21. The Claimant did not file submissions within agreed timelines. He is denied costs.

Delivered through Microsoft teams, dated and signed in Kisumu on this 24th day of March 2021.

Radido Stephen, MCI Arb

Judge

Appearances

For Claimant	Mathai Maina & Co. Advocates
For Respondent	Zacchaeus Okoth Imbo, Legal Officer
Court Assistant	Chrispo Aura