

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO. 2183 OF 2016

(Before Hon. Lady Justice Maureen Onyango)

FRANCIS X. O. K'OMBUT..... PLAINTIFF

VERSUS

UNIVERSITY OF NAIROBI.....DEFENDANT

RULING

Judgment in this suit was delivered on 1st December 2020 and orders made as follows –

1. I find that the Plaintiff was paid less than what he was entitled to under the Terms and Conditions of Service for Academic, Senior Library and Administrative Staff of the Defendant.
2. I direct the Defendant to tabulate and present to court the amount payable to the Plaintiff under those Terms of Service less what was paid to the Plaintiff within 60 days for purposes of final judgment. Should the Plaintiff not agree with the tabulation of the Defendant, he should within 30 days, file his own tabulation and present to court for final determination.
3. The case will be mentioned after 3 months on a date to be set at the time of judgement.
4. The Defendant shall pay the Plaintiff's costs of the suit.

On 15th February 2021 when parties appeared before the Court for purposes of submitting on computation, Mr. Kinuthia, Counsel for the Respondent submitted that according to the Respondent no amount was owing to the Claimant. On that day there was no appearance for the Claimant and the Court fixed the matter of further mention on 17th May 2020 when Mr. Kinuthia again appeared for the Respondent and Mr. Gitonga appeared for the Claimant. Mr. Gitonga informed the Court that he had filed the tabulation for the Claimant. Mr Kinuthia on the other hand submitted that the Respondent had filed a report stating that at the time of the Claimant's exit from the Respondent he was not owed even a single cent by the Respondent. That there was no need to file a further tabulation. He further submitted that when this Court delivered judgment it became *functus officio*.

The Claimant's tabulation is as follows –

Year	Lecturer salary per month	Chief Technologist salary per month	Difference	TOTAL
1999	22,105.00	13,197.00	8,908.00	106,896.00
2000	30,970.70	10,124.80	20,848.90	250,150.80
2001	35,854.00	12,359.00	23,495.00	281,940.00
2002	37,283.00	14,487.00	22,796.00	273,552.00
2003	39,402.00	17,307.00	22,095.00	265,140.00
2004	40,826.26	20,961.45	19,864.81	238,368.00
2005	150,785.20	80,067.68	70,717.52	848,610.24
2006	48,274.00	26,806.00	21,468.00	257,616.00
2007	71,773.80	40,465.00	31,308.80	375,705.60
2008	98,227.20	59,045.30	39,181.90	470,182.80

2009	105,661.40	63,314.25	42,347.15	508,165.80
2010	73,769.85	41,235.55	32,534.30	390,411.60
2011	84,126.80	44,584.85	39,541.95	474,503.40
2012	85,845.85	49,409.70	36,436.15	437,233.80
			TOTAL	5,178,476.04

The Claimant further submitted that he was promoted to the position of a Chief Technologist in the Respondent's department of Bio-Chemistry. That pursuant to the Respondent's salary scales as stipulated under its Terms of Service for Academic, Senior Library and Academic staff applicable at all material time, a Chief Technologist fell in the same salary scale as, among others, a Lecturer.

The tabulation above shows what a lecturer was earning per month in every year. It also shows what a chief technologist was earning per month every year. The difference is derived from the two and multiplied by twelve months.

With respect to the Respondent's refusal to tabulate after the judgment, I consider the same to be contemptuous of this Court's orders. Counsel's submissions that this Court is *functus officio* and that the Claimant is owed nothing by the Respondent is not excusable. Conduct of Counsel for the Respondent has been consistent since this suit was filed. In the first place, it did not file a defence. What Counsel is telling the Court is from the bar as there are no pleadings anywhere to support the submissions of Counsel.

When this matter came up for hearing, the Respondent was allowed to cross examine the Claimant on the basis that it had filed a Memorandum of Appearance.

In its submissions, the following issues –

- a. Whether the Claim offends section 90 of the Employment Act as read with Section 4 of the Limitation of Actions Act.
- b. Whether the Claimant filed a suit against a wrong Respondent as per his testimony in court if yes, who is the proper Respondent?
- c. Whether the Claimant has proved discrimination in his remuneration?
- d. Whether the Claimant has discharged his burden of proof?

Nothing was submitted on the substantive Claim which is that the Claimant was underpaid as he was paid under the wrong salary scales.

Once a judgment is delivered, a party cannot come to court to lecture it on how it has become *functus officio* or how the winning party did not prove its case. If it was not satisfied with the judgment as delivered, the least it would have done is seek a stay of the judgment and file either an application for review or an appeal. The Respondent has done neither.

The Respondent had the opportunity to at least demonstrate to the Court what it paid to the Claimant which makes it conclude that it owes the Claimant "*not even a single cent*" as submitted by Mr. Kinuthia so belligerently.

In view of the fact that the Respondent has not filed any pleading or evidence to controvert the computation of the Claimant, I adopt the undisputed tabulation by the Claimant and enter final judgment for the Claimant against the Respondent in the total sum of Kshs.5,178,476.04.

DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 28TH DAY OF MAY 2021

MAUREEN ONYANGO

JUDGE

ORDER

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020, that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with **Order 21 Rule 1 of the Civil Procedure Rules** which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court has been guided by Article 159(2)(d) of the Constitution which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of the Constitution and the provisions of **Section 1B of the Civil Procedure Act (Chapter 21 of the Laws of Kenya)** which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to

facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

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MAUREEN ONYANGO

JUDGE