



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT KISUMU**

**CAUSE NO. 90 OF 2019**

**(Originally Nairobi Cause No. 2118 of 2016)**

**SAMMY ERICK NJERU**

**CLAIMANT**

**v**

**DR DESTAINGS NYENYI NYONGESA**

**PROF JULIUS NYABUNDI**

**PROF CATHERINE MUHOMA**

**DR ALI ADAN ALI**

**GLADYS OTIENO**

**BENARD NYAORO**

**WYCLIFF OWOKO (sued on behalf and as trustees of**

**MASENO UNIVERSITY RETIREMENT BENEFITS SCHEME) 1<sup>st</sup> RESPONDENT**

**MASENO UNIVERSITY RETIREMENT**

**BENEFITS SCHEME**

**2<sup>nd</sup> RESPONDENT**

**RULING NO. 2**

1. On 22 March 2021, the Court fixed the Cause herein for hearing on 16 June 2021.
2. When the Cause came up for hearing as scheduled, the Court was informed of a Motion filed by the Respondents on 16 April 2021, seeking orders:
  - (1) THAT this suit be declared compromised.
  - (2) THAT a decree of this Honourable Court do issue declaring and marking the case as fully compromised by agreement and or conduct of the Claimant.
  - (3) THAT such other or further orders be made for the implementation and execution of the decree herein as the Court may deem just and expedient.
  - (4) THAT the costs of this application be provided for.
3. The Court directed that it would deal with the Motion first, and the parties were requested to file and exchange submissions. The Respondents filed their submissions on 2 August 2021, while the Claimants submissions were not filed by the agreed timeline.

4. The Court has considered the record, Motion, affidavits and submissions.

5. The Claimant sued the Respondents on 14 October 2016, and he stated the Issue in Dispute as:

Intended unlawful and unfair termination of employment contract for Sammy Erick Njeru.

6. The reliefs sought by the Claimant were:

(a) THAT this Honourable Court be pleased to issue a permanent injunction restraining the Respondents from breaching the contract of employment dated 11<sup>th</sup> November 2013 by subjecting the Claimant to inhuman, hostile and humiliating work environment nor terminating the Claimant's employment.

(b) An order quashing and nullifying the Respondents suspension letter dated 11<sup>th</sup> October 2016 addressed to the Claimant.

(c) Costs of the suit.

7. The gist of the Respondents assertions in support of the Motion were that the Court had allowed the disciplinary process against the Claimant to proceed and that he was offered an opportunity to be heard, after which a decision to terminate his employment was made and therefore the action had become compromised.

8. Opposing the Motion, the Claimant countered that Cause had not been compromised because the Respondents had not paid him his terminal dues after the termination of employment and that in any case, there had been no discussions to compromise the Cause.

9. At the time of filing the Memorandum of Claim, the Claimant had also filed a Motion under a certificate of urgency seeking orders interdicting the suspension letter and restraining the Respondents from breaching the contract.

10. The Motion was heard, and in a Ruling delivered on 25 November 2016, the Court dismissed the Motion and directed that the disciplinary process against the Claimant proceeds.

11. Consequently, the Respondent issued a show-cause notice to the Claimant on 19 December 2016, the Claimant responded on 6 January 2017, and a hearing was held on 24 January 2017, culminating in the termination of the Claimant's employment on 6 February 2017.

12. The Claimant was then paid his terminal dues around September 2017.

13. The substratum of the Claimant's action as set out in the Memorandum of Claim was the suspension from employment pending investigations and disciplinary action.

14. The Claimant sought to interdict the suspension and disciplinary process at an interlocutory stage, but the Court declined the invitation to interfere in the process with the result that the process went through the motions leading to the termination of the Claimant's employment on 6 February 2017, and payment of terminal dues.

15. The Claimant did not amend the Memorandum of Claim to reflect the changed state of affairs after the termination of employment on 6 February 2017, and in the Court's view, the substratum of the action advanced in the Memorandum of Claim became fundamentally altered that the Cause became moot.

16. In the circumstances, the Court would be engaging in a mere academic exercise in purporting to take evidence and deliver a determination in an action that has been overtaken by events.

17. From the above, the Court finds the Cause herein as having been overtaken by events, and it is struck out with no order on costs.

**DELIVERED THROUGH MICROSOFT TEAMS, DATED AND SIGNED IN KISUMU ON THIS 8TH DAY OF DECEMBER 2021.**

**RADIDO STEPHEN, MCI Arb**

**JUDGE**

**Appearances**

For Claimant Koceyo & Co. Advocates

For Respondents Wasuna & Co. Advocates

Court Assistant Chrispo Aura