



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU

CAUSE NO. 432 OF 2017

KENYA PRIVATE UNIVERSITIES WORKERS UNION.....CLAIMANT

v

GREAT LAKES UNIVERSITY OF KISUMU..... 1st RESPONDENT

PROFESSOR ATIENO A. NDEDE AMADI..... 2nd RESPONDENT

JUDGMENT

1. On 17 January 2017, the Vice-Chancellor, Great Lakes University of Kisumu (the Respondents) wrote to Judith Ng'ong'ah and Beatrice Akinyi Adipo (the Grievants), notifying them of the termination of their contracts and the reason given was *extraordinary low student enrolment*.
2. The Grievants reported the decision to the Kenya Private University Workers Union (the Union), and the Union reported a trade dispute to the Cabinet Secretary, Labour, who appointed a Conciliator.
3. During the conciliation, it was agreed that the Grievants should appeal, which they did, and by letters dated 17 March 2017, their previous contracts were reinstated.
4. However, due to wrangles and changes in the management of the University, the Grievants were blocked or denied entry into the University to fulfil their contractual obligations.
5. The Union, therefore, made another report of a trade dispute, and the Conciliator invited the parties for a meeting through a letter dated 14 June 2017.
6. The Respondents, however, notified the Conciliator through a letter dated 27 June 2017 that the Grievants had deserted work after reinstatement.
7. On 29 June 2017, the Respondent invited Judith Ng'ong'ah to appear for a disciplinary hearing on 29 September 2017 on allegations of desertion.
8. Feeling out of options, the Union lodged a Memorandum of Claim with the Court on 5 December 2017, alleging unfair termination of employment.
9. The Respondents filed a Response to the Memorandum of Claim on 7 February 2018, and this prompted the Union to file a rejoinder on 9 March 2018.
10. On 26 February 2020, the Court referred the parties to Mediation, and the Mediator filed a report of partial agreement on 30 October 2020.
11. The parties agreed:
 - (1) THAT the Respondent shall pay parties on the Claimant side their respective salary arrears as per their terms of service.
 - (2) THAT the Respondent shall pay parties on the Claimant side their respective dues in lieu of notice per their terms of service.
 - (3) THAT the Respondent shall pay parties on the Claimant side their respective gratuity in accordance with their terms of service.

12. The Union and the Respondents did not agree on:

- (1) Compensation for loss of job and
- (2) Who shall bear the cost of the suit.

13. When the Cause was called for directions on 15 March 2021, the Court directed the Union to serve a hearing notice upon the Respondents on the outstanding issues ahead of hearing on 24 May 2021.

14. According to an affidavit of service filed in Court on 24 June 2021, the Union served the notice upon the Respondents through the following email addresses: kagoanthony@gmail.com and info@gluk.ac.ke.

15. Despite the service, the Respondents were not represented on 24 May 2021.

16. The Union suggested that the parties proceed by way of submissions to be filed, and the Court directed the parties to file and exchange submissions.

17. The Union filed its submissions on 14 June 2021, while the Respondents submissions were not on record by the agreed timeline.

18. The Court has considered the record and the Union's submissions.

Unfair termination of employment

19. The Union did not lead or produce any evidence to support the assertion that the termination of the employment of the Grievants was unfair.

20. Although witness statements and documents were filed in Court, without the adoption of the witness statements on oath and production of documents as envisaged under the Evidence Act, the same have no evidential value.

21. The Court will therefore not award any compensation.

Adoption of Mediation Agreement

22. The parties agreed that the Grievants would be paid outstanding salary arrears, dues in lieu of notice and gratuity.

23. The Union filed its computations in the submissions, and the Court will adopt the same save for salary in lieu of notice which is ordinarily pegged on basic pay (the Union should not have computed the same using gross pay).

24. The Court also notes that the Grievants were members of a contributory pension scheme and, therefore, would be only entitled to gratuity at the rate of 25% of basic salary up to the date of conversion of terms of employment to permanent and pensionable terms.

25. For Judith Ng'ong'a, the qualifying period is from 1 May 2007 to 31 May 2010, while for Beatrice Adipo, it is from 1 August 2010 to 1 October 2016.

26. Judith Ng'ong'a's basic salary for purposes of gratuity was Kshs 25,526/- while for Beatrice Akinyi, it was Kshs 45,000/-.

27. To get the gratuity entitlement, the Court has multiplied the basic monthly salary with the period under contract and divided by 25% (3 years and 6 years 1 month respectively).

28. The Union has computed the dues as follows (Kshs) but based on the preceding, the Court will allow and award:

	J Ng'ong'ah	B Adipo
Salary arrears	528,000/-	573,000/-
Salary in lieu of notice	45,000/-	45,000/-
Gratuity	229,734/-	821,250/-
TOTAL	802,734/-	1,439,250/-

Conclusion and Orders

29. From the foregoing, the Court adopts the Mediation Report and awards the Grievants:

(i) Judith Ng'ong'ah **Kshs 802,734/-**

(ii) Beatrice A. Adipo **Kshs 1,439,250/-**

30. The Union and Respondents do not have a recognition agreement. Each party to bear its own costs.

31. The Court regrets that the judgment could not be delivered on 10 November 2021 due to other official engagements.

DELIVERED THROUGH MICROSOFT TEAMS, DATED AND SIGNED IN KISUMU ON THIS 2ND DAY OF DECEMBER 2021.

RADIDO STEPHEN,

MCIARB JUDGE

Appearances

For Union Peter Emisembe Owiti, General Secretary

For Respondents Anthony Kago & Co. Advocates

Court Assistant Chrispo Aura