



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO. 160 OF 2009

(Before Hon. Lady Justice Hellen S. Wasilwa on 10th March, 2020)

UNIVERSITY ACADEMIC STAFF UNION.....1ST CLAIMANT

LUCY MUGWERE2ND CLAIMANT

**ELIZABETH ATIENO MENYA & ANDRONIKO OTEDO MENYA (ADMINISTRATORS
OF THE ESTATE OF JOEL MENYA OTENDO (DECEASED)).....3RD CLAIMANT**

VERSUS

KENYATTA UNIVERSITYRESPONDENT

RULING

1. This Ruling is in respect of the Parties' computation as ordered by the Court on 21/7/2011. The 2nd and 3rd Claimants filed Affidavits in support of their tabulation of their terminal dues. The Respondent did not file any document with regard to their tabulation.

2nd Claimant's case

2. She avers that her payslip for the month of August 2005 indicates that she earned Kshs. 82,108/- as an Assistant Lecturer and that she was entitled to house allowance and commuting allowance.

3. She contends that it was the Respondent's Terms of Service that she was entitled to gratuity/pension payable at the rate of 25% of basic salary and annual leave of 30 days and retirement at 75 years of age.

4. She contends that her employment rights were governed by the Court's Award in Cause 105 of 2006 and in accordance with the Collective Bargaining Agreements (CBAs) between the 1st Claimant and the University's representatives being Local CBA 2006/2008 for June 2009, CBA 2008-2010, CBA July 2009, the Respondent's Memo dated 24/8/2009, CBA 2010-2013, Local CBA 2010/2012, CBA 2013 - 2017, Local CBA 2012/2013 dated September 2013 and Local CBA 2013/2017 dated September 2016.

5. She contends that in pursuant to these documents, she is entitled to cumulative terminal dues at the sum of Kshs. 41,021,969.62.

3rd Claimants' case

6. The 3rd Claimants suing as administrators of the estate of Joel Menya Otedo aver that at the time of dismissal of the deceased, a lecturer earned a basic salary of Kshs. 57,438, a house allowance of Kshs. 43,645 and a commuting allowance of Kshs. 4,040 which was subsequently increased to Kshs. 6,060.

7. They aver that pursuant to a Collective Bargaining Agreement executed on 18/6/2009 the deceased's salaries and allowances such as house and leave allowances increased over the years.

8. They further aver that in the CBA executed on 21/7/2009, the Respondent agreed to pay lecturers book/journal allowances of Kshs. 3,000 per month with effect from 1st July 2009 and also increased commuter allowance to Kshs. 7,300 per month from January 2009.

9. They contend that salaries and house allowance were further increased pursuant to the CBA executed on 20/9/2012 and 13/3/2017. They also contend that the deceased was entitled to school fees allowance of Kshs. 40,000/- per annum and that between the year 2006 and 2010 the deceased's was a student at the Respondent thus he is entitled to a reimbursement of Kshs. 160,000/-

10. They contend that the deceased was entitled to an in-patient insurance cover of up to Kshs. 1,000,000 per annum and an outpatient cover of up to Kshs. 80,000 per annum. It is therefore their case that the deceased incurred Kshs. 1,538,327/= on medical expenses which they seek from the Respondent.

11. They contend that the deceased was also entitled to a pension contribution by the Respondent at a rate of Kshs. 20% of his basic salary as per the CBA dated 21/7/2009. They further contend that as the family of the deceased they were entitled to funeral expenses of Kshs. 50,000.

12. It is their case that the deceased's estate is entitled to his benefits as follows:-

a. Salary	Kshs. 10,311,395.00
b. House allowance	Kshs. 5,107,478.00
c. Other Allowances (Leave, Commuter and Book allowance)	Kshs. 1,134,576.00
d. Unremitted Pension Contribution	Kshs. 2,047,746.20
e. Medical Expenses	Kshs. 1,590,706.00
f. Funeral Expenses	Kshs. 50,000.00

13. They therefore contend that they are entitled to Kshs. 20,241,901.20 plus interest at court rates from 1st May 2015 until payment in full.

14. I have examined the computation placed before Court. Vide the judgement of this Court delivered on 10/9/2009, the Honourable Court (J Mukunya), ordered that the Claimants be reinstated to their employment from the date of their respective wrongful termination with no loss to benefits which includes wages and allowances on seniority.

15. The two (2) were also to be re-engaged at their former terms and conditions and were to be paid their salary from the date of their respective suspension without pay.

16. The dates in question range from 5/5/2007 for Lucy Mugwere and 2nd December 2006 for Joel Otedo. The Honourable Court did not make a final computation of the figures payable hence the direction by this Court that the said amounts be computed for this Court's consideration. The Claimants did their computation but the Respondents have to done so.

17. I have considered the computation by Lucy Mugwere. She computes figures beyond 10/9/2009 when the judgement was delivered.

18. Administrators of 2nd Claimant's estate have also computed a figure beyond 2009 to 2015 when he died.

19. The judgement of the Court never awarded anything beyond the judgement date. While limiting myself to the award as at the time of judgement, I find that the Claimants are entitled to back pay as from the time of suspension to the time of the delivery of the judgement and which I find to be as follows:-

1. 2nd Claimant Lucy Mugwere

a. Period from 1/5/2006 to 30th June 2006

= 156,136/=

b. Period from 1/7/2006 to 30th June 2007

= 1,077,141.60/=

c. 1st July 2006 to 30th June 2008 as per CBA = 2006/2008 = 587,981.13 /=

d. 1st July 2007 to 30th July 2008

= 1,163,112.84

e. 1st July 2008 to September 2009 as per CBA of 2008 – (LM9) = 1,516,409.72

f. 1ST July 2008 – September 2009 as per CBA July 2009 – LM10) - 14 months

= 14 x 508,127.90/24=296,409.4

TOTAL = 4,797,190.69

Less statutory deductions

As for 3rd Claimant

a. Salary for year 2006 - 4 months = 72,664/=

b. Salary November 2006 to June 2008 = 20 months = 1,512,000/=

c. Salary for July 2008 to June 2009 = 12 months = 1,043,304/=

d. House allowance 2006 arrears = 5,420/=

e. House allowance from November 2006 to June 2008 = 20 months = 900,000/=

f. House allowance from July 2008 to September 2009 = 14 months

= 14 x 48,375/24 = 516,184/=

g. Other than allowances from 2006 to 2009 = leave = 30,240/=

h. Commuter = 224,068/=

i. Unremitted pension upto September 2009 = 547,029/=

TOTAL = 4,856,909/=

Less statutory deductions

20. The Respondents will pay costs of this suit plus interest at Court rates with effect from the date of the judgement on 20/9/2009.

Dated and delivered in open Court this 10th day of March, 2020.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

Miss Kahinga holding brief Wetangula for Respondent – Present

Makau holding brief Kiprono for 3rd Claimant – Present

No appearance for 2nd Claimant