



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

**PETITION NO. 93 OF 2018**

*(Before Hon. Lady Justice Maureen Onyango)*

**IN THE MATTER OF ARTICLES 22, 23, 27 AND 28 OF THE CONSTITUTION OF  
THE REPUBLIC OF KENYA AND IN THE MATTER OF ALLEGED  
CONTRAVENTION OF FUNDAMENTAL RIGHTS AND FREEDOMS  
UNDER ARTICLES 3, 10, 20, 27, 28, 29, 30, 36, 41 AND 47 OF THE  
CONSTITUTION OF THE REPUBLIC OF KENYA**

**BETWEEN**

**HUMPHREY NYAGA THOMAS AND 25 OTHERS.....PETITIONERS**

**VERSUS**

**KENYATTA UNIVERSITY.....RESPONDENT**

**RULING**

Vide an Amended Notice of Motion dated and filed on 28<sup>th</sup> September 2018, the applicants seek the following orders –

1. The motion be certified as urgent and heard ex-parte in the first instance owing to its extreme as demonstrated urgently.
2. An order do issue to the respondent to pay the Applicants/Petitioners salaries for July, August, September, 2018 and overtime thereto pending determination of this Application/Petition.
3. An order that the respondents do pay the Applicants/Petitioners their benefits under Employment Act 2007 for the years worked.
4. An order the seasonal contracts do have a clause that the terminal benefits for the Applicants/Petitioners under the Employment Act 2007 shall not be forfeited.
5. An order do issue restraining the respondent from reducing the Applicants/Petitioners salary from Kshs.28,020 to Kshs.19,233.
6. An order that the Respondent do pay the Applicants/Petitioners their July and .August, 2018 salaries and other subsequent months worked.
7. A declaration that the Applicants/Petitioners are entitled to join a Trade Union of their choice.
8. The costs of this Motion to the Petitioners/Applicants in any event.

The grounds in support of the application are that –

1. The Petitioners/Applicants are permanent and pensionable employees having worked for the respondent for more than one (1)

year.

2. The petitioners/ Applicants have dutifully and diligently worked for the respondent for all the continuous years to date.
3. The petitioners were shocked and dismayed on 19<sup>th</sup> July, 2018 when the Deputy Vice Chancellor Administration demanded they sign seasonal contracts of three months and yet the petitioners are permanent and pensionable.
4. That this intended act is a violation of the Petitioners/ Applicants rights as it violates their constitutional rights and it is against the provisions of the Employment Act 2007.
5. That the respondent has denied the Petitioners/ Applicants salaries from July 2018 to date in gross violation of their constitutional rights.
6. That the seasonal contracts are crafty way of terminating the petitioners' employment without following the laid down procedures for termination of employment as by law provided.
7. If the petitioners/ Applicants are kicked out of employment at the expiry date as provided by clause 6 and 16:3 of the seasonal contracts which falls on 30th September, 2018, there will be grave injustice visited on the Applicants.
8. No prejudice will be visited on the respondent.

The application is supported by the affidavit of Humphrey Nyaga Thomas sworn on 27<sup>th</sup> September 2018 in which he reiterates the grounds on the face of the application.

The respondent filed grounds of opposition dated 26<sup>th</sup> September 2018 in which the respondent states that the application is unmerited, that the applicants have not furnished the court with facts that would enable the court exercise discretion in their favour, that the application is based on a misapprehension of the law.

The parties thereafter filed written submissions.

#### **Determination**

I have considered the application, the affidavits on record and the submissions of the parties.

The applicants have not submitted any evidence in support of the prayers in the application. They have not demonstrated that they worked in July, August and September 2018 and were not paid. They have not demonstrated that the salary that they were earning was Kshs.28,020 and that payment of Kshs.19,233 in the contract that the respondent asked them to sign is a reduction of the salary.

The issues raised in prayers 3 and 4 of the affidavit are in the nature of reliefs that can only be granted after a full hearing while the prayer for a declaration that the applicants/petitioners are entitled to join a trade union of their choice is not supported by any evidence as no issue has been raised over the same in the grounds and affidavit in support of the application or in the petition.

All the grounds on the face of the application and in the affidavit in support of the application are matters that are relevant for the petition but not for the application.

For the foregoing reasons I find no merit in the application with the result that the same is dismissed with each party bearing its costs.

**DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 20<sup>TH</sup> DAY OF MAY 2019**

**MAUREEN ONYANGO**

**JUDGE**