



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT KISUMU**

**CAUSE NO. 457 OF 2017**

*(As consolidated with Cause No. 458 of 2017, 459 of 2017 and 460 of 2017)*

*(Before Hon. Justice Mathews N. Nduma)*

**ERICK OYIER OMONDI.....1<sup>ST</sup> CLAIMANT**  
**DR. DAVID O. OIMA.....2<sup>ND</sup> CLAIMANT**  
**DR. MERCY FLORA OLUOCH.....3<sup>RD</sup> CLAIMANT**  
**DR. SAMSON NTONGAI.....4<sup>TH</sup> CLAIMANT**

**VERSUS**

**CATHOLIC UNIVERSITY OF EAST AFRICA.....RESPONDENT**

**JUDGMENT**

1. The consolidated suits, causes numbers 457, 458, 459 and 460 of 2017 were partly settled by a consent entered into by the parties on 9<sup>th</sup> July 2018 leaving only items (d) and (e) in the memorandum of claim for resolution and costs of the suit.
2. Parties filed written submissions on the unresolved items. Therefore, the issues for determination are:
  - a. Whether the claimant is entitled to damages from the respondent for withholding his salary, interest and costs of the suit.
3. The claimants were part-time lecturers employed by the Respondent at its Kisumu campus in different faculties. In terms of the contracts of employment, the claimants were to be paid per session at the end of each month.
4. The respondent delayed in paying salaries to the claimants for the period 2015 and 2016. The claimant accrued arrear salaries as follows:
  - a. Erick Oyier Omondi – Kshs. 92,000.
  - b. Dr. David O. Oima – Kshs. 324,000.
  - c. Dr. Mercy Oluoch – Kshs. 796,105.
  - d. Dr. Sambo Ntongei – Kshs. 264,000.
5. The claimants pray for damages for breach of contractual and statutory duty to pay salaries in terms of the contracts of employment, Article 41 of the constitution which prohibits unfair labour practices and violation of *Section 17(10) (a) and (b) of the Employment Act, 2007* which makes it an offence for a person to willfully fails to make payment or tender the wages earned or payable to an employee.
6. The claimants in addition claim payment of interest on the arrear salaries and costs of the suit.
7. The respondent conceded to the claim for payment of arrear salaries. The respondent admits that it delayed in payment of salary to the

claimants due to financial constraints occasioned by dwindling number of students at the Kisumu Campus.

8. That in terms of *Section 17 and 25 of the Employment Act, 2007*, the remedy against an employer for late payment of salary lies in the criminal sanctions provided therein. That the respondent has mitigated the wrongs it did for reasons beyond their control and ought not to be penalized after they had paid the salaries belatedly in full.

9. The respondents crave the court to exercise fairness as per the decision of the court in *Gladys M. Vundi vs Bank of Africa (Kenya) Limited 2013 eKLR* where D.K. Njagi Marete J. ruled that there must be proportionality and fairness in evaluating employment remedies.

10. Having considered all the circumstances of the case including that the respondent has admitted having not paid salaries to the claimants until they approached court; that the respondent entered a consent to pay salaries due and owing in full, which it has proceeded to do; and that the late payment was occasioned by reasons beyond the control of the respondent due to dwindling number of students at the Kisumu campus where the claimants were employed, the court finds this not to be an appropriate case to make an award for damages against the respondent for the unintended breach of employment contract.

11. However, the court finds that the claimants suffered loss and great inconvenience by fact of the late payment and considers it appropriate to order award of payment of interest in favour of each of the claimants on the amounts previously owed, but now paid calculated at court rates from the 1<sup>st</sup> January 2016 up to the time the full amounts were paid in full.

12. The respondent is also to pay the costs of the suit.

**Judgment Dated, Signed and delivered this 9<sup>th</sup> day of December, 2019**

**Mathews N. Nduma**

**Judge**

**Appearances**

Mr. Abira for Claimant

Mr. Obara for Respondent

Chrispo – Court Clerk