

REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS

COURT OF KENYA AT MERU

CASE NO. 16 OF 2017

1. JACOB BUNDI MARETE

2. DESIDERIO NJERU MUCHIRI.....CLAIMANTS

VERSUS

THE CHAIRMAN AND COUNCIL MEMBERS

OF KENYA METHODIST UNIVERSITY.....RESPONDENT

JUDGMENT

1. The Claimants sued the Respondent for the unpaid salaries and bonuses for teaching services. As per the amended claim of 21st May 2018, they were lecturers on contract basis with the Kenya Methodist University (KeMU) from 2011 till 2017. The 1st Claimant had a 3 year contract from 22nd November 2013 and in the contract it was specified that the Claimant would be paid Kshs. 78,400/- per month; house allowance of Kshs. 45,000/-; a house to office allowance of Kshs. 6,000/- for use of other transport and Kshs. 10,000/- for use of private car; gratuity was 25% of total basic salary for the period of service. The contract could be terminated by issuing a 3 month notice or on payment of 3 month's salary in lieu of notice. The employee was amenable to transfer to any of the Universities campuses and was entitled to 30 days leave in a year and leave allowance of half a month's salary per year provided the employee took at least half the leave days. The letter was to be signed in acceptance. The Claimants averred that there was underpayment for units that they taught and that the Respondent had failed to remit statutory dues. The Claimants averred that the Respondent had underpaid them for services rendered from 2014 to 2016. They also sought annual increments that they averred were denied by the Respondent as well as gratuity that was unpaid. The Respondent filed a memorandum of defence which in sum was to the effect that the Claimants were paid their terminal benefits in full after clearing with the Respondent and were therefore estopped from claiming any other dues. The Respondent denied that any extra dues were owed for services rendered as the Claimants were paid their salaries in full without any deductions during the period in question. The Respondent averred that the services of the two Claimants were terminated on account of redundancy and that they were not entitled to any relief claimed. It was averred that the claims prior to 2014 were time barred on account of limitation.

2. The Claimants were heard on 3rd July 2018 and the Respondent did not call any witness. The 1st Claimant testified that he was employed by the Respondent and that his contract was terminated upon payment of 3 month's salary in lieu of notice. He stated that he was penalized for non-payment of income tax and was referred to the credit reference bureau. He was unable to get any other job as he cannot get clearance. He stated that he deferred his PhD and his wife had to defer her Masters program so that they could concentrate on educating their children.

3. In cross-examination he stated that he was employed on contract and was not paid as per contract. He testified that he was paid part of the money, not all of it. He stated that he was given 6 additional students to supervise and that there was money due for the supervision of the thesis. He admitted that the claim on unpaid income tax was not part of his case. He stated that the SACCO debt was uncleared and that there was no letter on the supervision. He testified that he did not have the amended contract and wondered how he could earn the same amount from 2011.

4. The 2nd Claimant testified that he got employed in 2010 on a 3 year contract with 25% gratuity and that the first contract ended in 2012 and he was paid gratuity in 2015. He was given a one year contract which ended in 2017 and he was given what the Respondent purported to be final payment. He stated that the gratuity for 2014-2015 was not paid and the second issue was that deductions were made to his salary and the said deductions were not made to the SACCO. He stated that he taught some units part time and despite writing requesting payment did not receive the payment. He testified that on leaving only gratuity for 1½ years of service was paid. He stated that he was not paid for additional work and his NSSF deductions amounting to Kshs. 2,800/- were unpaid.

5. In cross-examination he stated that the SACCO dues were deducted and the payment was not made to the SACCO. He said that the SACCO was to deduct the dues and not him. He testified that there was no part time teaching contract. He stated that they worked by course loading and that there were to be increments and none was given.

6. In their submissions the Claimants submitted that the claims they brought were within the period of 3 years and therefore there was no statutory bar. They submitted that the Respondent had not tabled documents for the payment of the sums due for supervision of the students. They submitted that for the extra students the department took 50% and the lecturer took 50% in the department of education and that lecturers are not issued with contract letters in the department.

7. The Respondent submitted that the doctrine of estoppel applied to the Claimants case as they cleared with the Respondent in June 2017 and waited for 4 months before filing the suit. The Court of Appeal decision in the case of **748 Air Services Ltd v Theuri Munyi [2017] eKLR** was cited for the proposition that the doctrine of estoppel applied in that the Claimants were precluded from asserting something

contrary to what is implied by previous action or statement of that person. The Respondent submitted that the Claimants had not discharged their burden of proving they were entitled to the relief sought.

8. The Claimants had contract of service which were for periods that were not in dispute. The 1st Claimant did not even sign the letter in acceptance. Only the 2nd Claimant had signed his letter in acceptance. In contention is the issue of payments of the sums due for the performance of the contracts. The Claimants assert they were not paid and that SACCO dues were not remitted. Other than their claims, their clearances when leaving indicate on the part filled by Mwalimu SACCO that there were no outstanding dues or pending loans. The Claimants assert that there were sums unpaid for the supervision of students. After crosschecking the handover notes that the Claimants have exhibited, there is indication that there were students whose supervision was incomplete. The contracts for the supervision were clear. The sums for the supervision fell due after successful defence of the thesis. It was not demonstrated that the Respondent did not pay for the students supervised by the Claimants. There were no letters to the Respondent from the SACCO demanding unpaid remittances from May 2014 to 2016. It is unfathomable how the Claimants could have accounts with the SACCO and fail to note there were no remittances from them for a period in excess of a few months. The Claimants are estopped from making any claims against the Respondent for the period prior to 2014 as these are time barred. The Claimants just threw documents to the court so to speak and anticipate the court will unravel what their particular claims are. It is not for the court to distill what the Claimants case is if the Claimants do make out a clear case. On the reliefs sought, the gratuity unpaid was for the 1st contract in 2013 which is brought outside of the limitation period prescribed by the Employment Act Section 90. On part time teaching there is no evidence that there was non-payment. On the NSSF dues, there was no proof that the Claimants had valid contracts for the months when the sums are said to be unpaid. The upshot of the foregoing is that the claims are unmerited and are accordingly dismissed. Each party however will bear their own costs of the suit.

It is so ordered.

Dated and delivered at Meru this 2nd day of October 2018.

Nzioki wa Makau

JUDGE