



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI**

**CAUSE NO. 1527 OF 2015**

**(BEFORE HON. LADY JUSTICE HELLEN S. WASILWA ON 1<sup>ST</sup> SEPTEMBER 2017)**

**PROF. PAUL MUNGAI MBUGUA .....CLAIMANT**

**VERSUS**

**THE REGISTRED TRUSTEES OF PRESBYTERIA UNIVERSITY**

**OF EAST AFRICA .....RESPONDENT**

**JUDGMENT**

1. The Claimant filed suit through the firm of Ndungu Njoroge & Kwach Advocates seeking payment of his terminal benefits which he claims were not paid by the Respondent at resignation.

2. It is his case that he was employed by the Respondent on 28.1.2009 as an Associate Professor. That he diligently served in this position until 11.8.2011 when he was appointed as the acting Vice Chancellor of the Respondent and due to his exemplary service he was appointed as the Respondent's Vice Chancellor vide a contract of employment dated 6.6.2012 where he was entitled to:

***a. A basic salary of Kshs.450,000/=***

***b. A house allowance of Kshs.70,000/=***

***c. A utilities allowance of Kshs.10,000/=***

***d. An entertainment allowance of Kshs.50,000/=.***

***e. 30 days leave every calendar year.***

***f. A gratuity payment calculated at the rate of 31% of the annual basic salary.***

3. He states that he diligently served the Respondent until his resignation on 30.4.2014 which was accepted by the Respondent on 2.5.2014. Upon resignation the Respondent promised to pay his terminal dues upon satisfactory handover which he did on 8.5.2014 which process was witnessed by the Respondent's Council Chairman.

4. He contends that he demanded payment of his terminal dues to the tune of Kshs.6,811,672/= which the Respondent paid in part leaving a balance of Kshs.3,253,544.80 which he has patiently waited to be remitted but the Respondent have failed to do. He prays for his claim to be allowed.

5. The Respondent entered appearance through the firm of Muhuhu & Company Advocates but did not file a Response to the Claim and as such the matter proceeded as an undefended cause.

6. In evidence the Claimant led evidence as per the Memorandum of Claim and urged the Court to order the Respondent to pay the balance of his terminal dues together with interest and costs of the suit.

7. I have considered the evidence of the Claimant. The 1<sup>st</sup> contract of Claimant with Respondent is one dated 28.1.2009 appointing Claimant as Associate Professor in the Department of Pre-Clinical Studies. It was part of the contract that the Claimant would be entitled to a gratuity of 30% of his annual basic salary upon successful completion of the contract.

8. On 11.8.2011, the Claimant was appointed as Ag. Vice Chancellor and on 6.6.2012, he was appointed as Vice Chancellor.

9. The Claimant gave his notice of resignation on 30<sup>th</sup> April 2014. The resignation was accepted vide a letter dated 2.5.2014.

10. The Claimant has tabulated his terminal dues as follows:

**1. Gratuity on the 2009 contract = 1,900,800/=.**

**2. Acting allowance as Vice Chancellor's contract = 3,069,000/=.**

**3. Three months' salary in lieu of notice = 1,560,000/=.**

**4. Accumulated leave days = 2,220,000/=.**

**5. Unpaid salary arrears = 412,160/=.**

**Total = 9,730,960/=**

**Less Tax 30% = 2,919,288/=**

**Balance = 6,811,672/=**

11. The Claimant acknowledged being paid part of this amount leaving a balance of 3,253,480/=.

12. In seeking to determine the terminal dues the Claimant is entitled to, I rely on the contracts exhibited herein and the one of 2009 indicated that the Claimant was entitled to 30% gratuity. The Claimant served on this contract from January 2009 to 6<sup>th</sup> June 2012.

13. The gratuity payable is therefore 30% of 158,400 basic salary x 40 months = 1,900,800/=.

14. The Claimant seeks an Acting allowance for the period he served an acting for the period he served as acting Vice Chancellor. The mode of calculating this acting allowance is not explained and neither was it included in the contract. This limb of the claim is therefore not proved and is therefore not tenable.

15. On gratuity on the second contract from 2012 June to April 2014, gratuity payable is 31% of 450,000 x 22 months = 3,069,000/=.

16. On notice, the Claimant gave notice to resign but was told to leave immediately on 2/5/2014. He is therefore entitled to 3 months gross salary in lieu of notice = 580,000 x 3 = 1,740,000/=.

17. He also claims unutilized 148 leave days. There is however no proof of his entitlement to these number of days. No leave forms were produced. I will however take it that he is entitled to 30 days leave

not taken in the year he left = 580,000/=.

18. On salary arrears claimed for 2012, there being no evidence to the contrary, I award him as claimed for 412,160/=.

19. He has not provided any documents to prove the payments alleged for medical cover he had to take. I will therefore not award anything on this item.

20. I therefore find the Claimant is entitled to the following payments:

**1. Gratuity on the 2009 contract = 1,900,800/=**

**2. Gratuity on the 2012 contract = 3,069,000/=**

**3. 3 months' salary in lieu of notice = 1,740,000/=**

**4. 30 days leave not taken for 2013/2014 = 580,000/=**

**5. Salary arrears claimed for 2012 = 412,160/=**

**Total = 7,701,240/= less tax**

**Having been paid partly this amount, the Claimant is entitled to the balance being = 7,701,240 – 3,253,544.80 (paid from the 6,811,672 = 4,143,112 claimed).**

**Less statutory deductions.**

21. These are the orders of the Court.

Read in open Court this **1<sup>st</sup> day of September, 2017.**

**HON. LADY JUSTICE HELLEN WASILWA**

**JUDGE**

**In the presence of:**

Mr. Muhoho for Respondent – Present

Claimant – Absent