



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO. 718 OF 2016

(Before Hon. Lady Justice Maureen Onyango)

JOSEPH MUNGAI KERIKO.....CLAIMANT

VERSUS

JOMO KENYATTA UNIVERSITY OF

AGRICULTURE AND TECHNOLOGY.....1ST RESPONDENT

VICE CHANCELLOR, JOMO KENYATTA UNIVERSITY OF

AGRICULTURE AND TECHNOLOGY.....2ND RESPONDENT

UNIVERSITY COUNCIL OF JOMO KENYATTA

UNIVERSITY OF AGRICULTURE AND TECHNOLOGY.....3RD RESPONDENT

RULING

1. Judgment in this suit was delivered on 12th June 2020. The Court ordered as follows –

“I therefore find that the claimant is entitled to a basic salary of Kshs.348,056, house allowance of Kshs.69,033 and commuter allowance of Kshs.13,000. To this should be factored all the annual increments of 4% per annum and any CBA salary increases, if any to bring him to the salary he would have earned had he not been released on the tour of duty.

The respondents are directed to tabulate the salary payable to the claimant based on the foregoing together with arrears and file in court within 30 days from date of this judgment.

The case will be mentioned on 30th July 2020 for purposes of adoption of the tabulation of the respondent as the final award of the court.

The 1st respondent shall pay the claimant’s costs for this suit. Interest shall accrue at court rates from date of filing suit in view of the nature of the claim being arrears of salary withheld by the respondent.”

[Emphasis added]

2. The parties were unable to agree on the tabulation of the amount payable pursuant to the judgment and the Court directed each of the parties to file their tabulation. The Claimant's tabulation was filed together with the affidavit of V. M. Ndung'u, Counsel for the Claimant sworn on 12th March 2021 while the Respondent's tabulation is filed with the affidavit of JOTHAM ODERA, the Deputy Finance Officer of the Respondent.

3. The tabulation of the Claimant comes to a gross total of Kshs.28,465,909.47 while the Respondent's is Kshs.21,822,996.95 with interest of Kshs.7,719,644 less Kshs.1,076,832 paid leaving a balance of Kshs.28,465,809.47.

4. According to the judgment, the Claimant is to be paid the salary attached to his substantive post, provided the same does not cause him to receive a salary that is lower than the last basic salary that he earned as Principal.

5. The Claimant's last basic salary was Kshs.348,056 with house allowance of Kshs.69,033 and commuter allowance of Kshs.13,000.

6. The Principal's salary was not subject to CBA as has been clarified by the Respondent. The Respondent had further explained that the Claimant was already at the ceiling of the salary payable in his salary scale and was therefore not entitled to 4% annual increment.

7. For these reasons, I find both tabulations by the Claimant and the Respondent are not compliant with the judgment.

8. The proper tabulation should be based on the Claimant's **substantive post of Professor without reducing the salary he last received as Principal**. The correct tabulation is as follows:

BASIC SALARY			
2014	Salary for Principal awarded by Court (Kshs.)	Amount paid (Kshs.)	Difference (Kshs.)
January	348,056.00	196,237.00	151,819.00
February	348,056.00	196,237.00	151,819.00
March	348,056.00	196,237.00	151,819.00
April	348,056.00	196,237.00	151,819.00
May	348,056.00	196,237.00	151,819.00
June	348,056.00	196,237.00	151,819.00
July	348,056.00	203,997.00	144,059.00
August	348,056.00	203,997.00	144,059.00
September	348,056.00	203,997.00	144,059.00
October	348,056.00	203,997.00	144,059.00
November	348,056.00	203,997.00	144,059.00
December	348,056.00	203,997.00	144,059.00
Sub-Total			1,775,268.00
2015	Kshs.	Kshs.	Kshs.
January	348,056.00	203,997.00	144,059.00
February	348,056.00	203,997.00	144,059.00
March	348,056.00	203,997.00	144,059.00
April	348,056.00	203,997.00	144,059.00
May	348,056.00	203,997.00	144,059.00
June	348,056.00	203,997.00	144,059.00
July	348,056.00	211,753.00	136,303.00
August	348,056.00	211,753.00	136,303.00

September	348,056.00	211,753.00	136,303.00
October	348,056.00	211,753.00	136,303.00
November	348,056.00	211,753.00	136,303.00
December	348,056.00	211,753.00	136,303.00
Sub-Total			1,682,172.00
2016	Kshs.	Kshs.	Kshs.
January	348,056.00	211,753.00	136,303.00
February	348,056.00	211,753.00	136,303.00
March	348,056.00	211,753.00	136,303.00
April	348,056.00	211,753.00	136,303.00
May	348,056.00	211,753.00	136,303.00
June	348,056.00	211,753.00	136,303.00
July	348,056.00	211,753.00	136,303.00
August	348,056.00	211,753.00	136,303.00
September	348,056.00	211,753.00	136,303.00
October	348,056.00	211,753.00	136,303.00
November	348,056.00	211,753.00	136,303.00
December	348,056.00	211,753.00	136,303.00
Sub-Total			1,635,636.00
2017	Kshs.	Kshs.	Kshs.
January	348,056.00	211,753.00	136,303.00
February	348,056.00	211,753.00	136,303.00
March	348,056.00	211,753.00	136,303.00
April	348,056.00	211,753.00	136,303.00
May	348,056.00	211,753.00	136,303.00
June	348,056.00	211,753.00	136,303.00
July	348,056.00	248,898.00	99,158.00
August	348,056.00	248,898.00	99,158.00
September	348,056.00	248,898.00	99,158.00
October	348,056.00	248,898.00	99,158.00
November	348,056.00	248,898.00	99,158.00
December	348,056.00	248,898.00	99,158.00
Sub-Total			1,412,766.00
2018	Kshs.	Kshs.	Kshs.
January	348,056.00	248,898.00	99,158.00
February	348,056.00	248,898.00	99,158.00
March	348,056.00	248,898.00	99,158.00
April	348,056.00	248,898.00	99,158.00
May	348,056.00	248,898.00	99,158.00
June	348,056.00	248,898.00	99,158.00
July	348,056.00	248,898.00	99,158.00
August	348,056.00	248,898.00	99,158.00
September	348,056.00	248,898.00	99,158.00
October	348,056.00	248,898.00	99,158.00
November	348,056.00	248,898.00	99,158.00
December	348,056.00	248,898.00	99,158.00

Sub-Total			1,189,896.00
2019	Kshs.	Kshs.	Kshs.
January	348,056.00	248,898.00	99,158.00
February	348,056.00	248,898.00	99,158.00
March	348,056.00	248,898.00	99,158.00
April	348,056.00	248,898.00	99,158.00
May	348,056.00	248,898.00	99,158.00
June	348,056.00	248,898.00	99,158.00
July	348,056.00	248,898.00	99,158.00
August	348,056.00	248,898.00	99,158.00
September	348,056.00	248,898.00	99,158.00
October	348,056.00	248,898.00	99,158.00
November	348,056.00	248,898.00	99,158.00
December	348,056.00	248,898.00	99,158.00
Sub-Total			1,189,896.00
2020	Kshs.	Kshs.	Kshs.
January	348,056.00	248,898.00	99,158.00
February	348,056.00	248,898.00	99,158.00
March	348,056.00	248,898.00	99,158.00
April	348,056.00	248,898.00	99,158.00
May	348,056.00	248,898.00	99,158.00
June	348,056.00	248,898.00	99,158.00
July	348,056.00	248,898.00	99,158.00
August	348,056.00	248,898.00	99,158.00
September	348,056.00	248,898.00	99,158.00
October	348,056.00	248,898.00	99,158.00
November	348,056.00	248,898.00	99,158.00
December	348,056.00	248,898.00	99,158.00
Sub-Total			1,189,896.00
2021	Kshs.	Kshs.	Kshs.
January	348,056.00	248,898.00	99,158.00
February	348,056.00	248,898.00	99,158.00
March	348,056.00	248,898.00	99,158.00
April	348,056.00	248,898.00	99,158.00
May	348,056.00	248,898.00	99,158.00
June	348,056.00	248,898.00	99,158.00
July	348,056.00	248,898.00	99,158.00
August	348,056.00	248,898.00	99,158.00
September	348,056.00	248,898.00	99,158.00
Sub-Total			495,790.00
Difference on Basic salary			<u>11,870,575.75</u>

9. In view of the fact that the Claimant's salary is still higher than that of his substantive post of Professor, he is not entitled to any further increment until the salary for his substantive post catches up with the salary he is earning.

10. There are no arrears on house allowance or commuter allowance as the Claimant was paid what was due.

11. I therefore enter final judgment for the Claimant against the Respondent in the total sum of Kshs.11,870,575.75 as at September 2021. It is presumed that after this date, the Respondent has been paying the correct salary.

12. As was clearly stated in the Court's judgment delivered on 12th June 2020, the 1st Respondent shall pay the Claimant's costs for this suit. Interest shall be paid only on the amount due up to date of judgment, less the amount already paid

13. It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 21ST DAY OF JANUARY 2022

MAUREEN ONYANGO

JUDGE

ORDER

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with **Order 21 Rule 1 of the Civil Procedure Rules**, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court has been guided by Article 159(2)(d) of the Constitution which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of the Constitution and the provisions of **Section 1B of the Civil Procedure Act (Chapter 21 of the Laws of Kenya)** which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

MAUREEN ONYANGO

JUDGE



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