



REPUBLIC OF KENYA



KENYA LAW
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**Malonza v Genghis Capital Limited (Cause E925 of 2022)
[2025] KEELRC 2591 (KLR) (26 September 2025) (Judgment)**

Neutral citation: [2025] KEELRC 2591 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E925 OF 2022
AK NZEI, J
SEPTEMBER 26, 2025**

BETWEEN

FIONA MALONZA CLAIMANT

AND

GENGHIS CAPITAL LIMITED RESPONDENT

JUDGMENT

1. The Claimant herein sued the Respondent on 8th December, 2022 vide a Memorandum of Claim dated 5th December, 2022, which the Claimant subsequently amended on 5th May, 2023. The following reliefs were sought in the amended statement of claim:-
 - a. Accrued commissions from March 2020 to November 2021 amounting to Kshs.900,000/=.
 - b. Unpaid annual leave of Kshs.206,250/= for 11 days for the year 2021.
 - c. Payment of PAYE, penalties and fines from 1st September, 2014 till on or about 17th December, 2021 to be remitted to KRA.
 - d. Payment of employee and employer pension contributions amounting to Kshs.296,864.37 plus interest as per the pension trust deed.
 - e. Telephone expenses of Kshs.5,525/= for the month of December 2021.
 - f. Fuel expenses of Kshs.736.67/= for the month of December 2021.
 - g. Costs of the suit plus interest at Court rates.
 - h. Any other relief as the Court may deem fit.
2. The Claimant pleaded:-



- a. that she (the Claimant) was employed by the Respondent as Head of Legal Compliance from 1st September, 2014 upto 17th December, 2021 or thereabouts, and that she diligently and without fail performed her duties and obligations at all times.
 - b. that on or about 17th December, 2021, the Claimant resigned from her position [in order] to pursue her personal goals, and duly notified the Respondent vide a resignation notice that she would cease working with the Respondent on 17th December, 2021.
 - c. that during the period that the Claimant worked for the Respondent (from 1st September, 2014 to 17th December, 2021), the Respondent deducted pension deductions from the Claimant's salary but failed to remit employer and employee pension contribution as required by the law and the relevant pension scheme documentation.
 - d. that during the period of the Claimant's employment (1st September 2014 to 17th December, 2021), the Respondent deducted Pay As You Earn (PAYE) from the Claimant's salary, but failed to remit it to the Kenya Revenue Authority as required by law, leading to non-compliance and therefore affecting the Claimant's chances of [getting] employment in either financial or government sectors due to lack of a Tax Compliance Certificate.
 - e. that at the time of resignation, the Claimant was entitled to a basic salary of Kshs.450,000/=, made up of Kshs.350,000/= and Kshs.100,000/= accrued on monthly basis and paid annually or on cessation of the contract, whichever is earlier.
 - f. that upon resignation, the Claimant tried to reach out to the Respondent for payment of her dues, but no explanation was given for non-payment.
3. Other documents filed by the Claimant included the Claimant's written witness statement dated 24th February, 2024 and an evenly dated list of documents, listing 9 documents. The listed documents include a demand letter dated 21st September, 2022, a resignation acknowledgment letter, computation of final dues, contribution schedules of ICEA and Rafiki Schemes, salary and performance letter dated 12th March, 2021, deferred compensation letter dated 18th March, 2021, certificate of service, tax deduction cards and email correspondence between the Claimant and the Respondent's representatives. Copies of the listed documents were filed alongside the aforesaid list of documents.
 4. The Respondent entered appearance on 10th May, 2023 and filed Response to the Claimant's Amended Statement of Claim, dated 15th September, 2024. Other documents filed by the Respondent included an evenly dated witness statement of David Wahome and a list of documents listing two documents. The listed documents include what is described on the list of documents as December salary payslip and commissions payslip.
 5. Trial opened before Hon. Justice Dr. Jacob Gakeri on 13th May, 2024 when the Claimant testified and was cross-examined. The Claimant adopted her filed witness statement as her testimony and produced the documents referred to in paragraph 3 of this Judgment in evidence.
 6. Cross-examined by Counsel for the Respondent, the Claimant testified:-
 - a. that her basic salary was Kshs.350,000/=, and that she received another letter from the Chief Executive Officer dated 12th March, 2021 on salary increment of Kshs.100,000/= that would be paid at the end of the month.
 - b. that the Respondent had confirmed omission of the PAYE to KRA.



- c. that she (the Claimant) had been partly paid her dues for December 2021, but was not sure of the amount paid.
 - d. that basic pay and commission was the gross pay, and that Kshs.350,000/= was paid while Kshs.100,000/= was deferred and was payable at the end of the year due to financial challenges.
 - e. that the Claimant was claiming the balance of the outstanding amount.
7. When the matter came up for hearing before me on 18th November, 2024, a date on which Counsel for the Claimant did not attend Court, Counsel for the Respondent informed the Court that parties herein were negotiating the matter, and asked that time be given for parties to conclude negotiations. I fixed the matter for mention on 9/12/2025 for purposes of recording settlement.
 8. On 9th December, 2024, Counsel for both parties informed the Court that there had been no settlement reached, and requested for a hearing date. The suit was fixed for further hearing on 25th March, 2025.
 9. On 25th March, 2025, Counsel for the Respondent informed the Court that the Respondent would not be calling any evidence, and proceeded to close the Respondent's case. Both parties subsequently filed written submissions pursuant to the Court's directions in that regard.
 10. In view of the Respondent's failure to call evidence, the Claimant's evidence presented herein stands unrebutted, and the Respondent's filed documents remain mere unsubstantiated statements of fact. This does not, however, diminish the Claimant's legal obligation to establish her claim on a balance of probabilities.
 11. In the case of Janet Kaphiphe Ouma & Another – vs – Marie Stopes International (Kenya), the High Court (in Kisumu HCCC No. 68 of 2007), citing the decision in Edward Muriga (Through Stanely Muriga – vs – Nathaniel D. Schulter (Civil Appeal No. 23 of 1997) stated:-

“In this matter, a part from filing its statement of defence, the defendant did not adduce any evidence in support of assertions made therein. The evidence of the 1st Plaintiff and that of the witness remain uncontroverted, and the statements in the defence therefore remain mere allegations . . . Sections 107 and 108 of the Evidence Act are clear that he who asserts or pleads must support the same by way of evidence.”
 12. Similarly, in the case of Interchemie EA Limited – vs – Nakuru Veterinary Centre Limited (Milimani) HCCC No. 165B of 2000, the Court stated that:-

“Where no witness is called on behalf of the defendant, the evidence tendered on behalf of the Plaintiff stands uncontroverted.”
 13. It was held in Drappery Empire – vs – The Attorney General (Nairobi HCCC No. 2666 of 1996) that:-

“Where the circumstances leading to the deliveries of goods are not challenged and stand uncontroverted due to the failure by the defendant to adduce evidence, the standard of the proof in civil cases (on the balance of probabilities) has been attained by the plaintiff.”
 14. The aforesaid three decisions were cited in Chrispine Otieno Caleb – vs – Attorney General [2014] KEHC 8485 (KLR).
 15. The single issue that falls for determination, in my view, is whether the Claimant is entitled to the reliefs sought.



16. On the claim for accrued commission from March 2020 to 2021 amounting to Kshs.900,000/=, the Claimant produced in evidence the Respondent's letter to her dated 18th March, 2021 and signed by the Respondent's Chief Executive Officer, which states in part:-

“Pursuant to my previous letter, this letter serves to confirm your entitlements to an additional gross deferred compensation of KES 1.2M per annum which will be paid within a period of 12 months with effect from the date of this letter.”

17. The Claimant also produced in evidence an internal email written by the Respondent's Chief Executive Officer on 16th January, 2022 (and copied to the Claimant), which states in part:-

“I spoke to Fiona re-her final obligations. I propose that we proceed as follows:-

1. Payment of final salary and leave pay at the earliest opportunity. I have shared the final dues and leave pay computation with finance for processing, I shall advise Fiona once payment is ready.
2. A written acknowledgment of the pending commissions of KES900,000/=. I will draft a letter for your review and thereafter sign off.
3. Statement of pension dues per the RBA payment plan or earlier as agreed with RBA in terms of exiting staff from the scheme. The withdrawal forms had already been shared with the administrator by Fiona personally so I shall liaise with the finance team to make payment within 30 days as per the RBA terms of exiting staff.

I hope this clarifies the position.

Fiona, please indulge us for a few days as we work to settle item 1. . . .”

18. The Claimant testified under cross-examination that the amounts of money claimed by her is what was outstanding, and did not include what had been paid to her. Based on the Claimant's uncontroverted evidence, I return a finding that the Claimant has proved her entire claim on a balance of probabilities, and hereby enter Judgment for the Claimant against the Respondent as follows:-

- a. Accrued commissions amounting to Kshs.900,000/=.
- b. A sum of Kshs.206,250/= being payment for 11 accrued leave days.
- c. Telephone expenses for the month of December 2021 in the sum of Kshs.5,525/=.
- d. Fuel expenses for the month of December 2021 in the sum of Kshs.736.67/=.
- e. The Respondent shall, within 45 days of this Judgment, remit to KRA all unremitted PAYE deductions made by the Respondent from the Claimant's salary from 1st September, 2014 upto 17th December, 2021, together with all the applicable penalties and/or interest.
- f. The Respondent shall, within 45 days of this Judgment, pay as appropriate, the employee and employer pension contributions amounting to Kshs.296,864.37, and interest as per the applicable pension trust deed.
- g. The Claimant is awarded costs of the suit and interest at Court rates on (a), (b), (c) and (d) above.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 26TH DAY OF SEPTEMBER 2025



AGNES KITIKU NZEI

JUDGE

Order

This Judgment has been delivered via Microsoft Teams Online Platform. A signed copy will be availed to each party upon payment of the applicable Court fees.

AGNES KITIKU NZEI

JUDGE

Appearance:

Mr. Onyango for the Claimant

Miss Kanyoni for the Respondent

