



**Munene v Xrx Technologies Ltd (Cause E256 of 2024)
[2024] KEELRC 2501 (KLR) (17 October 2024) (Ruling)**

Neutral citation: [2024] KEELRC 2501 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E256 OF 2024
L NDOLO, J
OCTOBER 17, 2024**

BETWEEN

TRACY GATHONI MUNENE CLAIMANT

AND

XRX TECHNOLOGIES LTD RESPONDENT

RULING

1. This ruling disposes of the Notice of Motion dated 8th April 2024, by which the Claimant seeks summary judgment against the Respondent.
2. The Motion is supported by the Claimant's own affidavit and is based on the following grounds:
 - a. That the Claimant claims 50% of severance pay totalling Kshs. 762,000;
 - b. That the other 50% was paid in March 2023, upon separation;
 - c. That there is no dispute as what is due and the only dispute giving rise to the claim is delayed payment, which requires enforcement through a court decree.
3. The Respondent opposes the Motion by a replying affidavit sworn by its Finance Manager, Martin Kinyua on 30th April 2024.
4. Kinyua accuses the Claimant of misleading the Court and states that after the termination of the Claimant's employment contract on 8th March 2023, she received Kshs. 420,901 as terminal dues, including salary for days worked in March 2023, earned commissions and severance pay.
5. Kinyua further depones that the Claimant's employment contract did not provide for severance pay, adding that at its sole discretion and in good faith, the Respondent paid the Claimant Kshs. 289,707.42 in severance pay.



6. According to Kinyua, the Respondent has never admitted owing the Claimant Kshs. 762,000 in severance pay. The Respondent asserts that it is desirous of defending the Claimant's claim and therefore opposes the plea for summary judgment.
7. In her further affidavit sworn on 2nd July 2024, the Claimant depones that the amount agreed upon as severance pay was Kshs. 962,000, out of which she was paid Kshs. 200,000.
8. The Claimant's application for summary judgment is premised on an alleged admission by the Respondent. Order 13 Rule 2 of the Civil Procedure Rules provides as follows:
 2. Any party may at any stage of a suit, where admission of facts has been made, either on the pleadings or otherwise, apply to the Court for such judgment or order as upon such admission he may be entitled to, without waiting for the determination of any other question between the parties; and the Court may upon such application make such order, or give such judgment, as the Court may think just.
9. In Choitram v Nazari (1984) KLR 237 it was held that admission may be express or implied either in a pleading or by way of correspondence. In the more recent decision in Scanad Kenya Limited v Independent Electoral & Boundaries Commission [2021] eKLR it was held that judgment may be entered on an implied admission so long as the facts relied on are clear and unambiguous.
10. In pursuing her plea, the Claimant relies on email correspondence between herself and officers of the Respondent. In its written submissions dated 16th July 2024, the Respondent challenges the veracity of the aforesaid correspondence, going as far as questioning the authority of its officers to engage in negotiations with the Claimant.
11. Further, in their pleadings and submissions, the parties refer to the benefits of severance pay and gratuity interchangeably, meaning that the benefit giving rise to the claim is unclear. As held in Cassam v Sachania (1982) KLR 191, the discretionary power to enter judgment on admission is to be exercised sparingly in plain cases where the admission is clear and unequivocal.
12. In its decision in Agricultural Finance Corporation v Kenya National Assurance Company Limited [1997] eKLR the Court of Appeal held that:

“Final judgment may not be passed on admissions unless they are clear, unambiguous and unconditional. A judgment on admission is not a matter of right; rather it is a matter of discretion of the Court and where a defendant has raised objections that go to the very root of a case, it would not be proper to exercise this discretion.”
13. In the present case, there are substantive issues in dispute regarding the Claimant's claim, which merit canvassing and determination in full trial. There being no clear case of admission, the Claimant's application dated April 8, 2024 is declined with costs in the cause.
14. Orders accordingly.

DELIVERED VIRTUALLY AT NAIROBI THIS 17TH DAY OF OCTOBER 2024

LINNET NDOLO

JUDGE

Appearance:

Mr. Ojienda for the Claimant



Mr. Kimathi for the Respondent

