



**Mbiyu v Maramoja Transport Limited (Cause E255 of 2024)
[2025] KEELRC 2731 (KLR) (3 October 2025) (Ruling)**

Neutral citation: [2025] KEELRC 2731 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E255 OF 2024
AK NZEI, J
OCTOBER 3, 2025**

BETWEEN

JIMMY NDUNG’U MBIYU CLAIMANT

AND

MARAMOJA TRANSPORT LIMITED RESPONDENT

RULING

Background

1. Vide a Memorandum of Claimant dated 6th November, 2023, the Claimant sued the Respondent and sought the following reliefs:-
 - a. A declaration that the Respondent breached the Employment Contract entered into by and between the parties.
 - b. Unpaid salary amounting to Kshs.999,757.98.
 - c. Gross salary for 12 (twelve) months pursuant to Section 49 of the *Employment Act* 2007, amounting to Kshs.3,600,000/=.
 - d. General damages for constructive dismissal.
 - e. Interest on (b) and (c) above at court rates from the date of default until payment in full.
 - f. Interest on (d) above at court rates from the date of Judgment until payment in full.
 - g. That the Respondent do issue the Claimant with a certificate of service in terms of Section 51 of the *Employment Act*, 2007 within 14 days of delivery of Judgment.
 - h. Costs of the suit; and
 - i. Any other or further court relief as the Honourable Court may deem fit and just to grant.



2. The Claimant pleaded:-
 - a. that the Claimant was in an employment contract with the Respondent since 2016 when he was employed as a Software Engineer until July 2023.
 - b. that effective 1st January 2021, the Claimant's salary was increased at [to] Kshs.300,000/= (gross), the net after statutory deductions being Kshs.215,000/=.
 - c. that in or about September 2021, the Respondent began to breach the employment contract by remitting the Claimant's salary in partial amounts without explanation, leaving arrears. That this occasioned an unanticipated financial crunch, forcing the Claimant to resign.
 - d. that non-payment of the Claimant's monthly salary arrears amounted to breach of contract by the Respondent, thus constructively dismissing the Claimant from his employment by failure to pay his salary.
 - e. That the Respondent's transgressions compelled the Claimant to render his resignation vide email correspondence addressed to the Respondent's Chief Executive Officer, Ronald Mahondo, and its Directors Jason Eisen and Bastian Bankenburg on 11th July, 2023, elaborating the grounds for his resignation as unpaid salary arrears exceeding Kshs.1,000,000/=.
3. The Respondent filed a Statement of Response to claim and a Counter-Claim dated 4th September, 2024. The Respondent pleaded that the Claimant had been employed by the Respondent on probationary terms on 9th September, 2016, and that the Claimant had unprocedurally and unlawfully terminated his employment contract without notice to the Respondent, in breach of the terms of the employment contract; deliberately sabotaging the Respondent's operations.
4. The Respondent admitted the Claimant's pleaded salary, and further pleaded:-
 - a. that being a company dealing with online Taxi business, it was greatly affected by Covid-19 and the ensuing lockdown beginning the year 2020, forcing the Respondent, in consultation with senior management and staff, to reach an understanding on how to cope.
 - b. that the Claimant, being in the senior management agreed, alongside other management staff, to take a pay-cut, thus accepting a lesser salary so as to cushion lower cadre employees and to keep the company afloat.
 - c. that the allegations made by the Claimant cannot constitute grounds of constructive dismissal, and are merely a smokescreen for the Claimant's illegal actions of unlawfully and unprocedurally terminating his employment agreement with the Respondent.
 - d. that there is another suit filed by the Claimant, being Milimani CM/ELRC No. E2039 of 2023 (Jimmy Ndung'u Mbiyu – vs – Maramoja Transport Limited; and that the suit herein is an abuse of the Court's due process.
 - e. by way of a Counter-claim, the Respondent seeks the following relieves against the Claimant:-
 - i. A declaration that the Claimant's termination of the employment was unlawful and unfair.
 - ii. 1 month notice equivalent of Kshs.300,000/=.
 - iii. Damages for unlawful termination of the employment agreement equivalent to 12 months Kshs.3,600,000/=



- iv. Respondent's laptop (model) and infrastructure Kshs.500,000/=.
 - v. Damages for business disruption Kshs.50,000,000/=.
 - vi. Interest on (ii), (iii), (iv) and (v) above from 13th October, 2023.
 - vii. Costs of defending the claim and Counter-claim.
5. The Claimant filed Reply to the Respondent's Response and Counter-claim dated 24th September, 2024.
 6. The suit was set down for hearing on 10th March, 2025 but just before the said date, on 28th February, 2025 to be specific, the Respondent filed a Notice of Motion dated 25th February, 2025.

The Notice of Motion dated 25th February, 2025.

7. The application is expressed to be brought under Order 2 Rule 15(b), (c) and (d) of the *Civil Procedure Rules* 2010 and Sections 1A, 2A & 3A of the *Civil Procedure Act*. The Respondent seeks the following Orders:-
 - a. spent.
 - b. spent.
 - c. that the Court be pleased to strike out the suit against the Respondent/Applicant on the basis that the plaint does not disclose any cause of action against the defendant.
 - d. that in the alternative, the file be remanded back to the Deputy Registrar for purposes of taking pre-trial directions.
 - e. that costs of the application be provided for.
8. The application is premised on the supporting affidavit of Ronald Mahondo, the Respondent/Applicant's Chief Executive Officer; and is opposed by the Claimant vide his replying affidavit sworn on 7th March, 2025. The Respondent filed a supplementary affidavit sworn by Ronald Mahondo on 18th March, 2025. Both parties filed written submissions on the application pursuant to the Court's directions in that regard.
9. What is a cause of action? *Black's Law Dictionary* (10th Edition) defines a cause of action as:-

“A group of operative facts giving rise to one or more bases for suing; a factual situation that entitles one person to obtain remedy in court from another person.”
10. The Claimant's statement of claim, looked at against the foregoing definition of the term “cause of action”, cannot be said not to raise a cause of action against the Respondent/Applicant. Further, the Respondent has raised a Counter-claim based on the facts pleaded by the Claimant.
11. It is to be noted that this Court, being a specialised court, has its own Rules of Procedure, the *Employment and Labour Relations Court (Procedure) Rules* 2024, which are tailor-made to suit the specialised nature of the Court. It has not been stated and/or demonstrated that the Claimant's suit is not presented in accordance with this Court's said *Rules of Procedure*, and in particular Rules 8 and 32 thereof. It cannot be said that the suit does not disclose a cause of action.



12. Whereas the prayer set out in the application herein is for striking out of the suit for allegedly disclosing no cause of action against the Respondent, the Respondent/Applicant appears to lament, in the supporting affidavit, that the suit herein was fixed for hearing

“before pre-trials and exchange of pleadings . . . that the Applicant was fearful that the matter would proceed on 10/3/2025 without critical documents from the Applicant unless the same was taken out and orders given as to the pre-trials in the matter”.

13. Having considered all the material placed before me in support of and in opposition to the application, I return a finding that the prayer for striking off of the suit is not merited, and is hereby dismissed.

14. On the alternative prayer that the file be remanded back to the Deputy Registrar for taking of pre-trial directions, I have noted from the Court’s record that the matter was placed before a Judge of this Court (Hon. Dr. Jacob Gakeri, J) on 24th July, 2024 and that in the presence of Counsel for both parties, parties were directed to “comply with pre-trial directions”. When the matter first came up before me on 26th November, 2024, only Counsel for the Claimant appeared. Counsel informed the Court that the Claimant had filed and served all his documents, and asked the Court to fix the matter for hearing. The Court acceded to that request, and fixed the matter for hearing on 10th March, 2025, with an order that a hearing notice be served; and directed the Claimant to file a hard copy of his trial bundle.

15. If the Respondent/Applicant wishes to file further documents, then it ought to have made an application in that regard. After all, Rule 38 of the [Employment and Labour Relations Court \(Procedure\) Rules 2024](#) allows the filing of additional documents. The Rule states as follows:-

“Where a party intends to rely on a document that has not been filed as at the time of filing pleadings, the party shall make sufficient copies of each document for the court file and serve the other party with a copy at least fourteen days before the case is set down for hearing or such shorter period as the Court may order.

Provided that after the close of pleadings, the court may allow the filing of a supplementary bundle of documents.”

16. In view of the foregoing, the alternative prayer is unfounded and is hereby dismissed. In the interest of justice, I make the following orders:-

- a. Both parties are granted leave to file and serve supplementary bundles of documents and/or further witness statements within 14 days of this Ruling, if need be; and shall place hard copies of such documents in the court file.
- b. Costs of the application shall be in the cause.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 3RD DAY OF OCTOBER 2025

AGNES KITIKU NZEI

JUDGE

order

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

Appearance:

No appearance for Claimant



No appearance for Respondent

