



**John Kisiangani Welime v Resolution Health East Africa Limited  
(Claim 370 of 2021) [2021] SCC 6 (KLR) (25 August 2021) (Judgment)**

*John Kisiangani Welime v Resolution Health East Africa Limited [2021] eKLR*

Neutral citation: [2021] SCC 6 (KLR)

**REPUBLIC OF KENYA  
IN THE MILIMANI SMALL CLAIMS COURT**

**CLAIM 370 OF 2021**

**KO GWENO, RM**

**AUGUST 25, 2021**

**BETWEEN**

**DR JOHN KISIANGANI WELIME ..... CLAIMANT**

**AND**

**RESOLUTION HEALTH EAST AFRICA LIMITED ..... RESPONDENT**

**JUDGMENT**

1. By a statement of claim dated 30<sup>th</sup> June 2021, the claimant seeks judgment to be entered against the respondent for a sum of Kshs 300,335. The claimant pleaded that he entered into a physician agreement with the respondent where he was to provide health services to the respondent's clients. He pleaded that he attended to the respondent's clients from 20<sup>th</sup> September 2019 to 19<sup>th</sup> April 2021, and the services' costs added up to Kshs 300,335.
2. The respondent entered an appearance and filed a response to the claim dated 21<sup>st</sup> July 2021. At paragraph 3 of the response to the claim, the respondent pleaded that he does not owe any money to the claimant. He acknowledged entering into an agreement with the claimant where the claimant was to provide health services to the respondent insured. The respondent denied failing to pay the claimant his dues for the services rendered. He alleged that the claimant breached the terms of the agreement. He, therefore, prayed that the suit be dismissed.
3. The matter proceeded for hearing where the parties testified as follows;

**Claimant's case.**

4. PW1 John Kisiangani relied on his written statements and a list of documents filed in court. He testified that he entered into an agreement with the respondent for the provision of health services to the respondent's insured. He told the court that under the agreement, he was supposed to submit his claim



within 30 days after rendering his services. He submitted his claims, and the respondent failed to settle the bills despite several reminders.

5. On cross-examination, PW1 testified that the respondent's clients who visited his clinics had smart cards issued by the respondent. He stated that he submitted his statement, and the respondent never questioned the particulars of the statement. He further averred that the claim forms were submitted online through the respondent's platform.
6. PW2 Caroline Kisiagani testified in support of the claimant. She reiterated the evidence adduced by the claimant. On cross-examination, she admitted that she had not availed the agreement between the claimant and the respondent to the court. She told the court that the patients they treated had the respondent's smart card. She also stated that several people in their facility would upload the invoices on the respondent's platform.

#### **Determination.**

7. From the pleadings and evidence adduced, the issue for determination is whether there was a breach of contract between the respondent and the claimant and whether the claimant is entitled to the reliefs sought.
8. Mr. Charana, while cross-examining the claimants, dwelt on the existence of a contract between the claimant and the respondent. The claimants did not produce the said physician agreement as evidence. As that may be the case, the respondent, in his response to the claim, acknowledged the existence of a contract between the claimant and the respondent for the provision of health services. The admission by the respondent in his defence precludes him from denying the existence of the said physician contract. His pleadings also bind him, and as such, he cannot depart from what he had previously pleaded. (see the decision of *Adetoun Oladeji (NIG) v. Nigeria Breweries PLC* SC 91/2002 cited by Justice Mrima in *Daniel Otieno Migore v South Nyanza Sugar Ltd* 2018 eKLR on parties being bound by their pleadings.)
9. Hence the issue of failing to produce a contract by the claimant is a non-issue since the respondent had acknowledged the existence of the agreement in his pleadings.

#### **Does the respondent owe the claimant Kshs 300,335?**

10. The claimant produced a statement dated 20<sup>th</sup> May 2021. The statement showed the services offered during the period in dispute. The respondent alleged that the list contained members whom the respondent has not insured. The respondent failed to point out the alleged persons not insured by the respondent. It has to be pointed out that the respondent did not adduce any evidence to show that some of the clients treated were not their insured. It was not enough to claim that some of the invoices did not belong to the respondent without proof. The respondents have further not demonstrated how the claimant breached the contracts.
11. As per the evidence on record, the claimant offered his services to the respondent's insured, and the respondent failed to pay for the services provided. The respondent further acknowledged the existence of the debt through an email sent to PW2 (dated 20/5/2021), where they stated that they are processing the claimant's payment.
12. The respondent did not adduce evidence to show that they had settled the claimant fees or that the claimant is not entitled to the stated amount. They did not call any witnesses to support their defence. Hence the statement filed by the respondent remained a mere statement. The evidence by the claimant was, therefore, uncontroverted.



13. In *Trust Bank Limited v. Paramount Universal Bank Limited & 2 Others* Nairobi (Milimani) HCCS No. 1243 of 2001 it was held that;

It is trite that where a party fails to call evidence in support of its case, that party's pleadings remain mere statements of fact since, in so doing, the party fails to substantiate its pleadings. In the same vein, the failure to adduce any evidence means that the evidence adduced by the plaintiff against them is uncontroverted and therefore unchallenged.

14. Similarly in *Janet Kaphiphe Ouma & Another v. Marie Stopes International (Kenya)* Kisumu HCCC No. 68 of 2007 Ali-Aroni, J. citing the decision in *Edward Muriga Through Stanley Muriga v. Nathaniel D. Schulter* Civil Appeal No. 23 of 1997 held that:

"In this matter, apart 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 statement in the defence therefore remains 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."

15. Without any evidence emanating from the respondent on how the claimant breached the contract, the court has no option but to find that the claimant performed his obligations as per the agreed terms. He is supposed to be paid Kshs 300,335 for the services rendered. The respondent, therefore, breached the agreement by failing to pay the claimant for the work done.

#### **Is the claimant entitled to general damages for breach of contract?**

16. From the facts presented to the court, there was an inordinate delay by the claimant in receiving the payment, and they had to use the services of their lawyers to demand payment. The claimant suffered unquantified loss flowing from the breach of the contract. The claimant had a legal right to receive the payment, and the respondent had a duty to make the payments as agreed in the contract. Although the claimant has proved breach of contract, he failed to prove the actual amount of the loss or any loss flowing from the breach of the contract. The award of general damages was not available to them. The loss suffered was therefore capable of compensation by an award of nominal damages.

17. in *Peter Umbuku Muyaka v Henry Sitati Mmbasu* [2018] eKLR, it was held that:

A claimant for general damages for breach of contract who does not prove that he suffered loss is all the same entitled to damages, though nominal. In the *Anson's Law of Contract*, 28th Edition at pg 589 and 590 the law is stated to be that: - Every breach of a contract entitles the injured party to damages for the loss he or she has suffered. Damages for breach of contract are designed to compensate for the damage, loss or injury the claimant has suffered through that breach. A claimant who has not, in fact, suffered any loss by reason of that breach, is nevertheless entitled to a verdict but the damages recoverable will be purely nominal".

18. In this case, the claimant is only entitled to a nominal award due to the said breach. In the circumstances, the court will award the claimant Kshs 50,000 as a nominal award. The same is sufficient to compensate the claimant for the unquantified loss flowing from the breach.

19. Therefore the court does enter judgment in favour of the claimant as follows;

- a) Judgment for Kshs 300,335/
- b) Nominal award at Kshs 50,000



c) Cost of the suit.

Interest shall apply from the date of judgment at court rates.

**DATED, SIGNED, and DELIVERED AT NAIROBI THIS 25<sup>TH</sup> DAY OF AUGUST 2021.**

**KEYNE .G. ODHIAMBO**

**ADJUDICATOR / RESIDENT MAGISTRATE**

**SMALL CLAIMS COURT NAIROBI, MILIMANI**

In the presence of;

Court Assistant: Ofafa

Mr. Simiyu for the Claimant

Mr. Masinde holding brief for Ms. Nduati for Respondent

