



**Nyanchoka v Winners Chapel International (Cause 1383 of 2018)  
[2025] KEELRC 3109 (KLR) (6 November 2025) (Judgment)**

Neutral citation: [2025] KEELRC 3109 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE 1383 OF 2018  
CN BAARI, J  
NOVEMBER 6, 2025**

**BETWEEN  
ANTHONY MUCHENGO NYANCHOKA ..... CLAIMANT  
AND  
WINNERS CHAPEL INTERNATIONAL ..... RESPONDENT**

**JUDGMENT**

**Introduction**

1. In a Statement of Claim dated 13<sup>th</sup> September, 2018, and filed in court on 14<sup>th</sup> September, 2018, the Claimant sued the Respondent seeking salary arrears and damages for unfair termination among others.
2. In a Memorandum of Reply filed on 28<sup>th</sup> May, 2019, the Respondent denied the Claimant's claim, and further averred that he provided voluntary mechanical services as a member of the Respondent's church. and that at one time he was offered a casual contract of three months and was duly paid for his services.
3. Interlocutory applications filed in the matter were determined, culminating in the matter being set down for hearing of the main suit.
4. On 13<sup>th</sup> March, 2025, both the Claimant's and the Respondent's cases were heard to conclusion, with the Claimant testifying in support of his case. The Respondent presented the testimony of one Daniel Otieno, a member of the church, in support of its case. Both witnesses adopted their witness statements and produced documents filed as exhibits in the matter.
5. Submissions were filed for both parties, and which have been duly considered.



### **The Claimant's Case**

6. The Claimant avers that he was employed by the Respondent as a senior church mechanic at a monthly salary of KShs.120,000 for all its motorized assets in and around Nairobi.
7. It is his case that though he served faithfully, he was only paid salary in cash for one month and that in the four years thereafter, he was given promises that salary arrears will be paid once the church's Bishop sends the money.
8. He avers that he would be assigned repair works and would be asked to secure spare parts from dealers on the promise that the Respondent church will pay, but it never did. He states that despite providing the services and producing receipts of the spare parts bought, the Respondent declined to make the payments.
9. The Claimant states that he was not issued any notice to show cause and was not disciplined for any reasons and was not told why he was not paid his dues. It is his position that throughout his service with the Respondent, he had no disciplinary case and no warnings were issued to him as he served in accordance with his terms of employment.
10. The Claimant avers that the withholding of his salary is illegal, wrongful and unlawful as salaries are payable monthly in arrears. It is his case that his dismissal was unjust, unfair and unlawful.
11. It is the Claimant's case that he asked to be paid all his salaries in July, 2018, but the salaries were not paid, and he was instead told that he had been dismissed. He avers that he was subsequently denied access to the Respondent's offices except on Sundays when he attends church service.
12. He avers that his claim is for payment of his four year salary arrears amounting to KShs.5,760,000, compensation for loss of employment, general and exemplary damages and finally, damages for breach of his employment contract.
13. It is his prayer that the court grants the reliefs in his statement of claim.

### **The Respondent's Case**

14. The Respondent denies employing the Claimant for a period of four year on a monthly salary of KShs.120,000. It avers that it is a church where the Claimant attended, and which runs a fleet of buses that ferry worshippers to the church every Sunday and are driven by church members on voluntary basis.
15. It is the Respondent's case that its membership offer their various skills as service to God without pay. It states that the Claimant herein, offered himself as a mechanic to carry out repairs on the church's various buses.
16. The Respondent states that it offered the Claimant a three (3) months causal contract of employment with effect from 1<sup>st</sup> August, 2015 to 1<sup>st</sup> November, 2015 at an all inclusive package of KShs.20,000/- so that he could offer his services fully to repair the church's vehicles.
17. It states that it fully paid the Claimant his salary for the period of the contract and which amount the Claimant accepted. It avers further, the Claimant served his full three month term, and that he continued serving until December, 2015 and was again fully compensated for the additional term.
18. The Respondent states that it made statutory deductions on the Claimant's pay and that his monthly take home for the period was KShs.19,050/-.



19. It states that the Claimant ceased working for it from the December, 2015 Christmas holidays and was not given a new contract come January, 2016.
20. The Respondent further states that the Claimant drove their motor vehicle without authority and unlicensed, and caused an accident resulting in injury to many members of the Respondent's church and to himself. It states that he was admitted in hospital and the church paid all his medical bills.
21. It is the Respondent's position that the Claimant was arrested and charged and that it posted a cash bail on his behalf to secure his release. It avers further that the Claimant thereafter disappeared to evade arrest and even stopped attending church services only to reappear sometime around 2017/2018 when the church's leadership had changed.
22. It states that in April, 2018, he engaged the new leadership and offered to repair the Respondent's motor vehicles, and the new leaders not knowing his previous dealings, engaged him to do the repairs as an independent contractor/mechanic.
23. It denies that the Claimant was their employee.
24. The Respondent states that on 13<sup>th</sup> July, 2018, the claimant submitted an invoice for payment in the sum of Kshs.454,500/- which payment he sought as an independent contractor and not an employee. It avers that the Claimant kept increasing the amount and issuing demand notices from various groups including Kamukunji Community Justice Centre.
25. The Respondent denies that the Claimant is entitled to the prayers sought and prays that the claim herein be dismissed with costs.

### **Analysis and Determination**

26. After careful analysis of the pleadings, the evidence adduced, the witnesses' testimony and the submissions by both parties, the issues for determination are: -
  - i. Whether the Claimant was an employee or an independent contractor;
  - ii. Whether he was unfairly dismissed
  - iii. Whether he deserves the reliefs he seeks.

### **Whether the Claimant was an employee or an independent contractor**

27. Whether one is an employee or an independent contractor determines their rights, obligations and protections accorded under the law.
28. Section 2 of the *Employment Act*, 2007 defines an employee as:-

‘a person employed for wages or a salary and includes an apprentice and indentured learner.’
29. The Act goes on to define an Employer as:-

“Any person, public body, firm, corporation or company who or which has entered into a contract of service to employ any individual.”
30. Although the *Employment Act* does not define an independent contractor, it has generally been understood from both common law and case law, as a person who enters into a contract for services rather than a contract of service.



31. Courts have applied several common law tests to determine whether a person is an employee or an independent contractor key among them; being the control test, the integration test, the mutual obligation test amongst others.
32. In the case of *Everret Aviation Ltd v. KRA (2013) eKLR*, the Court of Appeal emphasized that the control test distinguishes employees from independent contractors.
33. The Claimant's position is that he was employed by the Respondent as a senior church mechanic at a monthly salary of Kshs.120,000 for all its motorized assets in and around Nairobi. It is his further assertion that though he served faithfully, he was only paid salary in cash for one month and that in the four years thereafter, he was given promises but the salary was never again paid.
34. On its part, the Respondent told court that it offered the Claimant a three (3) months causal contract of employment with effect from 1<sup>st</sup> August, 2015 to 1<sup>st</sup> November, 2015 at an all inclusive package of Kshs.20,000/-.
35. The Respondent maintains that it fully paid the Claimant his salary for the period of the contract and which amount the Claimant accepted. It avers further, that the Claimant served his full three month term, and further continued serving until December, 2015 and was again fully compensated for the additional term.
36. It is its case that the Claimant after going into hiding for years to evade arrest after causing a road traffic accident, reappeared in 2018, where he provided services as an independent contractor repairing the Respondent's vehicles.
37. The record indicates that indeed the Claimant was given a three months contract effective 1<sup>st</sup> August, 2018 to November, 2018 at a monthly salary of Kshs.20,000. Further, the Respondent's September, October, November, and December 2015 and January, 2016 payrolls, indicates that the Claimant was an employee and was paid a net salary of Kshs.19,480.
38. The record also bears an undated invoice by the Claimant to the Respondent seeking payment on account of work done, and where he states "This is to bring to your attention that I was contracted to repair the below mentioned buses and payment has not been made.." He then proceeds to state the particulars of the vehicles repaired, the costs of the repair and finally the total amount due for the work done.
39. The record also shows that the demand notices issued by the various rights groups that the Claimant sought help from, demanded the payment for the invoices drawn on account of repair of the Respondent's motor vehicles. Again, in a letter to the Respondent's Resident Pastor dated 25<sup>th</sup> July, 2018, Mr. Daniel Otieno who also testified in this matter, advised the Pastor that the Claimant was contracted to repair motor vehicles, some of which he repaired to completion, while others he did not. He further advised that the Respondent pays the Claimant for the completed works.
40. In light of the foregoing, the record in my view, corroborates the Respondents assertion that the Claimant transitioned from an employee to an independent contractor.
41. The services the Claimant provided on his return in 2018, were provided purely in his capacity as an independent contractor and not as an employee.
42. It is therefore my conclusion that the Respondent has proved that it paid the Claimant his full pay for the period he served as an employee as shown by the payroll placed before court, and the subsequent services he provided were under a contract for services, which does not fall under the jurisdiction of this court.



43. In light of the foregoing, the issue of whether or not the Claimant was unfairly terminated, falls by the wayside premised on there not being an employer-employee relationship between the parties.
44. In the upshot, I find and hold that the Claimant's Claim is devoid of merit and is for dismissal.
45. It is hereby dismissed with no orders on costs.
46. Judgment accordingly.

**SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS 6<sup>TH</sup> DAY OF NOVEMBER, 2025.**

**C. N. BAARI**

**JUDGE**

Appearance:

Mr. Malinzi present for the Claimant

Ms. Moga h/b for Mr. Lutta for the Respondent

Ms. Esther S- C/A

