



**Musau v Adrian Kenya Limited (Cause E167 of 2024)  
[2025] KEELRC 3693 (KLR) (19 December 2025) (Judgment)**

Neutral citation: [2025] KEELRC 3693 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E167 OF 2024  
AK NZEI, J  
DECEMBER 19, 2025**

**BETWEEN**

**ENG. STANLEY KALILE MUSAU ..... CLAIMANT**

**AND**

**ADRIAN KENYA LIMITED ..... RESPONDENT**

**JUDGMENT**

1. The Claimant sued the Respondent vide a Statement of Claim dated 18<sup>th</sup> March, 2024 and pleaded:-
  - a. that the Claimant was employed by the Respondent company on a fixed one year contract for the period 1<sup>st</sup> August, 2023 in the capacity of Group Commercial Director, drawing a monthly salary of Kshs.654,631.63 per month.
  - b. that the Claimant worked diligently and honestly for the Respondent throughout the employment term, and was willing to continue with such service were it not for the Mutual Separation Agreement initiated by the Respondent for their separation on the 22<sup>nd</sup> December, 2023.
  - c. that on or about the 22<sup>nd</sup> December, 2023, the Claimant signed the aforesaid separation agreement with the Respondent, which Agreement directed the Respondent to pay the Claimant his full dues amounting to Kshs.2,423,900/=.
  - d. that the Respondent has failed to pay the Claimant his lawful dues without any justification whatsoever, thus subjecting the Claimant to harsh economic times.



- e. that the Respondent's refusal to pay the Claimant his dues was irregular, unlawful, unfair and malicious, and was in bad faith.
2. The Claimant set out his claim against the Respondent as follows:-
  - a. Unpaid salaries for August 2023, September, October and November 2023 ..... Kshs.1,798,984/=.
  - b. Pay for days worked in December 2023 ..... Kshs.110,048/=.
  - c. Pay in lieu of 7 days leave ..... Kshs.87,284/=.
  - d. One month salary in lieu of notice ..... Kshs.458,242/=.
  - e. All expenses reimbursable as per Clause 16 of the Employment Contract ..... Kshs.189,342/=.Total = Kshs.2,423,900/=.
3. The Claimant sought the following reliefs against the Respondent:-
  - a. A declaration that the Claimant is entitled to his lawful dues as per the Mutual Separation Agreement with the Respondent, in the sum of Kshs.2,423,900/=.
  - b. Damages for unlawful retention of lawful dues.
  - c. Costs of the suit and interest thereon.
  - d. Interest on the sum awarded at Court rates.
  - e. In the alternative, the Claimant be paid all his lawful dues as set out in paragraph 10 of the Statement of Claim.
4. Documents filed alongside the Statement of Claim included an affidavit in verification of the claim, the Claimant's written witness statement dated 18<sup>th</sup> March, 2024 and an evenly dated list of documents. The listed documents are copies of the employment contract dated 1<sup>st</sup> August, 2023, email correspondence between the Claimant and the Respondent exchanged in the period July and August 2023, copies of WhatsApp text messages, the Mutual Separation Agreement dated 22<sup>nd</sup> December, 2023, employee information form dated 7<sup>th</sup> December, 2023 and a demand letter dated 24<sup>th</sup> January, 2024.
5. The Respondent filed a Statement of Response dated 22<sup>nd</sup> April, 2024 and a witness statement.
6. When the suit came up for hearing before me on 15<sup>th</sup> July, 2025, a date taken in Court on 30<sup>th</sup> April, 2025, there was no appearance on the part of the Respondent. Hearing thus proceeded in the absence of the Claimant. The Claimant adopted his filed witness statement as his testimony, and produced in evidence the documents referred to in paragraph 4 of this Judgment. The claimant further testified; inter alia:-
  - a. that he was earning a consolidated contractual salary of Kshs.654,631.63; and that for the four (4) months that he worked, he was only paid Kshs.220,000/=.
  - b. that he adopted the particulars of his claim as set out in paragraph 10 of his statement of claim, being the summary of his entitlement as set out in the Mutual Separation Agreement dated 22<sup>nd</sup> December, 2023. That the effective date of the Mutual Separation Agreement was 7<sup>th</sup> December, 2023.



- c. that the amount agreed upon in the said Mutual Separation Agreement was to be paid [by the Respondent] as per Schedule 2 of the agreement; but no payment was made despite the Claimant having cleared with the Respondent Company.
7. As already stated in this Judgment, the Respondent did not call any evidence. The Court closed the Respondent's case upon closure of the Claimant's case, and ordered that written submissions be filed. The Claimant filed written submissions, while the Respondent did not.
8. In view of the Respondent's failure to call evidence, the Claimant's evidence presented herein stands unrebutted, and the Respondent's filed pleadings and/or documents remain mere unsubstantiated statements of fact. This does not however, diminish the Claimant's obligation to prove his claim on a balance of probabilities as by law required.
9. In the case of Janet Kaphiphe Ouma & Another – vs – Marie Stopes International Kenya, (Kisumu HCCC No. 68 of 2007), the High Court, citing the decision in Edward Muriga (Through Stanely Muriga – vs – Nathaniel D. Schuller (Civil Appeal No. 23 of 1997), stated as follows:-

“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 1<sup>st</sup> 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.”
10. Similarly, in the case of Interchemie E.A. Limited – vs – Nakuru Veterinary Centre Limited (Milimani) HCCC No. 165B of 2000), the Court stated as follows:-

“Where no witness is called on behalf of the defendant, the evidence tendered on behalf of the Plaintiff stands uncontroverted.”
11. The afore-cited two Court decisions, with which I agree, were cited in Chrispine Otieno Caleb – vs – Attorney General [2014] KEHC 8485 (KLR).
12. In the present case, the Claimant demonstrated that there existed an employer-employee relationship between himself and the Respondent by producing in evidence a written contract of employment, duly signed by both parties.
13. Clause 1 of the said Contract states as follows:-

“1. Contract Duration: This is a Fixed One (1) Year Contract starting 1<sup>st</sup> August, 2023 subject to the terms and conditions contained in this contract.”
14. Clause 8 of the contract states:-

“Salary: Your salary will be a Consolidated Gross Salary of Kes.654,631.63 (Kenya Shillings Six Hundred-Fifty Four Thousand, Six Hundred Thirty One Only) which is inclusive of the House Allowance. Salary will be payable end of each month by direct credit transfer to your Bank.”



15. The Claimant further demonstrated that he and the Respondent mutually separated before the lapse of the contractual period of one (1) year vide a Mutual Separation Agreement dated 22<sup>nd</sup> December, 2023, which the Claimant produced in evidence.
16. Paragraphs 2(b), 2.6.1 and 2.6.2 of the said Mutual Separation Agreement state as follows:-  
 “2(b) The parties have mutually agreed to have an amicable separation with effect from 7<sup>th</sup> December, 2023.”
17. Paragraph 2.6.1 of the Mutual Separation Agreement states as follows:-  
 “2. 6.1: The Employer shall pay the employee a separation package consisting of the amount indicated in Schedule 1 to this agreement.”
18. Paragraph 2.6.2 of the Agreement on the other hand states as follows:-  
 “2. 6.2: The Employer shall pay the employee the separation package of KES2,423,900/= in 4 equal instalments. Each until the said amount is paid in full.”
19. Schedule 1 (to the Mutual Separation Agreement) states as follows:-  
 “1. The Employer shall pay the Employee the following amounts;  
 Item Gross KES: Net KES  
 All unpaid salaries for August 2023, September 2023, October 2023 and November 2023 2,618,528 1,798,984  
 Pay for days worked in December 152,747 110,048  
 Pay in lieu of unpaid leave 7 days 124,692 87,284  
 One month salary in lieu of notice 654,632 458,242  
 Item Gross KES: Net KES  
 Less amounts already paid (KES) -220,000  
 All expenses reimbursable (as per Clause 16 of the employment contract) 189,342  
 Total Payable 3,550,599 2,423,900”
20. As already stated in this Judgment, the evidence adduced by the Claimant was not controverted; and I return a finding that the Claimant has proved his claim for Kshs.2,423,900/= on a balance of probabilities.
21. Consequently, and having considered the written submissions filed, Judgment is hereby entered for the Claimant against the Respondent for the sum of Kshs.2,423,900/=; with interest at court rates. Interest will be calculated from the date of this Judgment.
22. As the claimed and awarded sum is net of the amount payable to the Claimant pursuant to the Mutual Separation Agreement dated 22<sup>nd</sup> December, 2023, I will not subject the awarded sum to statutory deductions pursuant to Section 49(2) of the Employment Act, as deductions are shown to



have been deducted/contractually taken into account by the parties herein in arriving at the net mutual separation package which is made up of the sum that I have awarded the Claimant.

23. The claim for damages for unlawful retention of lawful dues is declined. The suit herein was filed in or about April 2024, which was weeks after the due date of the last instalment of the agreed Mutual Separation Package; according to Schedule 2 to the Mutual Separation Agreement. There was some retention of the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> instalments, which had fallen due on 27<sup>th</sup> December, 2023, 30<sup>th</sup> January, 2024 and 28<sup>th</sup> February, 2024 respectively, but the same was not lengthy and/or inordinate, and the Claimant did not demonstrate that he had suffered damage as a result of the same. It should, however, be noted that a cause of action, on the part of the Claimant, arose when the Respondent defaulted in payment of the first instalment.
24. The Claimant is awarded costs of the suit, plus interest at Court rates. Interest on costs shall be calculated from the date of taxation.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 19<sup>TH</sup> DAY OF DECEMBER 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:

Miss Okondo for the Claimant

No appearance for the Respondent

