



REPUBLIC OF KENYA



**Mboya v Navisat Telematics Limited (Cause E073 of 2024)
[2026] KEELRC 176 (KLR) (28 January 2026) (Judgment)**

Neutral citation: [2026] KEELRC 176 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E073 OF 2024
CN BAARI, J
JANUARY 28, 2026**

BETWEEN

ERNEST MBOYA CLAIMANT

AND

NAVISAT TELEMATICS LIMITED RESPONDENT

JUDGMENT

Introduction

1. The Claimant's claim against the Respondent is dated 29th January, 2024. He seeks the following reliefs:
 - i. A declaration that the actions of the Respondent of underpaying the Claimant and not settling the salaries violated the Employment Contract and existing laws, therefore unlawful, illegal, null, and void.
 - ii. An order for payments of all the differences of the unpaid expected salary accrued and entitled to the Claimant as a result of the Respondent's unlawful actions totalling Ksh.954,000/= plus interest
 - iii. An order of compensation by way of damages to be assessed against the Respondent as directed for the breach of the Claimant's Constitutional Right to fair labour practices and fair remuneration as guaranteed under Article 41(1) and 2(a) of *the Constitution*;
 - iv. An order on any other award or benefit that this honourable court may deem fit and just to grant in the circumstances of this case.
 - v. Costs of this suit plus interest.



2. The Respondent filed what it termed an answer to the Memorandum of Claim dated 19th February, 2024, denying that the Claimant was its employee and asserting instead that he was a piece rate consultant.
3. The Claimant's case was heard on 19th February, 2025, when the Claimant testified in support of his case, adopted his witness statement, and produced the list and bundle of documents filed as exhibits in the matter.
4. On 17th June, 2025, which was the day when the Respondent's case was scheduled to be heard, the Respondent's Counsel indicated that he could not trace his client/witness. The Respondent's case was declared closed for its failure to present a witness, and the parties were directed to file submissions.
5. The Claimant filed submissions in the matter, while the Respondent did not.

The Claimant's Case

6. The Claimant's case is that he was employed by the Respondent as an Operations Manager from 6th December 2019 at a net monthly salary of Kes. 120,000. The Claimant states that despite performing his duties diligently, the Respondent consistently failed to pay him his agreed salary, and instead made irregular and reduced payments throughout his employment.
7. It is the Claimant's case that in June 2020, the Respondent issued a letter to staff reducing salaries by 30% due to COVID-19-related business uncertainty, but even this adjusted salary was never consistently paid, with payments remaining irregular and below expectations.
8. He avers that due to persistent underpayment and unmet pleas for rectification, the Claimant resigned effective 1st September 2022.
9. The Claimant states that after his resignation, he continued to pursue payment of his outstanding salary arrears and underpayments without success, prompting intervention by the Nairobi County Labour Office in October 2022.
10. The Claimant avers that the Respondent acknowledged the debt by issuing five postdated cheques totaling Kes. 470,998, out of which only two cheques (Kes. 200,000) were honoured, while three cheques amounting to Kes. 370,998 were dishonoured due to insufficient funds. He avers that an additional balance of KES 583,002 remained unpaid.
11. It is the Claimant's case that his subsequent attempts to recover the outstanding amounts, including demand letters and follow-ups, were ignored. The Claimant further states that although the Respondent's lawyer indicated in December 2023 that a settlement would be made within two weeks, no payment proposal or response was provided thereafter.
12. The Claimant submits that Article 41(1) and (2)(a) of *the Constitution* of Kenya, 2010, guarantee every employee the right to fair labour practices, including fair and just remuneration and timely payment of wages and benefits. He further submits that Section 17 of the *Employment Act* requires employers to pay employees their full wages, directly and in Kenyan currency.
13. The Claimant states that the Respondent's conduct in arbitrarily reducing and irregularly paying his salary violated these constitutional and statutory provisions, amounting to a breach of the Claimant's right to fair labour practices.
14. On cross-examination, the Claimant told the court that the Respondent notified him of a salary review vide a letter dated 24th June, 2020, and that he accepted the review and that the reduction rate was 30 percent.



15. It is his position that his salary before COVID-19 was Kshs. 120,000/- net, and after reduction, it came down to Kshs. 84,000/-.
16. The Claimant confirmed that he resigned of his own volition through a letter dated 6th September 2022. It is his case that he did not know whether the Respondent was making any money since he did not work in the accounts department.
17. The Claimant confirmed on cross-examination that he could see that the Respondent's company was not functioning properly. He further confirmed that he had agreed to the reduced salary and had nothing to show that the company had reverted to the original salaries.
18. The Claimant prays that his claim be allowed.

The Respondent's Case

19. The Respondent states that the Claimant was engaged as a piece-rate consultant, not as a permanent or casual employee, and was only entitled to payment upon completion of assigned tasks.
20. The Respondent further states that due to financial challenges arising from the COVID-19 lockdown, the Respondent scaled down operations and notified the Claimant, who agreed to a reduction in pay consistent with his consultancy role.
21. The Respondent further states that the Claimant voluntarily left his position without coercion and that all amounts lawfully due were paid in full. The Respondent denies owing any salary arrears and further disputes the claim of Ksh.954,000, asserting that the cheques issued were part of an agreed settlement which the Claimant has since reneged on.
22. The Respondent maintains that the Claimant is not entitled to any salary arrears, as there was no termination or redundancy.
23. The Respondent finally prays that the Claimant's claim be dismissed with costs.

Analysis and Determination

24. Upon careful review of the pleadings, evidence, and submissions on record, the following issues arise for determination:
 - i. Whether there existed an employment relationship between the Claimant and the Respondent
 - ii. Whether the Claimant was underpaid
 - iii. Whether the Claimant is entitled to salary arrears
 - iv. Whether the Claimant's constitutional right to fair labour practices was violated

Whether there existed an employment relationship between the Claimant and the Respondent

25. The Respondent's position is that the Claimant was a piece-rate consultant and not an employee. On his part, the Claimant maintains that he was an employee of the Respondent.
26. The Claimant produced in evidence a letter of offer of appointment dated 4th November, 2019, wherein the Respondent offered him employment in the position of Operations Manager on a net monthly salary of Kshs. 120,000/-. It is also evident from the court record that the Claimant was in the Respondent's continuous service from December 2019 to September 2022.



27. The Respondent, on its part, did not lead any evidence to support their assertion of piece rate consultancy, having failed to present a witness or documents at trial.
28. Under Section 2 of the *Employment Act*, 2007, an employee is a person employed for wages or a salary, and Section 10(7) proceeds to place the burden on the employer to disprove the terms of employment where it fails to produce written particulars. In *Everett Aviation Ltd v Kenya Revenue Authority* [2013] eKLR, the Court of Appeal emphasized the control, integration, and economic dependency tests in determining the nature of employment relationships.
29. Similarly, in *Mary Wambui Muriuki v Central Bank of Kenya* [2014] eKLR, the Court held that the designation of a worker as a “consultant” is not conclusive; the court must examine the substance of the relationship.
30. In the circumstances, I find and hold that the Claimant was an employee of the Respondent within the meaning of Section 2 of the *Employment Act*.

Whether the Respondent underpaid the Claimant

31. It is not disputed that the Claimant’s salary was reduced by 30% in June 2020 due to the COVID-19 pandemic, and that the Claimant admitted accepting the reduced salary.
32. The Claimant’s position is that even the reduced salary of Kshs.84,000 was not consistently or fully paid by the Respondent.
33. While salary reduction by agreement is lawful, failure to pay the agreed salary is not. Section 17(1) of the *Employment Act* mandates employers to pay employees their full wages as and when it is due. In *Francis Maina Kamau v Lee Construction* [2014] eKLR, the Court held that underpayment or delayed payment of wages amounts to a breach of contract.
34. The court record confirms the Claimant’s assertion that the Respondent issued post-dated cheques acknowledging indebtedness to the Claimant. It is also evident that some cheques were dishonoured for reason of insufficient funds. This conduct by the Respondent amounts to an admission of liability, consistent with Section 23 of the *Evidence Act*.
35. In light of the foregoing, the court finds that the Respondent breached the employment contract by persistently underpaying and irregularly paying the Claimant’s salary.

Whether the Claimant is entitled to salary arrears

36. The Claimant particularized the arrears and demonstrated acknowledgment of debt by the Respondent through issuance of cheques. The Claimant has also shown that partial payment of Kshs. 200,000 was made by the Respondent, and the outstanding balance is supported by documentary evidence.
37. The Respondent, on its part, neither rebutted the computation nor tendered evidence to challenge the Claimant’s figures. In *Kenya Union of Commercial Food & Allied Workers v Meru North Farmers Sacco Ltd* [2014] eKLR, the Court held that once salary arrears are proved and not rebutted, they are recoverable as a contractual debt.
38. It is my considered view that the Claimant has proved, on a balance of probabilities, entitlement to salary arrears amounting to Kshs. 954,000.



Whether the Claimant's right to fair labour practices was violated

39. The Claimant's position is that the Respondent's conduct in arbitrarily reducing and irregularly paying his salary violated Article 41 of *the Constitution* and Section 17 of the *Employment Act*, amounting to a breach of his right to fair labour practices.
40. Article 41(1) and (2)(a) of *the Constitution* guarantees the right to fair labour practices, including fair remuneration. In *GMV v Bank of Africa Kenya Ltd* [2013] eKLR, the Court held that failure to pay agreed remuneration constitutes a violation of Article 41.
41. This said, courts have, however, consistently held that constitutional damages are not automatic where adequate statutory remedies exist. In *Judicial Service Commission v Gladys Boss Shollei* [2014] eKLR, the Court of Appeal cautioned against converting ordinary employment disputes into constitutional claims where the *Employment Act* provides sufficient redress.
42. Similarly, in *Alphonse Mwachanya v Operation 680 Ltd* [2013] eKLR, the Court held that damages for breach of contract are generally compensatory, not punitive.
43. While the Respondent's conduct violated statutory and contractual obligations, the Claimant's injury is, in my considered view, sufficiently remedied through payment of salary arrears, and any additional award would amount to double compensation and is therefore declined.
44. In the final analysis, the Claimant's claim succeeds in terms of the following orders:-
- a. A declaration that the Respondent's failure to fully and regularly pay the Claimant's agreed salary constituted a breach of the employment contract and violated the *Employment Act*, 2007.
 - b. That the Respondent shall pay the Claimant a sum of Kshs. 954,000 on account of salary arrears.
 - c. The Claimant's claim for constitutional damages under Article 41 is declined.
 - d. The Respondent shall bear the costs of the suit
45. It is so ordered.

SIGNED, DATED, AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS 28TH DAY OF JANUARY, 2026.

C. N. BAARI

JUDGE

Appearance:

Mr. Lichuma present for the Claimant

N/A for the Respondent

Ms. Esther S- C/A

