

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT ELDORET

CAUSE NO. E025 OF 2024

USSANGA WIJERATNE RAMBUKWELLA.....
CLAIMANT

VERSUS

DL KOISANGAT ESTATE
LIMITEDRESPONDENT

JUDGMENT

1. The Claimant instituted this claim vide a Memorandum of Claim dated 5th June 2024 seeking payment of his salary arrears from the Respondent.
2. The Claimant contended that he was engaged by the Respondent as the General Manager - Technical Operations, under a Consultancy Contract dated 13th June 2022, for a cumulative period of twenty-four (24) months, commencing on 13th June 2022 and expiring on 13th June 2024.
3. He avers that his remuneration package comprised a consolidated monthly fee of USD 4,094, subject to applicable taxes payable to the Government of Kenya, for each completed month of service. The fees were payable at the

end of every month, less any advances previously taken by the Claimant.

4. It is the Claimant's case that he performed his duties diligently and in accordance with the terms of the contract but the Respondent failed to pay his remuneration for the period from February 2024 to June 2024, resulting in an outstanding total of USD 21,131.86
5. The Claimant states that he made several written demands to the Respondent seeking payment of the outstanding salary arrears, but the Respondent neither responded nor effected payment.
6. The Claimant avers that his contract was set to expire on 13th June 2024 and that he required the outstanding salary to facilitate his relocation back to Sri Lanka, his home country. He asserts that the Respondent's failure to pay his due salary constitutes a breach of the employment contract and a violation of the Employment Act, 2007.
7. The Claimant particularised his claim as follows:-

- i. Unpaid salary for February 2024.....
3,889.30

ii. Unpaid	salary	for	March
2024.....	3,889.30		
iii. Unpaid	salary	for	April
2024.....	3,889.30		
iv. Unpaid	salary	for	May
2024.....	3,889.30		
v. Unpaid salary for June 2024 (pro-rated).....			
....	1,685.36		

8. The Claimant further avers that despite numerous attempts, the Respondent has failed or refused to pay his terminal dues, which he tabulated as follows:

Arrears	Net Amount in USD
February.....	3,889.30
March.....	3,889.30
April.....	3,889.30
May.....	3,889.30
June.....	1,685.36
Encashment of unavailed leave.....	3,889.30
	21,131.86
Relocation Costs	
Relocation to Sri-Lanka.....	8,990

Airfare for Claimant& Family	2,200
	11,190

9. The Claimant therefore prays for the following:-

- i. The Respondent do issue the Claimant with a Certificate of Service.
- ii. A Mandatory injunction do issue to compel the Respondent by themselves, their servants and/or agents or any one authorized by them or claiming under them to pay the sum of USD 32,321.86 as the final dues of the Claimant.
- iii. A Mandatory injunction do issue to compel the Respondent by themselves, their servants and/or agents or any one authorized by them or claiming under them to issue a certificate of service to the Claimant.
- iv. Damages in USD 10,000 for late payment.
- v. An Order do issue to compel the Respondents by themselves, their servants and/or agents or any one authorized by them or claiming under them to permit the Claimant to continue residing in the company-provided accommodation and be allowed to retain and use the company-provided vehicle until the full and final

settlement of all dues, including but not limited to unpaid salary, severance pay, and any other contractual.

- vi. An Order that the Respondent, its agents, or any other representatives be restrained from interfering with the Claimant's use of the company residence and vehicle during the period until the final settlement is completed.
- vii. An order that the personal effects of the Claimant be shipped prior to his and his family's exit from Kenya.
- viii. Any other damages that this court may find just.
- ix. Cost of the suit and interest thereon at court rates

10. The Respondent filed a Response to the Memorandum of Claim dated 3rd February 2025, in which it averred that the Claimant was engaged as an independent contractor pursuant to a Consultancy Contract dated 13th June 2022. The Respondent stated that, under the terms of the contract, it was obliged to pay the agreed consultancy fee only upon submission of a duly prepared and signed invoice by the Claimant, and that to date, the Claimant has not submitted any signed invoices in respect of the amounts claimed.

11. The Respondent asserted that the Claimant failed to diligently perform his duties, particularly in aligning cash flow processes, which failure led to the company experiencing financial and operational hardships from the year 2023 to date. The Respondent further averred that it was the Claimant's responsibility to ensure that salaries, including his own, were paid on time, a duty which he allegedly abdicated, resulting in the accumulation of employee salary arrears and adversely affecting not only the Claimant but also the welfare of the Respondent's employees.
12. The Respondent further contended that the Claimant failed in his duty to align factory operations, resulting in a significant decline in production and operational capacity during his tenure. It was also averred that, as the officer responsible for financial management, the Claimant was fully aware of the company's financial position but failed to regularize the remittance of statutory deductions, thereby prompting enforcement action by the Kenya Revenue Authority and causing further disruption to the company's operations.

13. In response to the allegation made by the Claimant that he made several written requests for payment, the Respondent asserted that the Claimant has never submitted duly prepared and signed invoices for the services allegedly rendered.
14. The Respondent stated that the Consultancy Contract expressly provided that, upon termination, the Claimant was obliged to immediately return to the Respondent all property belonging to the Respondent that was in his possession or control. The Respondent further contended that the Claimant's failure to surrender company property, coupled with his failure to submit invoices for terminal dues, constitutes a breach of the terms of the contract.
15. According to the Respondent, pursuant to Clause (e) of the consulting contract, the Claimant is personally liable to indemnify it for all losses, damages, and expenses incurred as a result of the Claimant's breach of contract, including failure to surrender the company-provided motor vehicle and laptop.
16. The Respondent also averred that the contract between the parties clearly provided that any disputes or disagreements about the contract such as its validity, meaning, or ending

ought to be resolved through friendly discussions or arbitration. They argued that the issues raised in this case fall under that part of the contract.

17. The Respondent therefore prayed that the Claim be dismissed with costs.
18. At the hearing, the Claimant testified as CW1 on his behalf while the Respondent called its Human Resource Director, Mr Kariuki who testified as RW1.
19. The Claimant adopted his witness statement, recorded on 8th December 2024, as his evidence-in-chief and relied on the documents filed in support of his case. He testified that he was never informed by the Respondent that his performance was unsatisfactory. He stated that he resigned from employment as a result of persistent salary arrears.
20. During cross-examination, the Claimant stated that, pursuant to the terms of his employment contract, he was required to return company property, which he had not yet done. He testified that he had prepared and submitted a comprehensive handover report. The Claimant further asserted that he submitted invoices for the period February to June 2024. He confirmed receipt of Kshs 500,000 from the

Respondent, which was paid through his advocate on record following an order to that effect by the court. He also stated that, among the reliefs sought, he prayed for an order compelling the Respondent to pay airfare and relocation costs, and that under the contract of employment, he was entitled to demobilisation costs to facilitate his return to Sri Lanka, subject to prior approval by the Respondent's Executive Chairman.

21. On re-examination, the Claimant asserted that he prepared a handover report and that Mr. Kariuki acknowledged receipt of the said handover report.
22. The Respondents witness, Mr. Daniel Kariuki adopted his witness statement recorded on 3rd February 2025 as his evidence in chief. He testified that upon the lapse of the Claimant's consulting contract, the Claimant was required to surrender all company property and execute an undertaking confirming compliance, which he had failed to do. He stated that the Respondent was not aware of the whereabouts of the company motor vehicle in the Claimant's possession. RW1 also testified that the Claimant failed to perform his duties as stipulated in the contract, thereby exposing the Respondent to financial distress.

23. On cross-examination, the Respondent's witness averred that the Claimant's engagement ended by effluxion of time. He admitted that no performance review reports were produced to demonstrate that the Claimant underperformed and that no warning letters were issued to the Claimant. He further stated that the Claimant wrote several letters demanding payment of his salary, which were not honored due to the Respondent's financial constraints. He further stated that the Respondent has not deliberately withheld the Claimant's dues but was unable to pay due to financial challenges.
24. At the close of the Respondent's case, parties were directed to file written submissions. The Claimant's submissions are dated 1st December 2025 while the Respondent's submissions are dated 9th December 2025.

Analysis and Determination

25. I have considered the pleadings, the evidence adduced by the parties and the submissions on record as well as the authorities cited. The issues that present themselves for the court's determination are: -

- i. Whether the engagement between the parties herein was an employment contract or a consultancy arrangement;
- ii. Whether the Claimant is entitled to salary arrears as claimed;
- iii. Whether the Claimant is entitled to demobilization costs;
- iv. Whether the Claimant is entitled to continue occupying the Respondent's property;
- v. Whether the Claimant is entitled to general damages.

Whether the engagement between the parties was an employment contract or a consultancy arrangement

26. The Claimant pleaded that he was engaged as a General Manager - Technical Operations under a Consultancy Contract dated 13th June 2022. Although the Respondent claimed that the relationship between it and the Claimant was a Consultancy Contract, and thus outside the jurisdiction of this court, the Claimant averred in his pleadings and evidence that the Claimant's engagement evidenced an employment relationship as the Claimant was responsible for

internal management functions ordinarily performed by an employee.

27. This issue was the subject of the ruling of this court dated 10th July, 2025 where this court held that the relationship between the Claimant and the Respondent herein was that of employer and employee even though the terminology used in the contract was that of consultant.
28. This issue is thus already determined.

Whether the Claimant is entitled to salary arrears as claimed

29. The Claimant contends that the Respondent failed to pay him his salary for the period February to June 2024. In its defence, the Respondent admitted non-payment of the said salaries but submitted that payment was conditional upon the Claimant submitting duly prepared and signed invoices which the Claimant allegedly did not provide.
30. The Claimant however, testified that he prepared and submitted all requisite invoices for the period in question and further submitted a comprehensive handover report, which was acknowledged by the Respondent. The Respondent's witness, RW1, conceded during cross-examination that the Respondent owed the Claimant the claimed salaries but

attributed non-payment to financial constraints. It was further confirmed that a partial payment of Kshs 500,000 had been made to the Claimant through his advocate, pursuant to an order of this court following an application by the Claimant.

31. The Claimant testified that he prepared and submitted invoices to the Respondent. That he further wrote demand letters for payment of his outstanding salary. This evidence was not controverted.
32. In the circumstances, I find that the Claimant has established a prima facie entitlement to the salary arrears for the period February to June 2024. The Respondent's financial challenges do not absolve it of its contractual obligation to pay for services duly rendered under the consultancy contract.
33. It is therefore my finding that the Claimant has discharged the burden of proving that he rendered the services under the contract and that he is entitled to the payments for the period February to June 2024 totaling USD 21,131.86 less the partial payment already made.

Whether the Claimant is entitled to relocation and repatriation costs

34. The Claimant has sought for relocation and repatriation costs totaling to USD 11,190. He pleaded and testified that upon expiry of his engagement, he was entitled to demobilisation costs to facilitate his return to Sri Lanka. He further stated that under the terms of the contract, such costs were payable subject to approval by the Respondent's Executive Chairman. On its part, the Respondent contended that the Consultancy Contract did not provide for relocation or repatriation costs upon expiry by effluxion of time.
35. The Claimant was engaged from outside the jurisdiction and deployed to Kenya for the sole purpose of executing the Respondent's project. Upon completion of the contract by effluxion of time, the Claimant was required to exit the country and disengage from the project location.
36. In the instant case the contract between the Claimant and Respondent expressly provided for mobilization and demobilization costs at Article 5 of the Addendum No. 01 of the contract dated 15th December, 2022 which provides:

a) Expenses

o The company shall bear the relocation costs for the consultant for his mobilization and demobilization subject to prior approval by the Executive Chairman of such expenses in writing.

37. In the circumstances, I am satisfied that the Claimant is entitled to demobilization fees as provided in his contract. The Claimant however did not justify the sum of USD 11,190 claimed. He did not give a breakdown of the same.

Whether the Claimant is entitled to continue occupying the Respondent's property

38. The Claimant sought orders permitting him to continue residing in the Respondent's company-provided accommodation and to retain use of the company motor vehicle pending full settlement of his dues. The Respondent's witness, RW1 testified that the provision of housing, motor vehicle, and laptop was strictly tied to the subsistence of the consulting contract which ended on 13th June 2024 and that upon expiry of the contract, the Claimant was obligated to immediately surrender all company property and complete the clearance process.

39. The Respondent contended that the Claimant's continued occupation of the property and use of the motor vehicle and laptop amounted to unjust enrichment and had compelled the Respondent to incur replacement costs.
40. Taking into consideration the circumstances of this case, especially that the Claimant was an expatriate who had come from his country to work for the Claimant, the fact that the Claimant's contract provided for repatriation costs to be borne by the Respondent, and having determined that the Respondent failed to settle the Claimant's accrued consultancy fees and demobilisation costs upon completion of the contract, the Court is satisfied that requiring the Claimant to immediately vacate the company provided accommodation and to surrender the motor vehicle before settlement of his dues would occasion undue hardship and would unjustly benefit the Respondent, who has failed to meet his obligations under the contract and failed to pay the Claimant's entitlements.
41. Accordingly, I hold that the Claimant shall continue occupying the Respondent's company-provided accommodation and to retain use of the company motor

vehicle strictly pending full settlement of the amounts awarded herein, whereupon the Claimant shall immediately surrender all company property and complete the clearance process.

Whether the Claimant is entitled to general damages

42. It is settled law that general damages are not payable for breach of contract unless specifically provided for. The contract herein ended by effluxion of time and did not provide for liquidated damages or penalties for delayed payment. The claim for USD 10,000 as damages for late payment therefore fails.
43. Consequently, judgment is entered for the Claimant in the following terms: -
- i. The Claimant is awarded USD 21,131.86 as consultancy fees arrears for the period February to June 2024 less Kshs 500,000.
 - ii. The parties shall address the court on the sum of USD 11,190 demobilization costs by way of written submissions.
 - iii. Pending full settlement of the sums awarded herein, the Claimant shall be permitted to continue occupying the

Respondent's company provided accommodation and to retain use of the company motor vehicle, upon which full settlement the Claimant shall immediately surrender all company property and complete the clearance process.

iv. The Respondent shall issue the Claimant with a Certificate of service.

44. The Respondent shall pay the Claimant's costs of this suit.

45. Interest shall accrue at court rates from date of filing suit till payment in full.

**DATED, SIGNED AND DELIVERED VIRTUALLY ON
THIS 29TH DAY OF JANUARY, 2026**

**MAUREEN ONYANGO
JUDGE**