



**Odhiambo v Music Copyright Society of Kenya (Cause 96 of 2020)
[2026] KEELRC 572 (KLR) (25 February 2026) (Judgment)**

Neutral citation: [2026] KEELRC 572 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 96 OF 2020
DKN MARETE, J
FEBRUARY 25, 2026**

BETWEEN

PETER OCHIENG ODHIAMBO CLAIMANT

AND

MUSIC COPYRIGHT SOCIETY OF KENYA RESPONDENT

JUDGMENT

1. This matter is originated by way of a Statement of Claim dated 14th February, 2020. The issues in dispute are therein cited as;
 1. Whether in failing to pay the claimant his salary arrears the respondent contravened the provisions of section 17 of the *Employment Act*,
 2. Whether in failing to remit the claimants NHIF and NSSF deductions the Respondent contravened the provisions of section 19 of the *Employment Act*,
 3. Whether the respondent is entitled to pay the claimant accrued benefits under the pension scheme and outstanding Sacco shares,
 4. Whether the respondent is entitled to pay the claimant expenses incurred while performing his duties in his capacity as the Respondents mandatory signatory.
2. The Respondent in a Defence dated 8th December, 2020 denies the claim and prays that the same be dismissed with costs.
3. The claimant in a Reply to Defence dated 25th October, 2021 rubbishes the defence and deems it a mere denial and further reiterates their claim.



4. The Claimant's case is that on or about 20th July, 2007 he was appointed as a Licensing Officer on a six months' probation. He earned Kshs.15,000.00 per month. On 4th February, 2008, he was appointed Branch coordinator.
5. The Claimant's other case is that due to his exemplary performance, he was promoted to Branch Manager for the Western Region Branch on or about 12th April, 2008 on a six months' probation with a monthly acting allowance of Kshs.11,000.00 over and above his salary. Subsequently, he was promoted to Senior Licensing Officer from which position he resigned voluntarily on 30th January, 2018. He was thereof entitled to salary arrears for November, 2017, December, 2017 and January 2018 all amounting to Kshs.52,693. He was also entitled to NSSF and retirement benefit from UAP totaling Kshs.409,504.69 and Kshs.17,274.42 for NSSF. This is besides Kshs.74,835.00 as Sacco shares refund. Other issues arising and entitlements owing to the Claimant are;
 - i. Kshs.6,000.00 per instance of signing cheques even after resignation all totaling Kshs.120,00.00 between February and June 2018.
 - ii. That this arrangement (Ksh.6000.00) persisted and prevailed after his resignation because the Respondent did not effect change of signatory, citing difficulties in convening a board meeting to effect this.
 - iii. Kshs.120,000.00 incurred on the above exercises for the period February to June, 2018.
 - iv. When this issue was raised, the Respondent stopped involving the Claimant in the signing of cheques and made illegal withdrawals of Kshs.1,000,000.00 which are still ongoing. Request for stoppage made to the Bank Manager, Kakamega on 10th January, 2019.
 - v. The Claimant on or about 10.01.2019 requested the Barclays Branch Manager. Kakamega requesting a stoppage of further withdrawals from the account where he still was a mandatory signatory.
 - vi. The Respondent has to date failed to pay the outstanding dues despite follow-ups.
6. He prays as follows;
 - a. A declaration that the respondent contravened the provisions of section 17 and 19 of the [Employment Act](#).
 - b. An order directing the respondent to pay to the claimant all NHIF deductions not remitted, or in alternative to clear all outstanding NHIF arrears until the claimant's NHIF membership is reactivated.
 - c. An order directing the respondent to pay the claimant salary arrears amounting to Kshs52,695.00.
 - d. An order directing the respondent to pay the claimant retirement benefits and NSSF deductions for all months not remitted together with compound interest in line with paragraph 13.
 - e. An order directing the respondent to pay the claimant compensation for expenses incurred while acting as its mandatory signatory amounting to Kshs.120,000.
 - f. An order directing the respondent to refund the claimant outstanding Sacco shares amounting to Kshs.74,8345.



- g. Damages for expenses incurred due to failure to remit the NHIF deductions and Sacco contributions.
 - h. Costs of the suit and interests thereon from the date of judgement; and
 - i. Any other orders that the court may grant in the interest of justice.
7. The Respondent admits that the Claimant was initially employed as a Licensing Officer in July, 2017 at a consolidated salary of Kshs.18,000.00 and later as a Branch Manager on the same term with a acting allowance of Kshs.11,000.00 over and above the salary.
 8. The Respondent's further case is a denial that the Claimant was entitled to Kshs.6,000.00 for being a signatory and even the allegation of such continued later after resignation and all monies claimed thereof.
 9. It is their case that they are strangers to the allegations that withdrawals were made on its bank account without the Respondents signature and contends that the said account belonged to the Respondent who was entitled to make changes to the signatories and carry out transactions through its several other authorized officers at any time and without reference to the Claimant who had left employment.
 10. Again, the Respondent avers that it regularized its position with regards to NHIF and NSSF deductions which matter can be ascertained at the said statutory bodies which have the mandate to follow up on the matters if it were not the case.
 11. The Respondent, they contend, is not responsible for the dealings of the Sacco that the Claimant joined as it is a separate independent entity not run by the Respondent and the Claimant should follow up his dues, if any, with the said Sacco and therefore denies such liability. Besides, the Respondent admits owing salary arrears as set out for the months of December 2017 and January 2018 which payments were stopped because of the suspension of the Respondents operations and accounts by the industry regulator the Kenya Copyright Board which facts were well known to the Respondent.
The matter came to court variously until the 18th March, 2025 when they agreed on a disposal of the Claim by way of written submissions.
 12. The issues in dispute therefore are;
 1. Whether the Claimant is entitled to the relief sought.
 2. Who bears the costs of this cause?
 13. The 1st issue for determination is whether the Claimant is entitled to the relief sought. The Claimant in their written submission dated 6th May, 2025 submits that in failing to pay his salary arrears, the Respondent contravenes section 17 of the *Employment Act*, 2007. This was for three months running between November, 2017 to January, 2018. On this the Claimant seeks to rely on the authority of section 74 of the *Employment Act*, 2007 which mandates an employer to keep and maintain employment records, including payment of salaries which should now be tabled before court as evidence of such payment. This is further supported by the authority of *Yaa v SGA Security Solutions Limited (Employment and Labour Relations Appeal No. E002 of 2022) [2022] KEELRC 1553 (KLR) (29 July 2022)* to which they rely on to buttress their case.
 14. Despite denial of owing in its defence and written submission, the Respondent in their witness statement (paragraph 11) admits owing the Claimant salary arrears for the months of December, 2017 and January, 2018. It is the evidence of the Respondent that these payments were stopped because of



- the suspension of the Respondent's operations and freezing of their account by the industry regulator, the Kenya Copyright Board. This is known to the Claimant and led to this resignation in search of greener pastures.
15. Coupled with the Claimant's case under section 74 of the *Employment Act*, 2007, this admission would reasonably entitle the Claimant to three months' salary arrears amounting to Kshs.29,000.00 x 3, all totaling Kshs.87,000.00.
 16. The Claimant in support of a claim for NHIF and NSSF deductions that were not remitted to the relevant statutory bodies in accordance with section 19 of the *Employment Act*, 2007 submits that this is also admitted by the Respondent at paragraph 5 of the defence dated 8th December, 2020. They further aver that the regularized this by paying all such but do not adduce any evidence to the extent of the remissions. It is indeed the evidential burden of the Respondent to prove that which they allege. In the absence of this, the claimant submit that he is owed the amounts and unremitted.
 17. The Claimant does not in any way support or demonstrate the amounts unremitted and owing by the Respondent. This is not indicated in his pleadings or even list of documents. Whatever is available in the list is not clear or indicative of amounts deducted and owing for non-remission. This claim therefore falters and fails for want of elucidation, clarity and proof.
 18. The next item of claim is that of the Claimant accrued benefits under the pension scheme and Sacco shares. It is the Claimant's case and submission that the Respondent made deductions to the pension scheme and Sacco but failed to remit these to the UAP pension scheme as explained in the claimant's witness statement at paragraph 11. This also applies to the Sacco shares.
 19. The claimant submits that the Respondent's denial of responsibility relating to non-refund of Sacco deduction amounts to just that. The Respondent and the Sacco are Siamese twins and not separate entities as claimed and submitted. This is because the Respondent's officers are the same as the Sacco officials. This is evidenced by the email correspondence dated 11th and 12th January 2018 between the Respondent CEO and the claimant where the CEO informed the claimant that the Sacco was experiencing financial difficulties in refunding the claimant's shares and would sort this out in due time. This inextricable web makes the Respondent a proper party to take up the responsibilities of the Sacco. While this may be agreeable, again, no clear evidence of amounts deducted and unremitted is adduced by the claimant. Nothing of the pleading and documentation in support of the claim brings out a clear case of amounts owing. This court therefore finds it difficult to assess the amounts claimed.
 20. The last and controversial claim is that of expenses incurred by the claimant while performing the duties of signatory to the Respondent's bank account. It is the claimant's case and submission that he was retained as a mandatory signatory to the Respondent's bank account even after his resignation from employment on 2nd February, 2018. He is therefore entitled to refunds at the rate of Kshs.6,000.00 per instant.
 21. The claimant in furtherance of his claim for reimbursement of expenses incurred as mandatory signatory of the Respondent's bank account posits that the Respondent undertook to pay him an amount of Ksh.6000.00 being mileage allowance and refund of expenses incurred in the execution of this service. It is his case that he continued to perform this service and that this arrangement persisted until he demanded compensation and refund for a work done. This resulted in the Respondent forging his signatures with a view to avoiding such payments and refund. This is demonstrated by a WhatsApp correspondent between the claimant and the Respondent's CEO where the claimant reported the forging of his signature and withdrawal of monies at the bank by the Respondent's officers. Again, the claimant's correspondences with Christabel Seluya for the Respondent demonstrate that they were trying to bypass the claimant after he demanded payment and refund of these expenses.



22. The claimant therefore submits a case of the Respondent creating a legitimate expectation that he would be paid and or refunded such mileage claim for expenses incurred in his mission as such. On this he seeks to rely on the authority of Benjamin v Safaricom PLC & 2 others; consumers Federation of Kenya (COFEK) & another (Interested Parties) (Petition E554 of 2022) (2024) KEHC 14762 (KLR) (Constitutional and Human Rights) where the Court acknowledged this principle.
23. Here again, the Claimant has not adduced any evidence of this relationship and terms as the Respondent mandatory bank signatory. The petty cash voucher for payment of Ksh.6000.00 as payment of allowances to attend court at Bungoma is not credible evidence in support of such arrangement between the parties. The claim also therefore fails.
24. Sustainance of a claim in law is won at the onset of pleading and documentation in support thereof. The pleadings must be elaborate and clear so as to guide the court or tribunal on the issues at hand and in dispute. This is followed by supporting evidence in the form of documents and oral evidence. Clarity and flow of thought and issues arising becomes of essence from day one. This unfortunately is not demonstrated in the circumstances of this case and therefore the calamity on the matter. It is not set out in form and arrangement.
25. I would agree with the Respondent's case and submission that the claimant as a term of employment was only entitled to Ksh.29,000.00 being his monthly salary as branch manager, Western Region and no more. He was not entitled to any allowance for being a signatory and he has not adduced any evidence to the contrary.
26. In toto, this court agrees with the Respondent that the claimant has not proved his claim as required of section 106, 107 and 108 of the Evidence Act, Chapter 80, Laws of Kenya, or at all. This is with an exception of unpaid salaries which are outrightly and impliedly admitted by the Respondent in their witness statement. I therefore partially find that the claimant is entitle to the relief sought to the extent of the claim for unpaid salaries only.
27. The 2nd issue for determination is whether the claimant is entitled to the relief sought. He is so entitled to the extent of this court's finding on the claim.
28. I am therefore incline to allow the claim and award relief as follows;
 - i. Unpaid salary for the month of November and December, 2017 and January 2018
=Kshs.29,000.00x3.....Kshs.87,000.00
 - (ii) Each party bears their costs of this cause.

DELIVERED, DATED AND SIGNED THIS 25TH DAY OF FEBRUARY 2026.

D. K. NJAGI MARETE

JUDGE

Appearances:

Mr. Adongo instructed by Rachier & Amollo Advocates for the Claimant.

Mr. Rombo instructed by Rombo & Company Advocates for the Respondent.

