



**Osuku v Coastal Kenya Enterprises Limited (Cause E070 of 2024)  
[2026] KEELRC 862 (KLR) (24 March 2026) (Judgment)**

Neutral citation: [2026] KEELRC 862 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E070 OF 2024**

**AK NZEI, J  
MARCH 24, 2026**

**BETWEEN**

**FAKE OSUKU ..... CLAIMANT**

**AND**

**COASTAL KENYA ENTERPRISES LIMITED ..... RESPONDENT**

**JUDGMENT**

1. The Claimant sued the Respondent herein vide a Memorandum of Claim dated 24<sup>th</sup> January, 2024 and sought the following reliefs:-
  - a. A declaration that withholding of the Claimant's salary and benefits was unfair and unlawful.
  - b. Payment of Kshs.720,000/= being Kshs.90,000/= x 8 months of unpaid salary plus 14% interest per annum thereon.
  - c. Payment of Kshs.675,000/= being Kshs.45,000/= x 15 years as service pay.
  - d. Payment of unremitted NHIF contributions for 24 months (about 2 years).
  - e. Payment of Kshs.90,000/= being unpaid leave days (for the year 2021).
  - f. General damages for violation of the Claimant's constitutional rights provided for under Articles 27, 28, 30, 41 and 47 of *the Constitution*.
  - g. Issuance of a certificate of service by the Respondent.
  - h. Costs of the suit.



- i. Any other order that the Honourable Court may deem fit to grant in the circumstances.
2. The Claimant pleaded:-
  - a. that vide a letter of offer of employment dated 30<sup>th</sup> November, 2009, which offer the Claimant accepted, the Claimant was employed as an accountant by the Respondent with effect from 1<sup>st</sup> December, 2009, earning a monthly salary of Kshs.24,000/=; which was eventually increased to Kshs.90,000/=.
  - b. that in the year 2020, the Respondent started paying the Claimant's monthly salary intermittently, contrary to the Claimant's employment terms and conditions.
  - c. that from March 2021 to March 2022, the Respondent withheld the Claimant's monthly salary without any notice or explanation, contrary to Sections 5, 17 and 18 of the Employment Act.
  - d. that the Respondent's said act exposed the Claimant to financial hardship and emotional distress, as he was unable to meet his financial obligations like house rent, leading to closure of his house in December 2021.
  - e. that the Claimant was forced by the foregoing circumstances to resign from his position and to, vide the resignation letter, seek payment of his unpaid salary.
  - f. that the Respondent neither responded to the resignation letter nor paid the Claimant's unpaid salary.
  - g. that later (after resignation), the Respondent deposited in four bits [of Kshs.90,000/=] to cover four months out of the 12 months of unpaid salary.
  - h. that to date, the Respondent has not paid the Claimant the eight months' salary it owes to him, despite demand.
  - i. that the Claimant has been subjected to physical and psychological torture, and to inhuman and degrading treatment amounting to slavery and servitude; contrary to Articles 27, 28, 30, 41 and 47 of the Constitution of Kenya. That the Claimant's constitutional rights have been contravened and violated.
  - j. that the Claimant's right to fair labour practices have been contravened and violated.
3. Documents filed alongside the Claimant's Memorandum of Claim included the Claimant's written witness statement dated 24<sup>th</sup> January, 2024 and an evenly dated list of documents. The listed documents included the Claimant's offer of employment/letter of employment dated 30<sup>th</sup> November, 2009, resignation letter (dated 2.3.2022), demand letter and certified copies of the Claimant's bank statements regarding the four months' salary paid (for the year 2021).
4. The Respondent defended the suit vide its Response to Claim dated 22<sup>nd</sup> July, 2022. The Respondent denied the Claimant's claim and further pleaded:-
  - a. that the Respondent's business experienced cash flow [problems] as a result of the unprecedented Covid-19 Pandemic, and was as such unable to remit the Claimant's salary during that period.



- b. that the Claimant voluntarily resigned from his position as an accountant at the Respondent company.
5. The Claimant filed Reply to the Respondent's Statement of Response, dated 5<sup>th</sup> September, 2024.
  6. The Claimant filed a further list of documents dated 5<sup>th</sup> September, 2024, listing three documents which included copies of WhatsApp conversations between the Claimant and an Agent/Managing Director of the Respondent, and a copy of NSSF contributions.
  7. When the suit herein came up for hearing before me on 3<sup>rd</sup> February, 2025, Counsel for the Respondent applied for an adjournment, which the Court allowed, and fixed the matter for hearing on 2<sup>nd</sup> July, 2025. The Respondent was ordered to pay the day's costs of Kshs.3,100/= to the Claimant, and to also pay Court Adjournment Fees of Kshs.1,000/=.
  8. There was no attendance on the part of the Respondent on 2<sup>nd</sup> July, 2025, and hearing of the case proceeded ex-parte. The Claimant adopted his filed witness statement as his testimony in the case, and produced in evidence the documents referred to in paragraphs 3 and 6 of this Judgment; and there upon closed his case. The Court closed the Respondent's case, and directed both parties to file written submissions. Only the Claimant filed written submissions.
  9. The Respondent did not present any evidence in Court. The Claimant's evidence presented in Court stands un rebutted and therefore uncontroverted.
  10. 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. Schulter (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 the 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.”
  11. Still on the same issue, the Court stated as follows in the case of Interchemie E.A. Limited – vs – Nakuru Veterinary Centre Limited (Milimani) HCCC No. 165B of 2000):-

“Where no witness is called on behalf of the defendant, the evidence tendered on behalf of the Plaintiff stands uncontroverted.”
  12. The foregoing two court decisions, with which I agree, were cited in the case of Chrispine Otieno Caleb – vs – Attorney General [2014] KEHC 8485 (KLR).
  13. The single issue falling for determination in this matter, in my view, is whether the Claimant is entitled to the reliefs sought in his Memorandum of Claim.
  14. The Claimant demonstrated by evidence, on a balance of probability, that he was employed by the Respondent from 1<sup>st</sup> December, 2009 upto March 2022, and that at the time of his resignation from employment in March 2022 due to non-payment of salary from March 2021 to March 2022, his monthly salary was Kshs.90,000/=. The Claimant also demonstrated by evidence that pursuant to his resignation, the Respondent deposited into his (the Claimant's) bank account an equivalent of four months' salary, paid/transferred in four batches/tranches of Kshs.90,000/= each, and paid on 13<sup>th</sup> April, 2022 and 22<sup>nd</sup> April, 2022 respectively.



15. The Claimant pleaded and testified that eight (8) months' salary arrears remained unpaid, and claimed Kshs.720,000/= in that regard. I allow that claim of Kshs.720,000/= being unpaid salary arrears for eight (8) months.
16. The claim for Kshs.675,000/= being service pay for 15 years is declined; as the same is not shown to have been fixed by the contracting parties pursuant to Section 35(5) of the *Employment Act*. Further, the Claimant did not demonstrate that his employment contract was subject to any CBA that fixed the terms of service pay payable to him by the Respondent.
17. The claim for unremitted NHIF contributions for 24 months (2 years), which is in the nature of special damages, was not specifically pleaded, particularised, and proved. The same is declined.
18. The claim for Kshs.90,000/= being payment for unpaid leave [days] for the year 2021 is allowed; in the absence of records and/or evidence by the Respondent to the contrary, pursuant to Section 74(f) of the *Employment Act*.
19. The claim for general damages for violation of the Claimant's constitutional rights under Articles 27, 28, 30, 41 and 47 of *the Constitution* is declined, as the alleged violated rights and the manner of violation were not pleaded and demonstrated. Had the Claimant pleaded constructive dismissal based on non-payment of salary for a whole year (12 months), I would have awarded him compensation for unfair termination of employment. He did not.
20. I however make a finding that the Respondent's act of withholding the Claimant's salary and benefits was unfair, and I so declare.
21. The prayer for issuance of a certificate of service is allowed pursuant to Section 51 of the *Employment Act*.
22. In the upshot, and having considered written submissions filed on behalf of the Claimant, Judgment is hereby entered for the Claimant against the Respondent as follows:-
  - a. Eight months' unpaid salary ..... Kshs.720,000/=.
  - b. Unpaid leave days ..... Kshs. 90,000/=.Total = .....Kshs.810,000/=.
23. The awarded sum shall be subject to PAYE (Pay As You Earn) pursuant to Section 49(2) of the *Employment Act*.
24. The Claimant is awarded interest on the awarded sum, to be calculated at Court rates from the date of filing suit until payment in full.
25. The Claimant is awarded costs of the suit.
26. The Respondent shall issue a certificate of serve to the Claimant pursuant to Section 51 of the *Employment Act*, within thirty days from the date of this Judgment.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 24<sup>TH</sup> DAY OF MARCH 2026.**

**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 Wairimu Mwangi for the Claimant

Miss Kihara for the Respondent

**DRAFT**

