

**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT & LABOUR RELATIONS COURT AT**  
**NAIROBI**  
**CAUSE NO. 1476 OF 2018**

**FRANCIS GITARI MURIUKI.....**  
**CLAIMANT**

**VERSUS**

**SKYLINE SERVICES LIMITED.....**  
**.....RESPONDENT**

**JUDGMENT**

**Introduction**

1. In a Memorandum of Claim dated 29<sup>th</sup> October, 2018 and filed on even date, the Claimant seeks the following reliefs as against the Respondent: -
  - i. Compensation comprising unpaid salaries, rest days, public holidays worked, annual leave, and gratuity, all amounting to Kshs. 32,000,088/-
  - ii. General damages
  - iii. Costs of the suit
  - iv. Interest at court rates
  - v. Certificate of Service.
  
2. The Respondent entered an appearance on 21<sup>st</sup> November, 2018, and subsequently filed a Response to the claim dated 11<sup>th</sup> December, 2018, and filed on 21<sup>st</sup> March, 2019, denying the Claimant's claim.

3. The Claimant's case was heard on 7<sup>th</sup> October, 2025, when the Claimant testified in support of his case. The Respondent's case was heard on 3<sup>rd</sup> December, 2025, when one Mr. Francis Lasalo Ngonga testified in support of the Respondent's case.
4. Submissions on the matter were filed for both parties.

### **The Claimant's Case**

5. The Claimant states that he was lawfully employed by the Respondent and performed his duties with diligence, loyalty, and exceptional dedication, devoting significant time and effort to his work.
6. The Claimant states that he entered into an employment contract with the Respondent around July 2014, in accordance with Kenyan employment law, and was appointed as a Line Maintenance Manager on a monthly salary of Kshs.500,000.
7. It is his case that despite diligently performing his duties, his salary was neither reviewed nor paid as agreed. He avers that the Respondent repeatedly promised to settle the accrued salary arrears, leading him to continue working for an extended period without pay, during which time he relied on savings and occasional manual jobs for survival.
8. The Claimant states that after waiting for months, which turned into years without payment, he eventually issued

notice to terminate the employment contract with the Respondent.

9. The Claimant avers that he notified the Respondent in January 2017 of his intention to terminate the employment contract due to prolonged non-payment of his accumulated salary, and eventually left employment in May 2018 after serving diligently for four years.
10. The Claimant contends that the Respondent's failure to pay his salary was unlawful, unfair, and inhumane, and as a result, he left the job without receiving any salary, depleting his savings, which had been his only source of livelihood.
11. The Claimant argues that withholding his salary and salary increments was unlawful and unreasonable, and as a result, he seeks several payments, including severance pay, unpaid salary, accrued leave, and gratuity.
12. It is his case that he worked for 6 years, and calculating his total time with the Respondent as 48 months, and based on a monthly salary of Kshs.500,000, he claims unpaid salary (48 months): Kshs.24,000,000, rest days (192 days): Kshs.3,200,064, Public holidays (36 days at double pay): Kshs.1,200,024, annual leave (4 years): Kshs.2,000,000 and gratuity: Kshs.1,600,000.
13. Overall, the Claimant is seeking compensation for unpaid wages and benefits accrued during his employment, totaling to Kshs.32 million.

14. On cross-examination, the Claimant told this court that his first day of employment with the Respondent was 1<sup>st</sup> July, 2014, and his last day was June 2017. He confirmed that he signed a letter of offer of employment dated 14<sup>th</sup> December, 2015, and later on 1<sup>st</sup> January, 2016, he signed a payment terms agreement.
15. The Claimant contends that the Respondent did not state the salary amount in the employment letter/contract. He denied that salary payments were made in terms of the agreement of 1<sup>st</sup> January, 2016.
16. It is his testimony that he discovered that the Respondent was just starting operations when he was employed and had only a few customers.
17. The Claimant states that the Respondent did not have its own aircrafts and that he worked on aircrafts under skyline services. He denied that his salary was Kshs.15,200/- as alleged and further stated that the Respondent did not issue him a pay slip. He further told the court that, since he was not being paid, he did not have a bank statement showing how much he earned.
18. He maintained that his pay was USD.5500. He averred further that he did not list the public holidays when he provided services and that he rested for one day in a week and was not denied rest days.

19.The Claimant finally states that he is entitled to the reliefs sought and prays that his claim be allowed with costs.

### **The Respondent's Case**

20.The Respondent denies being the Claimant's employer and further disputes the alleged salary of Kshs.500,000 per month, which the Claimant claims. It avers that the Claimant is not being truthful, is malicious, and has failed to fully disclose material facts to the court.

21.The Respondent states that the Claimant and three colleagues received money from a client and failed to declare it to the company. It further avers that the Claimant was questioned about \$1,000 shared among colleagues, and that it was resolved through agreed salary deductions to recover the money.

22.The Respondent's witness in his evidence in chief told the court that, though it engaged the Claimant in 2015, the company did not have much work yet, and that the Kenya Civil Aviation Authority indicated to it that the Claimant was not qualified for the job, and it undertook to train him.

23.It avers that the Claimant was only accepted by KCAA on 25<sup>th</sup> May, 2017, to take up the position of line maintenance manager. It avers further that the Claimant left their employment in May 2018, and that all his terminal dues were paid, and that he was overpaid by Kshs.9,135/-.

24. It is its assertion that the Claimant's pay rate was USD 30 per day, as only persons approved by KCA who earned USD 50 per day. It avers that the Claimant worked only 56 hours in 2017, that all hours worked were paid, and that the tabulation is before the court.

25. On cross-examination, RW1 told the court that the Claimant's salary was stated as being rate C, but that this was later clarified in a confidential letter shared with the Claimant and that the applicable pay was for hours worked and after the work he did was paid for.

26. He avers that the scale C pay grade was at Kshs.15,200/- and that is where the Claimant fell.

27. Finally, the Respondent denies that the Claimant is entitled to any of the remedies sought.

### **Analysis and Determination**

28. From the pleadings and the evidence adduced, the key issues for determination are: -

- i. Whether an employer-employee relationship existed between the parties herein.
- ii. What the Claimant's terms of employment were, particularly on salary payable.
- iii. Whether the Claimant is entitled to the reliefs sought

### **Whether an employer-employee relationship existed between the parties herein**

29. The Respondent, in its Response to the Claimant's Memorandum of Claim, denied employing the Claimant. In the witness statement of one Francis Lasalo Ngonga (RW1), as well as his oral testimony, the Respondent admitted engaging the Claimant vide a letter of offer dated 1<sup>st</sup> December, 2015, and which letter the Claimant produced in evidence before court.

30. It is also not denied that the Claimant performed work for the Respondent and payments were made in respect of the work done, though the Claimant disputes the payments.

31. Under Section 2 of the Employment Act, an employee includes any person employed for wages or salary. In ***Everret Aviation Limited v Kenya Revenue Authority [2013] KEHC 6352 (KLR)***, the court emphasized that the existence of an employment relationship is determined by substance rather than form, including control, integration, and remuneration.

32. Similarly, in ***Ready Mixed Concrete (South East) Ltd v Minister of Pensions [1968] 2 QB 497***, the court held that the existence of an employer-employee relationship is determined by mutuality of obligation, control, and remuneration, amongst others.

33. In the upshot, I hold that by the Respondent's own admission that it engaged and paid the Claimant, an employment relationship is confirmed to have existed.

**What were the terms of employment, particularly the salary payable**

34. The Claimant's position is that he was employed on a monthly salary of Kshs.500,000 (USD 5,500), while the Respondent contends that the Claimant's pay depended on the hours he worked, whose rate was USD 30/day or Kshs.15,200 monthly.

35. The burden of proof lies on the employee under Section 47(5) of the Employment Act, but Section 10(7) shifts the burden to the employer where written particulars are not produced. In ***Elizabeth Washeke & 62 others v Airtel Networks Kenya Ltd*** [ (2013) KEELRC 572 (KLR) ], the court held that failure to produce employment records leads to adverse inference against the employer.

36. Curiously, neither the offer letter dated 1<sup>st</sup> December, 2015, nor the payment terms agreement of 4<sup>th</sup> January, 2016, both issued to the Claimant, indicated the amount payable to the Claimant under the contract. The Respondent, however, produced payment schedules for the years 2017 and 2018 in evidence in support of its assertion that the Claimant was paid at the rate of USD 30 per hour worked.

37. The Claimant, on his part, did not lead any evidence to show that he was ever paid Kshs.500,000. He did not produce any bank statements or payment records in support of the amount he claims, and he admitted on cross-examination

that the Respondent was indeed a startup with limited operations.

38. In light of the foregoing, I conclude that the Claimant has failed to prove earning or having been offered the alleged salary of Kshs. 500,000, giving credence to the Respondent's assertion that payment was based on work done.

**Whether the Claimant is entitled to the reliefs sought**

39. The Claimant seeks payment of 48 months' salary pay on account of rest days, public holidays, leave, and gratuity.

40. For the claim of unpaid salary to succeed, the Claimant needed to show that he worked continuously and that he was not paid.

41. The Respondent has produced evidence showing that the Claimant's pay was based on hours worked, and has similarly shown that he was paid for the hours worked.

42. In ***Kenya Union of Commercial Food and Allied Workers v Meru North Farmers Sacco Ltd [2014] KEELRC 813 (KLR)***, the court held that claims for unpaid wages must be supported by evidence of work done.

43. The Claimant's claim for Kshs.24,000,000 as unpaid salary is therefore not proven, and it fails.

44. On rest days, the Claimant admitted in his oral evidence that he rested one day per week during his time with the Respondent. This claim thus has no merit, and it similarly fails.

45. The Claimant did not specify the Public Holidays that he claims to have worked as to justify payment on that account.

46. The claims thus fail for lack of proof.

47. Gratuity is only payable where it is provided for as a term of the contract, or under a collective agreement. The contract between the parties herein does not provide for payment of gratuity, and the claim fails on that account.

48. The Claimant is entitled to a certificate of service pursuant to Section 51 of the Employment Act.

49. In the final analysis, I find and hold that the Claimant's claim is devoid of merit and is dismissed save for an order that the Claimant be issued with a certificate of service within 14 days of this judgment.

50. I make no orders on costs.

**SIGNED, DATED, AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS 23<sup>RD</sup> DAY OF APRIL, 2026.**

**C. N. BAARI**  
**JUDGE**

**Appearance:**

Mr. Nyakeriga present for the Claimant

Ms. Kamau h/b for Mr. Mwangi for the Respondent

Ms. Esther S- C/A

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