



REPUBLIC OF KENYA



KENYA LAW
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**Hemlanaik v Superfit Steelcon Limited (Cause E408 of 2020)
[2025] KEELRC 137 (KLR) (30 January 2025) (Judgment)**

Neutral citation: [2025] KEELRC 137 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E408 OF 2020
L NDOLO, J
JANUARY 30, 2025**

BETWEEN

MANJANAİK HEMLANAİK CLAIMANT

AND

SUPERFIT STEELCON LIMITED RESPONDENT

JUDGMENT

Introduction

1. The Claimant's claim brought by a Memorandum of Claim dated 6th July 2020 is for compensation for unlawful termination of employment and payment of terminal dues. The Respondent's reply is contained in a Statement of Defence dated 16th November 2020.
2. At the trial, the Claimant testified on his own behalf and the Respondent called Alphonse Kii Kyalo. Both parties further filed written submissions.

The Claimant's Case

3. The Claimant states that he worked for the Respondent in the position of General Manager, from 17th March 2015 until 26th July 2019.
4. The Claimant claims that there was an agreement that he would be paid a net salary of Kshs. 250,000 but in the month of April 2015, he was paid Kshs. 180,644 contrary to the terms of his employment contract. He adds that upon raising a complaint, the Respondent promised to pay him the agreed salary of Kshs. 250,000 in the second year of employment but the Respondent did not honour this promise. The Claimant avers that during the entire period of his employment with the Respondent, his salary was not reviewed.



5. The Claimant further claims that it had been agreed that the Respondent would provide him with accommodation, cater for a two-way air ticket to and from India once a year, and provide a medical cover for the Claimant and his family but the Respondent did not honour these agreements either.
6. The Claimant avers that he was subjected to ridicule, and was forced to work overtime and perform duties beyond his job description, without compensation. He adds that he was forced to work immediately after undergoing surgery and was denied leave.
7. The Claimant states that due to mistreatment by the Respondent, his employment was rendered untenable, forcing him to resign. He claims to have given a one month's resignation notice, which the Respondent rejected and instead issued him with a termination letter.
8. The Claimant tabulates his claim as follows:
 - a. House allowance for 55 months.....Kshs. 2,062,500.00
 - b. Underpayment for 55 months.....5,877,080.00
 - c. Overtime.....3,693,614.80
 - d. Annual leave.....287,500.00
 - e. Withheld salary for 26 days in July 2019.....497,596.30
 - f. Rest days.....4,865,384.60
 - g. Holiday pay.....1,105,769.20
 - h. Withheld salary increments.....1,533,588,891.00
 - i. 12 months' salary in damages.....3,450,000.00
 - j. Air tickets.....759,270.00
 - k. Medical expenses.....2,759,380.00
 - l. Annual salary increment
 - m. Certificate of service

The Respondent's Case

9. In its Statement of Defence dated 16th November 2020, the Respondent admits having employed the Claimant in the position of General Manager, at a negotiated and agreed gross monthly salary of Kshs. 250,000.
10. The Respondent states that the Claimant received the agreed salary for 5 years and received payslips itemising the payments and deductions, without raising any complaint until he left employment on his own volition in July 2019.
11. The Respondent denies the Claimant's entire claim and states that the Claimant voluntarily resigned on 17th May 2019, without giving the required 3 months' notice. The Respondent avers that it appreciated the circumstances stated in the letter of resignation and in good faith calculated the Claimant's terminal dues and issued a cheque dated 25th July 2019, which the Claimant failed to collect.
12. The Respondent states that it is entitled to claim one month's salary in lieu of notice from the Claimant.



Findings and Determination

13. There are two (2) issues for determination in this case:
 - a. Whether the Claimant has made out a case of unlawful termination of employment;
 - b. Whether the Claimant is entitled to the remedies sought.

Unlawful Termination?

14. The Claimant filed the following email communication sent by him to Jitendra Ganesh:

“Respected Sir,

Good Day

This is to inform you that I need to quit the job. Please accept this email as formal notice of my resignation from the job.

My Work permit expires on July 27th. However I would like to leave Superfit earlier than before (i.e. 29th June 2019). Therefore, unfortunately, family circumstances at this time require my full attention and I have important issues to take care of it (sic), I want to focus on my health and also in sorting out some personal things. Kindly I apologize for this decision to be abrupt (sic).

Kind Regards

Manjanaik.”

15. By a return email from Garnesh Prasad, the Respondent accepted the Claimants’ resignation, subject to him serving a 3-month notice period. The Claimant wrote back indicating that he was unable to serve notice as required by the Respondent. He specifically stated that he would not work in the month of August 2019.
16. By a strange twist, the Respondent purported to terminate the Claimant’s employment. The Court was unable to understand the basis upon which the Respondent would terminate the employment of an employee, who had himself expressly communicated his desire to leave employment.
17. As held by my brother Dr. Gakeri J in *Apudo v Azure Hotel Limited* [2024] KEELRC 321 (KLR) resignation is a unilateral action by an employee by which the employment relationship terminates. It has also been consistently held that within our jurisdiction, the efficacy of a termination notice given by an employee is not dependent on acceptance by the employer (see *Herbert Wafula Waswa v Kenya Wildlife Services* [202] eKLR and *Ayonga v Falcon Signs Ltd* [2023] KEELRC 300 (KLR)).
18. By his own email, the Claimant expressly communicated his decision to leave the Respondent’s employment. With this communication, nothing more was required to give effect to the termination of the employment relationship between the parties. Any subsequent communication between the parties was no more than negotiation for a smooth exit.
19. Moreover, there is nothing in the Claimant’s email to suggest that his decision to resign was informed by any adverse action or conduct by the Respondent. Instructively, the Claimant cites family and personal considerations as the prime mover of his decision to leave the Respondent’s employment. That said, and in light of the finding on the efficacy of the resignation notice, the Court finds nothing to cause it to infer constructive dismissal or discharge.



20. The claim for compensatory damages is therefore without basis and is dismissed.
21. According to payslips filed by the Respondent, which the Claimant confirmed having received, the Claimant was paid house allowance and the claim thereon is therefore without basis.
22. The Claimant's claim for underpayment is based on his assertion that he was entitled to a gross monthly salary, without deductions. However, perusal of the Claimant's payslips, issued to him in the course of employment, shows that the Claimant's monthly salary was subjected to normal statutory deductions, inclusive of Pay as You Earn (PAYE) Tax.
23. Under Kenyan tax law, employers are statutory agents for deduction and remittance of PAYE. Any agreement to the contrary would evidently be in violation of express statutory law and therefore impermissible.
24. In light of the foregoing, I find and hold that the claim for salary underpayment is also without basis and is disallowed.
25. Regarding leave pay, the Claimant's payslips exhibit his leave entitlement, which was duly expended. At any rate, no evidence was adduced to support the pleaded figure of Kshs. 287,500.
26. The claims for overtime, rest days, holiday pay, salary increments, air tickets and medical expenses were not proved and are dismissed.
27. The claims for salary for July 2019 and certificate of service are admitted and are consequently due.
28. Save for the admitted claims, the Claimant's claim fails and is dismissed with an order that each party will bear their own costs.
29. Orders accordingly.

DELIVERED VIRTUALLY AT NAIROBI THIS 30TH DAY OF JANUARY 2025.

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JUDGE

Appearance:

Mr. Ondigi for the Claimant

Mr. Isindu for the Respondent

