



Manyuru v Teknohub Limited & another (Employment and Labour Relations Cause E936 of 2021) [2025] KEELRC 246 (KLR) (30 January 2025) (Judgment)

Neutral citation: [2025] KEELRC 246 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS CAUSE E936 OF 2021
MN NDUMA, J
JANUARY 30, 2025**

BETWEEN

STELLA NABWIRE MANYURU CLAIMANT

AND

TEKNOHUB LIMITED 1ST RESPONDENT

VINCENT OKOTH 2ND RESPONDENT

JUDGMENT

1. The suit was filed by a statement of claim on 15/11/2021 by the Claimant against the Respondent seeking the following reliefs: -
 - a. Kshs. 2,731,000.00 with interest at commercial rates from date of ruling till payment in full.
 - b. Costs of the suit
2. The reliefs sought are crystalized at paragraph 16 of the statement of claim to include:-
 - i. One month salary in lieu of notice at Kshs. 150,000.00
 - ii. Arrear salary for 5 months and 3 days in the sum of Kshs. 765,000.00.
 - iii. Equivalent of 12 months salary being compensation for the unlawful and unfair termination of the employment of the Claimant and
 - iv. Unpaid airtime Kshs. 16,000.00
3. The Claimant (CW1) testified under oath and adopted a witness statement filed on 15/11/2021 as her evidence in chief.
4. CW1 stated that she was employed by the 1st and 2nd Respondents on 11/1/2021 as a Client Success Manager and worked continuously until 3/9/2021 when he was sent on unpaid leave for reasons that



the 1st Respondent was not performing well. At the time the Claimant had not been paid salary from the month of March 2021. The Respondent had promised to pay the salary of the Claimant at the earliest instance the funds were available. CW1 produced the written contract of employment dated 4/12/2020 between the parties which commenced on 11/1/2021.

5. According to the contract, the Claimant was paid a gross monthly salary of Kshs. 150,000.00. The Claimant was entitled to 30 days leave and his retirement age was 55 years. Termination notice was one month or payment of one month salary in lieu of notice.
6. CW1 testified that other employees were receiving their monthly salaries consistently except the Claimant. The Claimant was forced to resign on 3/9/2021 due to the persistent breach of employment contract. The Claimant states that he was constructively dismissed from employment by fact of the aforesaid breach. That CW1, spent Kshs. 2,000.00 on business calls and had done so for a period of 8 months with promises from the 1st and 2nd Respondent that the money would be reimbursed. That she had spent Kshs. 16,000.00 which she now claims from the Respondents.
7. CW1 said that she had during the 8 months period done her work diligently to the satisfaction of the respondent, but the 2nd Respondent mistreated her continuously by denying her access to the office email account. That the Claimant suffered hardship culminating in being sent on compulsory leave without being paid arrear salary.
8. The Claimant prays for the reliefs set out in the statement of claim.
9. Under cross-examination by Mr. Olao, advocate for the Respondent CW1 stated that her employer was the 1st Respondent and the 2nd Respondent was her line manager and was a director of the company. CW1 said she made successful sales between January and September of about 1,700 USD. CW1 said that she had made many pitches but was being sabotaged by the 2nd Respondent. CW1 said she had a long list of prospective clients, but was frustrated whenever she asked for assistance to close the deals. CW1 insisted that other employees were paid but she was not paid. CW1 said the Respondent had two other technical staff. CW1 said that the period in question was after COVID and IT operations were not affected by COVID. CW1 said she was not allowed to access email like other colleagues while they worked from home. CW1 said she texted Vincent, the 2nd Respondent on her sales. CW1 insisted that she was constructively dismissed from work. CW1 said Vincent had stopped picking her calls by the time she resigned. CW1 said she could not pay her landlord due to non-payment of her salary. The 2nd Respondent had sent her on unpaid leave. CW1 said there was no request to provide receipts for airtime spent and taxi services to perform sales work. CW1 said she used Kshs. 2,000.00 per month to do her work. CW1 said she claims against both the 1st and 2nd Respondent. CW1 outlined the list of clients she had gotten deals with but was frustrated by Vincent and the deals fell through.
10. RW1 Vincent Okoth testified for the Respondents. He is the 2nd Respondent. RW1 adopted witness statement dated 16/12/2021 as his evidence in chief and produced exhibits '1 to '10' dated 15/12/2021. RW1 stated that he sent the Claimant on leave because the Respondent had cash flow difficulties. RW1 said that they expected to be back in full operation in five (5) months time. RW1 said they intended to recall the Claimant and also other staff who had been sent on leave. RW1 said they did not intend to frustrate, the Claimant's employment. RW1 said he wrote to the Claimant's landlord the letter dated 3/9/2021. In the letter RW1 confirmed that the Claimant was the staff of the Respondent from January 2021 and in good standing. RW1 wrote:

“Following cash flow constraints brought about by poor business environment because of COVID-19, we have not been able to pay her salary since May 2021.”



11. RW1 said there was difficult to access staff email and staff were directed how to deal with this challenge. RW1 said the Claimant did not resign and did not complain to him of any sabotage.
12. RW1 said that he had paid the Claimant arrears of Kshs. 400,000.00.
13. RW1 denied under cross-examination that he had sabotaged business gotten by the Claimant with various companies. RW1 said he held many meetings between the Claimant and various prospective clients. RW1 said 1st instalment of arrears was paid on 1/7/2022. RW1 said he was owner and director of the 1st Respondent. RW1 denied that as at 2021, he had paid all other employees except the Claimant.

Determination

14. The parties filed written submissions which the court has considered together with the evidence adduced by CW1 and RW1. The issues for determination are:
 - i. Whether the employment of the Claimant was constructively terminated by the Respondent.
 - ii. Whether the Claimant is entitled to the reliefs sought.
15. The fact of employment between Claimant and the 1st Respondent is not in dispute. The Claimant was employed by the 1st Respondent in the position of Client Success Manager with effect from 11/11/2021. It is not in dispute that the Claimant worked for the Respondent continuously until 3rd September 2021. The court has established from the evidence adduced by CW1 and RW1 that the Respondent was experiencing financial and cash flow difficulties in the period the Claimant worked for the Respondent. It is not disputed that the Claimant was entitled to a monthly gross salary of Kshs. 150,000.00 per month.
16. The Claimant has proved that by the time she stopped working for the Respondent on 3rd September 2021, the Respondent owed her arrear salary for five (5) months and 3 days in the sum of Kshs. 750,000.00.
17. The Claimant stated that the non-payment of her salary was deliberate on the part of the Respondent because the Respondent continued to pay salary in respect of other staff and at the time this suit was filed on 18/11/2021 the Respondent had paid the full salary for all other staff except the Claimant.
18. The Claimant told court that her employment contract was frustrated by non-payment of her salary and so she was forced to resign from employment because she had been constructively dismissed.
19. RW1 on the other had testified that the cashflow experienced by the Respondent was due to down turn of business due to COVID-19 pandemic. The court is satisfied that the period the Claimant was employed was during the COVID-19 pandemic and indeed all staff of the Respondent worked from home.
20. The court is satisfied that the Respondent was unable to pay the salary of not only the Claimant but also had not paid full salary for all other employees who work online from home.
21. The Claimant has not satisfied the court that the Respondent deliberately discriminated against her and failed to pay her salary while paying the salary of others.
22. The court is not satisfied that the Claimant has proved on a preponderance of evidence that the Respondent constructively dismissed her from employment. The Claimant and other staff were asked to work from home due to the COVID-19 pandemic and that the inability to pay salary was not intentional but was due to circumstances beyond the control of the Respondent.



23. The separation between the Claimant and the Respondent was precipitated by lack of business to sustain the relationship. Accordingly, the Claimant has failed to prove that the termination of her employment was wrongful as she is obliged to do under section 47(5) of the *Employment Act*, 2007.
24. The Respondents on the other have shown that they were justified to send all employees on unpaid leave due to COVID-19 pandemic. The Claimant did not return to work thereafter.
25. With regard to the debt owed to the Claimant, the Respondents have admitted they owed arrear salary claimed by the Claimant. RW1 however stated that it had paid Kshs. 400,000.00 to the Claimant after the suit was filed and produced supplementary list of documents dated 3/4/2024, which demonstrate that the Respondent did pay the Claimant the said Kshs. 400,000.00 and now owes the Claimant Kshs. 350,000.00 being her rightful salary arrears.
26. Accordingly, the court enters judgment in favour of the Claimant against the 1st respondent in the sum of Kshs. 350,000.00 being arrears salary due and owing to the Claimant from the 1st Respondent. The said amount is payable with interest at court rates from date of filing suit till payment in full.
27. The Respondents are also to pay costs of the suit. For the avoidance of doubt, the Claimant has not proved that she is entitled to payment in lieu of notice since it was her who voluntarily separated with the 1st Respondent due to the difficult COVID-19 situation not the doing of any of the parties.
28. Furthermore, judgement is against the 1st Respondent only, being the lawful employer of the Claimant and so the 2nd Respondent is not personally liable for the salary arrears.
29. The claim for general damages is also dismissed since no unlawful dismissal took place between the Claimant and the 1st Respondent.
 - a. In the final analysis the 1st Respondent is to pay arrear salary to the Claimant in the sum of Kshs. 350,000.00.
 - b. Interest at court rates from date of filing suit till payment in full.
 - c. The 1st Respondent to meet the costs of the suit.

DATED AT NAIROBI THIS 30TH DAY OF JANUARY 2025

MATHEWS NDUMA

JUDGE

Appearance:

Mr. Bench for Claimant

Mr. Ojwang for Respondent/Applicant

Mr. Kemboi – Court Assistant

