



**Alam v Noorani & 18 others (Employment and Labour Relations Petition E028 of 2024) [2025] KEELRC 82 (KLR) (23 January 2025) (Judgment)**

Neutral citation: [2025] KEELRC 82 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
EMPLOYMENT AND LABOUR RELATIONS PETITION E028 OF 2024**

**MN NDUMA, J  
JANUARY 23, 2025**

**BETWEEN**

**ASNARI SHAMSHER ALAM ..... PETITIONER**

**AND**

- KANEEZ ZEHRA MOHAMED NOORANI ..... 1<sup>ST</sup> RESPONDENT**
- ESTEEM ELECTRONICS LIMITED ..... 2<sup>ND</sup> RESPONDENT**
- IMPULSE THE SHOE SHOP LIMITED ..... 3<sup>RD</sup> RESPONDENT**
- ANAM COLLECTIONS LIMITED ..... 4<sup>TH</sup> RESPONDENT**
- RICHMAN VENTURES LIMITED ..... 5<sup>TH</sup> RESPONDENT**
- VENTURE HOLDINGS LIMITED ..... 6<sup>TH</sup> RESPONDENT**
- GITANGA PLACE LIMITED ..... 7<sup>TH</sup> RESPONDENT**
- DIANI DUNES LIMITED ..... 8<sup>TH</sup> RESPONDENT**
- RIVERSIDE GARDENS ..... 9<sup>TH</sup> RESPONDENT**
- CASA DI VACANZA INTERNAITONAL LTD ..... 10<sup>TH</sup> RESPONDENT**
- SILVER EDGE APARTMENT LIMITED ..... 11<sup>TH</sup> RESPONDENT**
- SILVERSTONE APARTMENT LIMITED ..... 12<sup>TH</sup> RESPONDENT**
- MILESTONE HOTELS AND APARTMENTS LTD ..... 13<sup>TH</sup> RESPONDENT**
- SONADO CERAMICS LIMITED ..... 14<sup>TH</sup> RESPONDENT**
- STILES CERAMICS LIMITED ..... 15<sup>TH</sup> RESPONDENT**
- SONAVIT CERAMICS LIMITED ..... 16<sup>TH</sup> RESPONDENT**
- ELEGANZA CERAMICS LIMITED ..... 17<sup>TH</sup> RESPONDENT**



**SQUARE VALLEY LIMITED ..... 18<sup>TH</sup> RESPONDENT**

**SONADO PLASTICS LIMITED ..... 19<sup>TH</sup> RESPONDENT**

### **JUDGMENT**

1. The petition was filed on 6/3/2024 by one Ansari Shamsher Alam, an Indian national residing in Kenya stating that he worked for the Respondents from October 2006 in various capacity until November 2023 when the 1<sup>st</sup> Respondent verbally told the Petitioner to stop attending work.
2. That at the time of stoppage of work the Petitioner earned a monthly salary of Kshs. 150,000.00.
3. That the Respondent paid the salary of the Petitioner in bits and pieces and as at the time of separation the Petitioner was owed accumulated arrears salary of Kshs. 14,149,815.00.
4. That the Respondents paid the Petitioner salary in various ways including from Morgan Forex Bureau in Nairobi and Bank of India. Sometimes the Petitioner was paid directly to his bank accounts in India namely Punjab National Bank. That at times, the Petitioner would be paid via 3<sup>rd</sup> parties in India including one M/s Said Karawale, the 1<sup>st</sup> Respondent's relative in India.
5. That the Respondent provided the Petitioner with housing for himself and family and also paid school fees for the Petitioner's children in Spring Valley Junior School at Nairobi. That the fees was religiously paid until after 18<sup>th</sup> February 2021 when the husband of the 1<sup>st</sup> Respondent Mr. Noonan died.
6. That during his tenure, the Petitioner served the Respondent in various capacities including General Manager, Finance Officer, Site Manager, Quality Inspector Expert and Director in different businesses and companies owned by the 1<sup>st</sup> Respondent and her late husband. The said entities are set out at paragraph 4 of the petition and are named as Respondents.
7. That initially, the monthly salary of the Petitioner was 100,000 Indian Rupees and due to his exemplary service, the salary of the Petitioner was increased to a net monthly salary of Kshs. 150,000.00.
8. The Petitioner states that he worked at least 10 hours daily which translated to about 7 hours a week and was never paid overtime.
9. The Petitioner states that his passport and that of the entire family were kept by the 1<sup>st</sup> Respondent and would only be released when the Petitioner was on vacation in India.
10. That upon separation, the 1<sup>st</sup> Respondent unlawfully retained the passports of the Petitioner and his family and has used the same to coerce the Petitioner to accept unfair terms of separation for the documents to be released and return fair paid to the family.
11. The Petitioner states that the Respondents did not pay any statutory dues in respect of the Petitioner including PAYE, NHIF and NSSF and did not provide the Petitioner with any terminal benefits.
12. That the 1<sup>st</sup> Respondent sent to the Petitioner an "Agreement for determination of an Employer-Employee relationship on 24<sup>th</sup> November 2024, proposing to pay the Petitioner a sum of IWR 3,000,000 (equivalent of about Kshs. 6,000,000.00 as terminal benefits).
13. The Petitioner states that the proposed terms are harsh, unfair, unreasonable and do not meet and address the salary arrears owed to the Petitioner by the Respondents. That the Petitioner has rejected the proposed agreement in its entirety.



14. That the veil of the named Respondents should be lifted, the same having been used to evade statutory and contractual obligations to the Petitioner, 3<sup>rd</sup> parties and the government and the Respondents, be held jointly and severally liable to make good the loss.
15. That the conduct by the Respondents has violated Articles 27, 30 and 35(1) of the Constitution which guarantee the Petitioner equality before the law and the right to equal protection and equal benefits of the law; right not to be subjected to slavery, servitude and forced labour and the right to information required for the exercise or protection of any right or fundamental freedom.
16. The Petitioner has invoked Article 20(2) of the Constitution which obliges interpretation of the Constitution so as to confer the right or freedom to the greatest extent consistent with the nature of the right or fundamental freedom.
17. The Petitioner has relied heavily on international instruments which he posits are now part of the laws of Kenya by dint of Article 2(4) and (5) of the Constitution including:-
  - i. Universal Declaration of Human Rights under Article 23 which provides that everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity and supplemented, if necessary, by other means of social protection.
  - ii. International Convention on Economic Social and Cultural Rights (ICESCR) under Article 7(a) (i) which recognizes the right of everyone to enjoy just and favourable conditions of work, including fair wages.
  - iii. The Convention 95 on Protection of Wages including ensured and timely payment of wages.
  - iv. Convention 131 on minimum wage fixing.
  - v. ILO Declaration on fundamental principles and Rights at work.
  - vi. African Charter on Human and Peoples' Rights which recognizes the right to work under Article 15 and
  - vii. Customary International Law comprising of fair labour practices.
  - viii. European Convention on Human Rights (ECHR) under Article 4 which prohibits slavery, forced labour and servitude inter alia.
18. The Petitioner prays for the following reliefs as against the Respondents jointly and severally:
  - a. An order lifting the veil of incorporation for the corporate Respondents and making the beneficial owner and director Kaneez Zehra Mohamed Noorani jointly and severally liable for violating the Petitioner's labour rights.
  - b. An order compelling the 1<sup>st</sup> Respondent to provide a certificate of service.
  - c. A declaration that the Claimant's employment was constructively terminated in December 2023.
  - d. A declaration that the 1<sup>st</sup> Respondent has subjected the Petitioner to slavery and servitude.
  - e. A declaration that the Claimant's salary stoppage and termination of his employment services are unlawful and unfair.



- f. A declaration that the Respondents have violated the Claimant's rights guaranteed and protected by Articles 19, 27, 28, 30, 41, 43, 47 and 50 of the Constitution.
- g. An award of general damages for violating and/or breaching the Claimant's Constitutional rights.
- h. An award of damages, to be assessed by court, for the various services accorded to the corporate Respondents without pay.
- i. Indian Rupees 1,800,000.00 or its equivalent in Kenya Shillings at the time of judgment being 12 months' compensation for unlawful termination.
- j. Indian Rupees 150,000.00 or its equivalent in Kenya Shillings at the time of judgment being one month's salary in lieu of notice.
- k. Indian Rupees 600,000.00 or its equivalent in Kenya Shillings at the time of judgment being unpaid salary for September, October 2023, November 2023 and December 2023.
- l. Kshs. 14,149,815.00 being unpaid salary arrears/salary arrears.
- m. Indian Rupees 1,275,000.00 or its equivalent in Kenya Shillings at the time of judgment being service pay for the 17 years.
- n. Indian Rupees 1,470,976.00 or its equivalent in Kenya Shillings at the time of judgement being overtime for the 17 years and.
- o. Indian Rupees 4,590,000.00 or its equivalent in Kenya Shillings at the time of judgment being gratuity for the 17 years.
- p. Interest on all the above at court rates from December 2023 until payment in full.
- q. Costs of the suit on a full indemnity basis and interest at court rates from the date of judgment until payment in full.
- r. Any other relief the court may fashion or deem fit to grant in the circumstances.

## **Response to the Petition**

### **The 1<sup>st</sup> Respondent's Replying Affidavit**

19. The 1<sup>st</sup> Respondent deposes that she does not own neither does she run the 1<sup>st</sup>, 4<sup>th</sup>, 6<sup>th</sup>, 8<sup>th</sup>, 12<sup>th</sup> and 15<sup>th</sup> Respondents. That the 7<sup>th</sup> Respondent is non-existent as there is no record of such a company on the Business Registration Services platform on e-citizen. She states that she is not a shareholder nor a director of either of the Respondents listed in paragraph 6 and 7 above and therefore would not know whether the said companies have ever transacted with the Petitioner. The Petitioner has never been her employee nor an employee of the 10<sup>th</sup>, 11<sup>th</sup>, 13<sup>th</sup>, 14<sup>th</sup>, 16<sup>th</sup>, 17<sup>th</sup>, 18<sup>th</sup> and 19<sup>th</sup> Respondents.
20. She says that following her husband's demise, she learnt of a lot of debt owed by the 14<sup>th</sup>, and 18<sup>th</sup> Respondents', businesses which her husband was actively running before his demise, owed to various persons and resolved to streamline the businesses for accountability. That since the Petitioner was not an employee of the Respondents, the Respondents would not know the hours he spent in delivering any services as the services outsourced from the Petitioner were paid as per the agreed fees, upon completion. That the allegations that the Petitioner has salary arrears of ksh 14,149,815 are unsubstantiated and meant to mislead this honourable court for personal gain.



### **The 12<sup>th</sup> Respondent's Replying Affidavit**

21. The 12<sup>th</sup> Respondent vide the affidavit of its director, Meet Hiten Kumar Raja, on his part says that the Petitioner is unknown to him and the Petitioner has never been an employee of the 12<sup>th</sup> Respondent. The 1<sup>st</sup> Respondent is unknown to him but her late husband Hussein Mohamed Noorani and himself registered the 12<sup>th</sup> Respondent as a special purpose vehicle for the development of Silverstone Apartments. The 12<sup>th</sup> Respondent has never at any point in time sought the services of the Petitioner. As regards the email at page 48 of the Petitioner's bundle of documents, he says that he received the said email from the firm of Messrs Archer & Wilcock whom he had approached to provide legal advice before he could invest in the 12<sup>th</sup> Respondent. The essence of the email was just to forward the draft shareholders agreement in relation to the partnership with the late Noorani which he intended to have. That the same does not in any way allude to an employment relationship between the Petitioner and 12<sup>th</sup> Respondent.

### **The 6<sup>th</sup>, 8<sup>th</sup> and 9<sup>th</sup> Respondents' Replying Affidavit.**

22. The 6<sup>th</sup>, 8<sup>th</sup> and 9<sup>th</sup> Respondents vide the affidavit of Kwame Kariuki, a director of the said Companies deposes that the late Hussein Mohamed Noorani and himself registered the 6<sup>th</sup> Respondent as a special purposes' vehicle for the development of Runda Mumwe Gardens and Gitanga place. So, the 7<sup>th</sup> Respondent is not a Company but a development of Riverside Meadows. That the Petitioner was never and has never been an employee of the 6<sup>th</sup>, 8<sup>th</sup> and 9<sup>th</sup> Respondents. That the email at page 36 of the Petitioner's bundle of documents was forwarded to him as per the instructions of the late Hussein Mohammed Noorani and the petitioner did not do so as his employee or that of the 6<sup>th</sup> Respondent. The allegations that the Petitioner has salary arrears of ksh 14,149,815 are unsubstantiated and meant to mislead the honourable court for gain.

### **Petitioner's Further Affidavits**

23. The Petitioner in rejoinder says that the Respondents have misrepresented facts that he was never their employee and never been under their instructions. He says he was employed by the 1<sup>st</sup> Respondent and her late husband, Mr Mohammed Noorani from October 2006 and served in various capacities, including General Manager, Finance Officer, Site Manager, Quality Inspection Expert, and Director in different Companies owned by the 1<sup>st</sup> Respondent and her late husband. That the late Noorani Mohammed appointed him as his authorized agent for I & M bank account as well as Elegenza Cremics Ltd, one of their companies and the same were received by the bank on the 24<sup>th</sup> day of January 2020. He refers to the annexure marked ASA-3 to this end.
24. In response to the averments by the 6<sup>th</sup>, 8<sup>th</sup>, 9<sup>th</sup> and 12<sup>th</sup> Respondents' that he had no employment relationship with them, the Petitioner says that the 1<sup>st</sup> Respondent and her late husband had direct influence over other Respondent Companies and as such he was bound by their instructions to work under the Respondent Companies mentioned.

### **Determination**

25. The Court has considered the submissions filed by the parties in the case together with the depositions filed and has identified the following issues for determination in the case.
- i. Whether the Petitioner has proved that he was employed by any/and or all the Respondents in the case



- ii. If answer to (i) above is in the affirmative, whether his employment can be said to have been unfairly and unlawfully terminated.
  - iii. Whether the Petitioner has proved that he is owed benefits by any and /or all the Respondents
  - iv. What is the amount of terminal benefits owed if the answer to (iii) above is in the affirmative.
  - v. Whether the Petitioner has proved violation of human rights/fundamental freedoms set out in the petition
  - vi. If answer to (v) above is in the affirmative, what is the amount of damages to be awarded to the Petitioner.
26. The Petitioner deposes that he was employed by the Respondents. There was no written contract between the parties, and this fact is admitted by the Petitioner who says that he served in various capacities, including General Manager, Finance Officer, Site Manager, Quality Inspection Expert, and Director in different business and Companies owned by Kaneez Zehra Mohamad Noorani and her late husband. The 1<sup>st</sup> Respondent says that any work outsourced were paid for by the husband and she is not privy to the details.
27. The Court is to therefore consider whether on the evidence provided before Court, and in the absence of a written contract, employment relationship can be said to have existed as between the Petitioner and any or all of the Respondents.
28. It is also worth noting that the jurisdiction of the Employment and Labour Relations Court as far as employment matters are concerned is limited by the existence of an employment relationship as defined in law and the Court must always satisfy itself on this account before proceeding any further.
29. Section 2 of the *Employment Act*, 2007 defines an employee as:
- “a person employed for wages or a salary and includes an apprentice and indentured learner”
- An employer is defined in the same section as: “any person, public body, firm, corporation or company who or which has entered into a contract of service to employ any individual”
30. The Court in *Casmir Nyankuri Nyaberi vs Mwakikar Agencies Ltd* 2016 e KLR observed that;
- “I have stated elsewhere that an employment relationship is not the same as a work relationship. The mere fact that parties work together does not necessarily give rise to an employment relationship. This Court is fully aware that it is the responsibility of an employer to document the employment relationship and in certain respects, the burden of proving or disproving a term of employment shifts to the employer. This does not however release the Claimant from the burden of proving their case. Even where an employment contract is oral in nature, the Claimant must still adduce some evidence whether documentary or viva voce to corroborate their word. More importantly, where an employee believes that the employer has in its possession some documents that would support the case of the employee, that employee is obligated to serve a production notice.”
31. In the case before Court, the nature of work the Petitioner was performing for the Respondents is not clear at all. There are no pay slips attached by the Petitioner. The Court has seen some email correspondences at page 122 to 125 referencing payments without specifics on where such documents originated from, and the same applies to the account documents that have been attached to the supporting affidavit.



32. There are also work permits relating to some of the Respondents for periods between 2010 to 2014, but there is no specificity as to the work done and whether the Petitioner was paid for work done or not. The Court also finds it striking that the Petitioner as per his evidence occupied various important positions such as that of a director of the Respondents which ordinarily would have been shown by the documentation provided before court but which have not been availed to court.
33. The Court has also considered the Petitioner's response as contained in the further affidavit on the question whether there was an employer employee relationship between himself and the respondents. The only evidence referred to in this regard is the document marked ASA-3 in the further affidavit dated 1/7/2024 where he is appointed as an authorized agent for bank transactions which demonstrates that the late Noorani knew the Petitioner but falls short of showing any employment relationship. The Court has also seen the document labelled as 'acknowledgement of salary settlement' at page 11 of the supporting affidavit which is not signed and it is not clear from whom the document originated nor is the document dated. There is accordingly no evidence before court which shows that the Petitioner was an employee of any of the Respondents before Court.
34. Having found that there was no employer/employee relationship proved between the Petitioner and the Respondents, it is not apt to determine the next issue as the same is only dependent on the existence of an employment relationship which is jurisdictional.
35. The Petition before Court is therefore dismissed with no order as to costs.

**DATED AT NAIROBI THIS 23<sup>RD</sup> DAY OF JANUARY 2025.**

**MATHEWS NDUMA**

**JUDGE**

**Appearance:**

Mr. Omongo for Claimant/Respondent

Mr. Kipkorir for Respondent/Applicant

Mr. Kemboi – Court Assistant

