



Anungo v Nyakundi t/a GN Nyakundi Advocates (Cause E893 of 2024) [2025] KEELRC 270 (KLR) (6 February 2025) (Ruling)

Neutral citation: [2025] KEELRC 270 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E893 OF 2024
S RADIDO, J
FEBRUARY 6, 2025**

BETWEEN

EDGAR ANUNGO CLAIMANT

AND

GEOFFREY NYAKUNDI T/A GN NYAKUNDI ADVOCATES RESPONDENT

RULING

1. Edgar Anungo (the Claimant) sued Geoffrey Nyakundi t/a G.N. Nyakundi Advocates (the Respondent) alleging unfair labour practices and breach of contract.
2. Filed together with the Statement of Claim was a Motion seeking orders:
 - i. spent.
 - ii. That pending the hearing of this application inter partes, an interim order be issued compelling the Respondent to forthwith release and pay the applicant's withheld salary for the month of September to enable the applicant meet his basic financial obligations, including rent and utilities.
 - iii. That pending the hearing and determination of this application, an injunction be issued restraining the Respondent, its agents or servants from continuing to withhold the applicant's dues or taking any further adverse action against the applicant related to the employment terms.
 - iv. That the Honourable Court be pleased to issue orders directing the Respondent to produce the documents and information listed in Appendix 1 to this Notice of Motion.
 - v. That pending the hearing and determination of this application and the main suit, an injunction be issued restraining the Respondent, its agents or servants from tampering with and/or otherwise altering any records relating to the suit herein.



- vi. That the Honourable Court be pleased to issue such further or other orders as this Honourable Court may deem just and expedient be made to prevent the applicant from suffering irreparable harm as a result of the Respondent's actions.
- vii. That the costs of this application be provided for by the Respondent
3. The primary grounds in support of the Motion were that the Respondent had unlawfully withheld the applicant's salary from September 2024; the applicant was on the verge of being evicted from place of residence; the applicant was unable to meet his basic needs and was likely to suffer irreparable harm and that the Respondent had custody of documents the applicant needed to use in the litigation.
4. When the Motion was placed before the Court, it declined to certify it as urgent or to grant ex-parte injunctive orders. The Claimant was directed to serve the Motion ahead of directions on 6 November 2024.
5. Upon serve, the Respondent filed a Notice of Preliminary Objection on 29 October 2024 contending:
 - i. That the Claimant was engaged with the Respondent as a consultant and not an employee.
 - ii. That the dispute between the parties arises from the contract for consultancy services.
 - iii. That pursuant to Article 162(2)(a) (sic) of the Kenya, 2010 as read together with section 12 of the *Employment and Labour Relations Court Act*, Cap 8E of the Laws of Kenya, this Honourable Court lacks the jurisdiction to hear the dispute between the parties.
 - iv. That the Claimant's claim is therefore incompetent, an abuse of the court process and should be struck out with costs.
6. The Respondent also filed a replying affidavit in opposition to the Motion on 29 October 2024. In the affidavit, it was deponed that the Motion was an attempt to secure final orders at an interlocutory stage; the applicant had been engaged as a consultant and not employee and thus the Court lacked jurisdiction; the applicant had failed to tender a 30-day resignation notice and that the threshold for the grant of orders sought had not been met.
7. The parties did not attend the Court on 6 November 2024. Nevertheless, the Court gave directions and directed the Deputy Registrar to notify the parties.
8. Consequently, the Claimant filed his submissions on 20 November 2024, and the Respondent on 6 December 2024.
9. The Court has considered the Motion, affidavits, Notice of Preliminary Objection and submissions and concluded that both the Notice of Preliminary Objection and Motion are devoid of merits for the following reasons
10. One, the Notice of Preliminary Objection calls upon the Court to delve into and interrogate matters of evidence which appear controversial or contested.
11. From a cursory glance of the material on record, both parties are accusing each other of breach of contract and whether there was an employment relationship.
12. In other words, the Preliminary Objection does not meet the standard set in *Mukisa Biscuit Manufacturing Co Ltd v West End Distributors (1969) EA 696*.
13. Two, the proposed Orders (ii) and (iii) as sought and worded by the Claimant were transient in nature and were overtaken by events when they were declined at the ex-parte stage.



14. Three, there is a formal way for seeking discovery prior to the hearing and the Claimant has not given any reasons why he has not followed that path.

Orders

15. Arising from the above both the Motion and Notice of Preliminary Objection are dismissed. Each party to bear their own costs.

DELIVERED VIRTUALLY, DATED AND SIGNED IN MACHAKOS ON THIS 6TH DAY OF FEBRUARY 2025.

RADIDO STEPHEN, MCIARB

JUDGE

Appearances

For Claimant Angano & Ratemo Advocates LLP

For Respondent Kotonya Njoroge LLP, Advocates

Court Assistant Wangu

