



REPUBLIC OF KENYA



**KENYA LAW**  
THE NATIONAL COUNCIL FOR LAW REPORTING  
Where Legal Information is Public Knowledge

**Masawa v Magdak Maternity Hospital Limited (Cause E014 of 2024)  
[2025] KEELRC 296 (KLR) (4 February 2025) (Judgment)**

Neutral citation: [2025] KEELRC 296 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU  
CAUSE E014 OF 2024  
NZIOKI WA MAKAU, J  
FEBRUARY 4, 2025**

**BETWEEN**

**STEPHEN MASAWA ..... CLAIMANT**

**AND**

**MAGDAK MATERNITY HOSPITAL LIMITED ..... RESPONDENT**

**JUDGMENT**

1. On 23<sup>rd</sup> February 2024, Stephen Maswa (the Claimant) filed a Memorandum of Claim against Magdak Maternity Hospital (the Respondent), alleging unfair termination of his employment. He sought reinstatement, damages for unlawful termination, Kshs. 135,000/- in unpaid salary, as well as costs and interest of the suit.
2. The Claimant averred that he was employed by the Respondent as Operations Manager on 22<sup>nd</sup> December 2022 and worked diligently until his verbal termination on 12<sup>th</sup> June 2023. He contended that his dismissal was carried out without notice and that the Respondent had failed to pay him salary amounting to Kshs 135,000/-.
3. Although the Claim was served on the Respondent, they neither entered appearance nor filed any response. As a result, the matter proceeded undefended on 31<sup>st</sup> October 2024, with the Claimant giving his testimony. Subsequently he filed written submissions on 22<sup>nd</sup> January 2025.

**Claimant's Submissions**

4. The Claimant submits that the Respondent's failure to respond to the claim despite numerous notifications, effectively constitutes an admission of the claim. He further asserts that, based on his uncontroverted evidence, he has successfully proven his case on a balance of probabilities. He emphasizes the appointment letter, the lack of prior notice before his termination, and references sections 45 and 49 of the [Employment Act](#), as well as Articles 41 and 47 of [the Constitution](#).



5. Regarding, general damages the Claimant submits that he is entitled to Kshs. 1,000,000/-, However, if the Court is not inclined to award this amount, he requests that the court order compensation of 12 months' salary for the unfair termination, citing the Court of Appeal case of Kenya Broadcasting Corporation v Wakio [2019] eKLR as a precedent. In conclusion the Claimant urges the court to grant his claim in its entirety.
6. The claim was one that was fraught with paucity of information. Under section 47 of the Employment Act, an employee is permitted to lodge a complaint with the Labour Office withing 3 months of the alleged unfair termination. In this case, the Claimant asserts he was orally terminated in June 2023 and the complaint to the Labour Office seems to have been made in September 2023. Whereas he raised the same issues before the Labour Officer, he did not present any documentation to support the allegations of non-payment of salary. The Claimant has not properly articulated the claim he seems to have against the Respondent. He simply asserts he is owed a sum of Kshs. 135,000/- which from the Court's assessment neither represents a certain number of months plus notice or simply put, can not be divided by the monthly salary of Kshs. 25,000/-. It is clear the Claimant went to the Labour Office sometime in September 2023 and a letter was issued containing the demand for resolution of non-payment of dues including pro-rata leave. The letter dated 21<sup>st</sup> September 2023 was addressed to the Director of the Respondent and was neither stamped received nor accompanied by a certificate of posting to indicate dispatch to the said Director at Rongo. The salary claimed per the letter was Kshs. 30,000/- a month. There is no bank statement or payment slip indicating the salary earned per month further compounding the Claimant's woes. The Claimant did not show any demand for salary payment prior to the demand letter issued by his advocates on 26<sup>th</sup> October 2023. There is no correspondence around this issue making it tenuous to say the least. As the Claimant failed to properly plead and prove his case, the Court finds that the claim, though undefended, to have been unproved and is dismissed with no order as to costs.

It is so ordered.

**DATED AND DELIVERED AT KISUMU THIS 4TH DAY OF FEBRUARY 2025**

**NZIOKI WA MAKAU, MCIARB.**

**JUDGE**

