



REPUBLIC OF KENYA



**KENYA LAW**  
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**Komu & 2 others v RRR Kenya Limited (Cause E014 of 2024)  
[2025] KEELRC 975 (KLR) (27 March 2025) (Judgment)**

Neutral citation: [2025] KEELRC 975 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISII  
CAUSE E014 OF 2024  
NZIOKI WA MAKAU, J  
MARCH 27, 2025**

**BETWEEN**

**JOSEPH KOMU ..... 1<sup>ST</sup> CLAIMANT  
KEVIN OCHOLA ..... 2<sup>ND</sup> CLAIMANT  
KEVIN NJAU ..... 3<sup>RD</sup> CLAIMANT**

**AND**

**RRR KENYA LIMITED ..... RESPONDENT**

**JUDGMENT**

1. The Claimants through a statement of claim dated 29<sup>th</sup> October 2024 and filed in court on even date, sued the Respondent for breach of contract due to non-payment of salaries. They sought the following reliefs:
  - a. A declaration that the Respondent breached their employment contracts by failing to pay their salaries;
  - b. An order directing the Respondent to pay them the outstanding salaries as follows:
    - i. 1<sup>st</sup> Claimant Kshs. 2,400,000/-
    - ii. 2<sup>nd</sup> Claimant Kshs. 2,200,000/-
    - iii. 3<sup>rd</sup> Claimant Kshs. 2,200,000/-
  - c. General damages for breach of contract and financial hardship;
  - d. Costs and interests of the suit at court rates;
  - e. Any relief the court deems fit.



2. The Claimants stated that they were employed by the Respondent in different capacities. The 1<sup>st</sup> Claimant was hired as a Project Manager on 21<sup>st</sup> June 2021, with a monthly salary of Kshs. 400,000/-. The 2<sup>nd</sup> and 3<sup>rd</sup> Claimants were employed as Project Geologists on 29<sup>th</sup> June 2021, each earning a monthly salary of Kshs. 200,000/-. The Claimants averred that despite the explicit terms of their contracts, the Respondent failed to pay their salaries. Specifically, the 1<sup>st</sup> Claimant asserts that his salary from August 2023 to 31<sup>st</sup> January 2024, amounting to Kshs. 2,400,000/- remained unpaid. Similarly, the 2<sup>nd</sup> and 3<sup>rd</sup> Claimants alleged that they were not paid from August 2023 to June 2024, each accumulating salary arrears of Kshs. 2,200,000/-.
3. Although the Respondent was duly served, they neither entered appearance nor filed a defence, leading to the matter proceeding undefended.
4. All the Claimants testified in support of their case on 28<sup>th</sup> January 2025 whereat they reiterate their statements and adopted the bundle of documents in support of their case. They each indicated that the Respondent did not pay their salaries when the salaries fell due. Since the Respondent had neither entered appearance nor filed a defence and did not attend the hearing, the Court closed the defence case. Subsequently, the Claimants filed their written submissions on 14<sup>th</sup> February 2025. None were filed by the Respondent despite being served with a copy of the Claimants' submissions as directed by the Court.

#### **Claimants' Submissions**

5. The Claimants submit that the Respondent breached their employment contracts by failing to pay their salaries. They reference Part IV of the *Employment Act* on protection of wages, asserting that non-payment of salary could expose an employer to criminal liability. Specifically, they cite section 17 of the *Employment Act* which mandates that an employer must pay an employee's full wages for work done under a contract of service in Kenyan currency. They also rely on section 18(2)(c) of the *Employment Act*, which stipulates that salaries must be paid at the end of each month for employees engaged for a period exceeding one month. Additionally, they invoke Article 41(2) of *the Constitution*, which guarantees every employee the right to fair remuneration and reasonable working conditions.
6. To support their position the Claimants, cite the cases of *Chimwani v Solfin Solutions Limited* [2024] KEELRC 13478 (KLR), *Kiboko v Osteria Group (Kenya) Limited* (Cause E023 of 2022) [2023] KEELRC 2700 (KLR) (27 October 2023) and *Maureen Wanjiru Mwangi v Blue Sea Energy Limited* [2020; eKLR, in which the common thread was that non-payment of salary amounted to breach of contract and constituted an unfair labour practice. Regarding the reliefs sought, the Claimants submit that they are entitled to salary arrears due to the Respondent's breach of contract. On the issue of general damages they assert that the Respondent unjustifiably withheld their salaries and unduly delayed settling arrears, causing them significant hardship. They cited the case of *Jemima Holdings Limited v County Government of Kitui; County Assembly of Kitui (Interested Party)* [2023] KEHC 22201 (KLR), where the court held that damages for breach of contract may be awarded in instances of oppressive, high-handed, outrageous, insolent, or vindictive conduct by the Respondent. They further place reliance on the case of *Jamuto Enterprises Ltd v County Government of Meru* [2021] eKLR, in which the court deemed a three-year delay in payment of contractual dues as unconscionable, oppressive, and injurious. The court also held that when one party unfairly withholds another's money, the innocent party is entitled to damages to restore them to the position they would have been in had the breach not occurred.
7. With respect to costs and interest, the Claimants urge the court to award both from the date of filing suit to the date of the decree. They assert that they have incurred expenses in enforcing a legal right



against the Respondent. They cite section 26(1) of the Civil Procedure Act, which grants the court discretion to award interest either from the date of filing suit to the date of judgment or from the date of judgment till payment in full. On the question of special damages, they cite the case of *Jemmina Holdings v County Government of Kitui; County Assembly of Kitui (Interested Party)* (supra) where the court emphasized that special damages attract interest from the date of filing suit, while general damages attract interest from the date of judgment. In conclusion the Claimants assert that they have proven their case to the required standard and urge the grant of the reliefs sought in their claim.

8. The Court has considered the pleadings on record, the evidence adduced including the testimony of the 3 Claimants. The Court has taken into account the submissions and decisions cited. The Claimants were all employees of the Respondent and were engaged as project manager and project geologists. They are competent and articulate.
9. The Respondent did not defend the suit despite the many opportunities granted by the Court. The Claimants assert the Respondent failed and/or refused to pay their salaries when due contrary to the provisions of section 17 of the Employment Act. They sought the payment of the arrears as well as general damages for breach of contract and financial hardship.
10. The law in our realm concerning employment contracts is that general damages are not awardable for breach of contract or breach of contractual obligations in employment. Instead, the Employment Act provides for compensation under section 49. The Claimants did not plead for compensation and they therefore will not recover under this head.
11. The Claimants cited the cases of *Chimwani v Solfin Solutions Limited* (supra), *Kiboko v Osteria Group (Kenya) Limited* (supra) and *Maureen Wanjiru Mwangi v Blue Sea Energy Limited* (supra), in which the common thread was that non-payment of salary amounted to breach of contract and constituted an unfair labour practice. These cases are on point in regard to the non-payment of salary. The Court returns that the Respondent breached the contracts of employment by refusing to pay the salaries of the Claimants. The 1<sup>st</sup> Claimant proved he was not paid his dues as project manager from August 2023 to 31<sup>st</sup> January 2024 amounting to Kshs. 2,400,000/-. He would therefore be entitled to the sum of Kshs. 2,400,000/-. The 2<sup>nd</sup> and 3<sup>rd</sup> Claimants proved that they were not paid from August 2023 to June 2024 each accumulating salary arrears of Kshs. 2,200,000/-. They are therefore entitled to the sums unpaid. They have been forced to go for many months without any pay.
12. The Claimants thus are entitled to relief and judgment is entered for Claimants against the Respondent as follows:
  - a. The 1<sup>st</sup> Claimant – Kshs. 2,400,000/- as unpaid salary
  - b. The 2<sup>nd</sup> Claimant – Kshs. 2,200,000/- as unpaid salary.
  - c. The 3<sup>rd</sup> Claimant – Kshs. 2,200,000/- as unpaid salary.
  - d. Interest at court rates on the sums in a), b) and c) above from the date of judgment till payment in full.
  - e. Costs of the suit.

It is so ordered.

**DATED AND DELIVERED AT KISUMU THIS 27<sup>TH</sup> DAY OF MARCH 2025**

**NZIOKI WA MAKAU, MCIArb.**

**JUDGE**

