



**Ndungu v Kenya Institute Of Management (KIM) (Cause  
E875 of 2024) [2025] KEELRC 952 (KLR) (27 March 2025) (Ruling)**

Neutral citation: [2025] KEELRC 952 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E875 OF 2024  
BOM MANANI, J  
MARCH 27, 2025**

**BETWEEN**

**ZIPPORAH WANGECI NDUNGU ..... CLAIMANT**

**AND**

**KENYA INSTITUTE OF MANAGEMENT (KIM) ..... RESPONDENT**

**RULING**

1. The Claimant has instituted this action to challenge the Respondent's decision to terminate her contract of service on grounds of gross negligence, misconduct and poor performance. She contends that the Respondent posted her to a station which had a plethora of challenges that affected its performance. She further contends that the Respondent did not accord her support to navigate these challenges.
2. The Claimant avers that notwithstanding the failure by the Respondent to accord her support, she instituted a series of changes at the station which saw it improve in performance. It is her case that the Respondent did not take into account the improved performance of the station in its decision to terminate her contract.
3. The Claimant contends that in March 2023, one student was inadvertently left out of the Respondent's graduation list of the year. As a result, he did not graduate.
4. The Claimant avers that as a result of this occurrence, the Respondent issued her with a notice to show cause accusing her of gross negligence and misconduct. She contests the Respondent's assertion that she was responsible for the error and blames the incident on institutional challenges within the Respondent.
5. The Claimant contends that the Respondent issued her with a second letter of show cause in February 2024 accusing her of poor performance. She avers that this was notwithstanding that the performance



- challenges at the station was institution based. She further contends that the Respondent unfairly placed her under a performance improvement plan as a result.
6. The Claimant avers that the Respondent eventually issued her with a letter of termination of her contract of service as from 2<sup>nd</sup> May 2024. She contends that the Respondent's decision was not anchored on valid reason and violated the principles of fair procedure.
  7. The Claimant accuses the Respondent of having withheld part of her salary and other emoluments during the currency of her contract. She also accuses the Respondent of having made statutory and loan deductions from her salary but failed to remit the money collected to the relevant agencies. As a consequence, she contends that she suffered loss in penalties. As a result, she, inter alia, claims Ksh. 5,454,499.00 from the Respondent.
  8. Accompanying the Statement of Claim is the instant application dated 15<sup>th</sup> October 2024. In the application, the Claimant prays for the following orders:-
    - a. Spent.
    - b. That the Respondent be ordered to pay to her all withheld salaries of more than sixteen months.
    - c. That the Respondent be compelled to release to her the deductions from her salary together with interest thereon.
    - d. That the Respondent be ordered to clear her immediately and to release her dues withheld since 2022.
    - e. That the court gives directions on costs of the application.
  9. The application is anchored on the grounds on the face of it and the affidavits in support thereof. Essentially, the Claimant asserts that the Respondent's decision to terminate her contract was illegal. Yet, it (the Respondent) still insists on withholding her salary arrears, statutory deductions and other terminal benefits. She contends that the Respondent's actions are discriminatory and have subjected her to unnecessary suffering, trauma and servitude.
  10. The Claimant avers that the Respondent has insisted that in order for her to be paid her terminal dues, she must clear with it. Yet, it has failed to allow for the clearance process to be concluded by insisting that she accounts for a fictitious sum of Ksh. 706,806.00.
  11. The Claimant contends that if the court does not intervene and order the Respondent to release her salary arrears and other emoluments, she faces the danger of imminent litigation. She fears that this may result in her assets being auctioned.
  12. The Respondent is opposed to the application. It contends that the reliefs which the Claimant is pursuing through the application are the very same ones that she seeks in the suit. As such, they cannot issue at the interim stage.
  13. The Respondent avers that the purported interim claims are contested matters in the suit. It contends that in making the interim request, the Claimant makes an assumption that the sums claimed in the application are owing. Yet, they are contested. As such, the court can only determine the issues through full trial of the case.
  14. The Respondent avers that the contention by the Claimant that her salary for December 2022 to March 2024 was not paid is false. It contends that it has evidence to confirm payment of the purported salary arrears.



15. The Respondent avers that it pays staff salaries in bulk through bank transfers and simultaneously issues pay slips with the bank transfers to support the payments. Thus, it contends that the fact that the Claimant has pay slips for the period in question is proof that her salary was paid.
16. Similarly, the Respondent denies the Claimant's assertion that it deducted loan instalments from her salary but failed to remit them to the Claimant's bankers. To support this contention, the Respondent refers to the pay slips on record which allegedly demonstrate that no debits were effected on the Claimant's salary towards loan instalment payments. The Respondent avers that although its members of staff benefit from concessionary loan facilities from banks, the obligation to service the loans rests with them (the employees) and not the employer.
17. With regard to remittance of statutory deductions, the Respondent admits that it fell into arrears on this. However, it contends that it has since entered into an arrangement with the Kenya Revenue Authority regarding how to clear the arrears and is currently servicing the arrears as per the aforesaid agreement.
18. The Respondent avers that the Claimant owes it Ksh. 706,806.00. It contends that it will be prejudiced for the court to compel it to pay the Claimant the sums claimed without accounting for the aforesaid amount.

### **Analysis**

19. The Claimant did not cite the provisions of law under which she filed the instant application. However, the motion bears the face of an application for summary judgment.
20. A cursory look at the Statement of Claim and the application demonstrates that the interim reliefs which the Claimant seeks through the application form part of the reliefs which she seeks in the suit. This includes liquidated claims for: salary arrears; and deductions made to her salary but allegedly not remitted to various agencies.
21. The Claimant seeks the reliefs in the application, which are mainly liquidated in nature, before trial. And hence the position expressed by the court that the motion bears the face of a request for summary judgment.
22. As demonstrated earlier in the ruling, the Respondent has contested all the claims. None of them is admitted.
23. The foregoing being the case, the court is obligated to evaluate the evidence that the parties will present on the disputed claims before it can make a conclusive finding on them. It is not open to it (the court) to determine such claims at an interlocutory stage on the basis of contested evidence which has not been subjected to cross-examination.
24. The court can only entertain the request presented by the Claimant if there was no contest regarding the interim reliefs that are sought. However, where the Respondent has strongly contested the request, it has to go to full trial.
25. In the court's view, once the Respondent expressed the position that: the purported salary arrears are not due as the money has been paid; the purported loan deductions were not effected against the Claimant's salary as purported by her; and it (the Respondent) has an ongoing arrangement to settle the tax obligations under inquiry, the dispute thereby raised triable issues which can only be resolved through trial. This obliterated the possibility of the court issuing a summary order requiring the Respondent to pay out the contested amounts.



26. As has been observed previously, it is not desirable for the court to make definitive conclusions and findings on contested matters at the interlocutory stage of a dispute. Such matters ought to await trial to enable their resolution (Isaac Musyoki Komoni v Sammy Kaumbulu Mbuvi [2022] eKLR).
27. Indeed, the observations by the court in the case of Mathenge v DLR Group Africa Limited (Cause E942 of 2021) [2024] KEELRC 960 (KLR) (2 May 2024) (Judgment) relied on by the Claimant were made in the context of a final judgment after the court had evaluated the evidence which had been presented by the parties. As such, it cannot be relied on to support the instant application for interim reliefs before the parties have had the opportunity to tender evidence on the contested matters during the anticipated trial.

### **Determination**

28. The upshot is that the court arrives at the conclusion that the application dated 15<sup>th</sup> October 2024 is unmerited.
29. As such, it is dismissed.
30. Costs of the application are granted to the Respondent.

**DATED, SIGNED AND DELIVERED ON THE 27<sup>TH</sup> DAY OF MARCH, 2025**

**B. O. M. MANANI**

**JUDGE**

In the presence of:

..... for the Claimant/Applicant

.....for the Respondent

### **ORDER**

In light of the directions issued on 12<sup>th</sup> July 2022 by her Ladyship, the Chief Justice with respect to online court proceedings, this decision has been delivered to the parties online with their consent, the parties having waived compliance with Rule 28 (3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

**B. O. M MANANI**

