



**Gatuguta v Discovery Centre Limited (Cause E628 of 2024)  
[2025] KEELRC 888 (KLR) (20 March 2025) (Ruling)**

Neutral citation: [2025] KEELRC 888 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E628 OF 2024  
L NDOLO, J  
MARCH 20, 2025**

**BETWEEN**

**EUNICE KIRIGO GATUGUTA ..... CLAIMANT**

**AND**

**DISCOVERY CENTRE LIMITED ..... RESPONDENT**

**RULING**

1. By her Notice of Motion dated 22<sup>nd</sup> January 2025, the Claimant asks the Court to enter judgment in her favour, on account of the Respondent's admission as to salary arrears and non-remittance of Higher Educational Loans Board deductions, as per the Respondent's letters dated 15<sup>th</sup> April 2024, 12<sup>th</sup> June 2024 and 8<sup>th</sup> July 2024.
2. The Motion is supported by the Claimant's own affidavit and is based on the grounds that:
  - a. Vide letters dated 15<sup>th</sup> April 2024, 12<sup>th</sup> June 2024 and 8<sup>th</sup> July 2024, the Respondent admitted that the Claimant's salary had not been paid and that the same was in arrears. The Respondent also admitted not making regular/consistent payment to the Higher Education Loans Board;
  - b. Court proceedings should not permit the Respondent to cause the Claimant unnecessary costs in pursuing a full hearing, in addition to the precarious position that the Claimant finds herself in;
  - c. It is in the interest of justice that the orders sought be granted.
3. The Respondent opposes the application by a replying affidavit sworn by its Director, Daniel Gichuki Muhoro on 31<sup>st</sup> January 2025.
4. Muhoro terms the application as frivolous and vexatious. He depones that the Claimant's claim before the Court is for constructive dismissal. He denies any admission on the part of the Respondent.



5. The Claimant swore a further affidavit on 10<sup>th</sup> February 2025, in response to the replying affidavit filed on behalf of the Respondent. She depones that the letters annexed to her supporting affidavit dated 22<sup>nd</sup> January 2025, indicate a clear and unequivocal admission of part of the amount due as salary arrears and unpaid allowances.
6. The single issue for determination in this Motion is whether the Claimant has made out a case for partial judgment on admission.
7. It is well settled that summary judgment is to be entered only in cases where there is clear and unambiguous admission.
8. In *Cassam v Sachania* [1982] KLR Potter JA stated the following:

“The judge’s discretion to grant judgment on admission of fact....is to be exercised only in plain cases where the admissions of fact are so clear and unequivocal that they amount to an admission of liability entitling the plaintiff to judgment.”
9. In the subsequent decision in *Choitram v Nazarani* [1984] KLR 327, Madan JA (as he then was) rendered himself thus:

“Admissions have to be plain and obvious, as plain as a pikestaff and clearly readable because they may result in judgment being entered. They must be obvious on the face of them without requiring a magnifying glass to ascertain their meaning. Much depends upon the language used. The admissions must leave no room for doubt.”
10. The foregoing position was restated in the more recent decision in *Express Automobile Kenya Limited v Kenya Farmers Association Limited & another* [2020] eKLR.
11. In its submissions dated 18<sup>th</sup> February 2025, the Respondent cites the decision in *Agricultural Finance Corporation v Kenya National Assurance Company Limited* [1997] eKLR where the Court of Appeal held that:

“Final judgment may not be passed on admissions unless they are clear, unambiguous and unconditional. A judgment on admission is not a matter of right; rather it is a matter of discretion of the Court and where a defendant has raised objections that go to the very root of a case, it would not be proper to exercise this discretion.”
12. The Claimant filed two sets of submissions dated 28<sup>th</sup> January 2025 and 24<sup>th</sup> February 2025. While in his original submissions he pursued summary judgment with respect to the entire claim, in the further submissions, he singled out the claims for salary arrears and unremitted Higher Education Loans Board dues.
13. The Claimant relied on the decision in *Sehmi v Henkel Polymer Co Ltd t/a Henkel Chemical (EA)* [2023] KEELRC where my brother Dr. Gakeri J held that judgment on admission may be partially allowed.



14. By its letter dated 15<sup>th</sup> April 2024, the Respondent admits that there were unpaid dues arising from the Claimant's emoluments, including unremitted statutory deductions. Paragraph 3 of the subject letter states:

“We will be doing the reconciliation within the next one week, and will come with a proposal on how it will be settled. Please note that for the statutory deductions, we will deal directly with the institutions such as HELB.”

15. A subsequent letter dated 12<sup>th</sup> June 2024, issued by the Respondent's Advocates in response to a demand letter by the Claimant's Advocates dated 7<sup>th</sup> June 2024, was more categorical. At paragraph 5 of this letter the Respondent's Advocates wrote:

“the response to the demanded amounts is as follows:

- a. Arrears in Wages/Salary – Amounts are as per the attached schedule.
- b. One (1) month's salary in lieu of notice. This does not apply because your client resigned of her own volition and served the notice period.
- c. Unremitted deductions to H.E.L.B. – Statutory deductions are an obligation of the company to the statutory bodies including H.E.L.B. The said amounts can therefore not be considered as due to your client.
- d. Unpaid allowances & overtime – Amounts due are as per the attached schedule.
- e. Compensation on Unfair Constructive Termination – Your Client resigned on her own volition and served for the notice period. Claims of Unfair Constructive Termination are false and preposterous.
- f. Profits from Discovery Centre Smart Maker – Smart Maker was a business line that Our Client ventured into. However, Our Client only managed to make sales in 2018 and 2019. During and after the period affected by the COVID 19 pandemic, Our Client has not made any sales of the same. In the years 2018 and 2019, the company made losses and hence there was nothing to be shared.
- g. Certificate of Service – Your Client will be issued with a certificate of service.
- h. KRA P9 Form – Your Client will be issued with a KRA P9 form”

16. Attached to the letter dated 12<sup>th</sup> June 2024, is a detailed reconciliation showing the sum of Kshs. 515,466.50 as balance due to the Claimant, on account of net salary and allowances. To my mind, this constitutes a clear and unambiguous admission and I have no hesitation in entering partial judgment on this account.

17. Regarding the claim for unremitted Higher Education Loans Board dues, there is no admission of any particular figure. Further, the rightful recipient of these dues, as between the Claimant and the Higher Education Loans Board, is a matter in controversy, to be determined at full trial.

18. Finally, I enter judgment in favour of the Claimant as against the Respondent, in the sum of Kshs. 515,466.50 being accrued salary and allowances as admitted by the Respondent.

19. The said amount will attract interest at court rates from the date of this ruling until payment in full.



20. The Respondent will pay the costs of the application.

21. Orders accordingly.

**DELIVERED VIRTUALLY AT NAIROBI THIS 20<sup>TH</sup> DAY MARCH 2025**

**LINNET NDOLO**

**JUDGE**

Appearance:

Mr. Okadia for the Claimant

Mr. Mwangi for the Respondent

