



Owii v Tropical Institute of Community Health & Development (TICH) in Africa & another (Cause E089 of 2024) [2025] KEELRC 806 (KLR) (13 March 2025) (Judgment)

Neutral citation: [2025] KEELRC 806 (KLR)

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
CAUSE E089 OF 2024
JK GAKERI, J
MARCH 13, 2025

BETWEEN

SALMON OGUTU OWII CLAIMANT

AND

**TROPICAL INSTITUTE OF COMMUNITY HEALTH & DEVELOPMENT
(TICH) IN AFRICA 1ST RESPONDENT**

**THE MANAGING DIRECTOR, TROPICAL INSTITUTE OF COMMUNITY
HEALTH AND DEVELOPMENT (TICH) IN AFRICA 2ND RESPONDENT**

JUDGMENT

1. The Claimant commenced the instant suit on 21st November, 2024 vide a memorandum of claim for unpaid salary arrears and prays for:
 - i. A declaration that he is entitled to salary arrears of Kshs.363,000.00
 - ii. An order compelling the respondent to pay the salary arrears of Kshs.363,000.00.
 - iii. General damages.
 - iv. Costs of this suit at court rates of 14%.
2. The claimant's case is that he joined the respondent on 13th February, 2021 as the Director, effective 1st March, 2021 under a three (3) year contract but resigned owing to unfavourable and hostile working environment and at the time of resignation, the respondent owed him salary arrears for November and December, 2021 and January, 2022, total Kshs.363,000.00.
That notwithstanding several reminders, the amount remains unpaid.
3. By a response dated 20th December, 2024, the respondent admits owing the claimant the sum of Kshs.363,000.00 as unpaid salary arrears and admits prayers (i) and (ii) but denies the claimant's



entitlements to general damages and costs as he was the respondents Chief Executive Officer since December 2021, absconded duty and did not hand over and retains the respondents property and was being investigated for having disappeared with over Kshs.3,000,000.00 belonging to the respondent.

4. That the amount owed will be paid when the claimant hands over and clears with the respondent.

Claimant's Evidence

5. On cross-examination, the claimant testified that he did not know that he was supposed to clear and hand over a report but admitted having seen the letter dated 18th July, 2022 requiring hand over reports, which he did not respond to but did not indicate in his evidence that he did not receive it.
6. It was his testimony that he served the resignation letter physically and was the Chief Executive Officer (C.E.O) but was not aware that staff were not paid yet he did not receive his salary.
7. The claimant testified that he handed over what he had pursuant to the letter dated 13th September, 2021, but confirmed that no other after resignation letter on 20th January, 2022.

Respondent's Evidence

8. RWI, Professor Charles Wafula testified that the claimant resigned and his resignation was accepted.
9. The witness further admitted that the respondent had cash flow challenges and prayed for more time to pay.
10. The witness testified that the claimant did not clear with the respondent which was a normal practice for staff.
11. According to the witness, the claimant has not been paid because he had not cleared with the respondent and the respondent does not dispute the amount claimed.
12. That the witness confirmed that he had talked to the claimant about the clearance and he had handed over to the claimant when he left the respondent.
13. On re-examination, RWI testified that the claimant absconded and then resigned and all the respondent requires is for the claimant to clear and hand over.
14. By the time the court retired to prepare this judgment, after the 14 days accorded to the claimant to file and serve submissions, no submissions had been filed on the CTS.
15. On 18th February, 2025, the respondent's counsel confirmed that he would rely on documents on record exclusively and not file submissions.

Analysis and Determination

16. It is common ground that the claimant was an employee of the respondent and the parties separated by the claimant's resignation vide letter dated 20th January, 2022, which the respondent accepted.
17. Equally not in contest is the fact that the respondent owes the claimant salary arrears for November, 2021, December 2021 and January 2022, Kshs.363,000.00.
18. The claimant admitted that he was the respondent's Chief Executive Officer but could not tell why members of staff had not been paid including his own salary.
19. The only issue which the parties do not appear to agree on is whether or not the claimant cleared with the respondent and handed over.



20. In his response to the respondent's response to the memorandum of claim, the claimant avers that he handed over the seal and tools of office to the office Secretary, Ms. Peninah as per the request on 13th September, 2021.
21. However, on cross-examination, the claimant admitted that the letter dated 13th September, 2021 referred to his being released from one role to take up another and in any event he did not allege having cleared after his resignation.
22. Earlier, on cross-examination, the claimant stated that he was not aware that he was supposed to clear and hand in a report but again admitted the contents of the letter dated 18th July, 2022 which required him to submit hand over reports, almost 6 months after his resignation.
23. From the record, it is unclear as to whether the claimant responded to this letter.
24. RWI on other hand testified that the claimant had not cleared and that was the reason why payment was not been forthcoming.
25. As the Chief Executive Officer of the respondent, the claimant knew or ought to have known that that clearance and handover are ordinary occurrences in separations between employer and employee. The statement that he was not aware of the need to clear or hand over cannot avail the claimant in the face of a written document requiring him to prepare hand over reports.
26. From the evidence on record, it is the finding of the court that the claimant has neither cleared with the respondent nor handed over as the former C.E.O of the organization, which is essential for continuity.
27. Although the claimant alleged that he resigned because of unfavourable/hostile work conditions, he did not testify as to the nature of hostility he had to contend with and when and for how long the alleged unfavourableness persisted forcing him to leave on 20th January, 2021.
28. More significantly, the resignation letter on record makes no reference to any unfavourable or hostile work environment.
29. Other than requesting payment of salary arrears, the claimant hand no complaint against the respondent and wished the council staff and all stakeholders the best in their endeavours.
30. There is no evidence to suggest that the claimant was a disgruntled employee.
31. Resignation by an employee is one of the legitimate approaches to termination of the employment relationship where the relationship ends at the instance of the employee. It is a unilateral act and the law does not require any acceptance by the employer. See *Edwin Beiti Kipchumba V National Bank of Kenya Ltd* [2018] eKLR.
32. A resignation takes effect immediately and the employee can tender a resignation at any time the employee wishes to do so. See *Kennedy Obala Oaga V Kenya Ports Authority* [2018] eKLR.
33. Significantly, the claimant has neither pleaded nor alleged this his employment was constructively dismissed by the respondent and there is no evidence on record to support such an allegation.
34. In the end, it is the finding of the court that the claimant voluntarily resigned from employment on 20th January, 2022 and the only item that is outstanding is unpaid salary arrears which the respondent is ready and willing to pay as soon as the claimant clears and hands over the office he previously held, to the respondent.



35. In conclusion, since the respondent admitted owing the amount claimed as salary arrears and is willing to pay and having found that the claimant voluntarily resigned from employment, but neither cleared nor handed over to the respondent, the reliefs available to the claimant are as follows:
- a. Declaration that the claimant is entitled to the unpaid salary arrears.
 - b. Respondent shall pay the claimant the sum of Kshs.363,000.00.
 - c. The claimant shall clear with the respondent and hand over.
 - d. The claimant is awarded 50% of the costs of the suit.

Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KISUMU ON THIS 13TH DAY OF MARCH, 2025.

DR. JACOB GAKERI

JUDGE

Order

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court has been guided by Article 159(2)(d) of *the Constitution* which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of *the Constitution* and the provisions of Section 1B of the *Civil Procedure Act* (Chapter 21 of the Laws of Kenya) which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

DR. JACOB GAKERI

JUDGE

