



**Kiruhi v Nusunusu Production Limited (Cause E964 of 2022)
[2025] KEELRC 744 (KLR) (7 March 2025) (Judgment)**

Neutral citation: [2025] KEELRC 744 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E964 OF 2022
B ONGAYA, J
MARCH 7, 2025**

BETWEEN

EDDAH KIRUHI CLAIMANT

AND

NUSUNUSU PRODUCTION LIMITED RESPONDENT

JUDGMENT

1. The claimant filed the statement of claim dated 21.12.2022 through Sheila Mugo & Company Advocates. She prayed for judgment against the respondent as follows:
 - a. A declaration that her dismissal by the respondent was unfair, unprocedural and unlawful.
 - b. A declaration the respondent treated her with indignity contrary to Article 28 of *the Constitution*.
 - c. The declaration that the respondent violated her right to fair administrative action contrary to Article 47 of *the Constitution* and section 4 of the *Fair Administrative Action Act*.
 - d. 12-months' compensation Kshs.4,200,000.00; a month's salary in lieu of notice Kshs. 350,000.00; unpaid salary for March, April, May June, July, August, September, October, and November at Kshs.198,000.00; and refund for hiring computer Kshs. 160,000.00.
 - e. Compensation for violation of rights.
 - f. Certificate of service.
 - g. Costs of the suit.
 - h. Any other just relief.
2. The claimant's case was as follows:



- a. The respondent employed the claimant as a production manager by contract dated 30.07.2018. Monthly salary was Kshs. 350,000.00, furl allowance Kshs. 12,000.00 per month, and mobile phone allowance of Kshs.10,000.00 per month.
 - b. Effective March 2020 the respondent defaulted in payment of salaries and was paid Kshs.80,000.00 plus full allowances in March 2020. From April to November the respondent failed to pay the salary.
 - c. By email of 20.07.2020 the claimant issued a resignation notice in view of the non-payment and upon verbal promise to resolve issues the claimant verbally retracted the resignation notice. Latter in October she was paid a further Kshs.30,000.00. she continued to work and hired a computer for 16 days at Kshs.160,000.00.
 - d. She was treated with indignity because she was admitted in hospital on 28.09.2020 and on 23.10.2020 disconnected from office email. On 29.10.2020 the respondent issued a show cause letter and on23.10.2020 she was disconnected from office email. Her termination amounted to unfair administrative action contrary to Article 47 because on 18.11.2020 the respondent purported to convene a disciplinary hearing but which did not address the alleged absconding from duty. On 19.11.2020 by aborting the disciplinary process, the respondent terminated the employment by purportedly accepting the claimant’s resignation notice of 27.07.2020 and effective 03.08.2020. the dismissal was therefore unfair as prayed for.
3. The respondent did not enter appearance or file a defence.
4. The Court has considered the material on record and returns that the suit will fail because of the following findings:
- a. The statement of claim and the summons appear to have been served through email addresses not provided by the respondent or by respondent’s authorised officer. The Court infers from the affidavit of service dated 25.01.2023 that service was not properly effected.
 - b. The employment must have ended by the claimant’s resignation email of 27.07.2020. The alleged oral rescission of the resignation is inadmissible under the parol evidence rule. The claimant cannot have resigned and remained in employment. The claimant has not shown that she worked between March 2020 to the date of her resignation. While making the finding the Court has judicially noticed that at the material time COVID 19 was at its peak. The claimant carefully conceals in her pleaded case that crucial material fact that obviously impacted on her employment. The Court finds that every transaction after the resignation between the parties was misconceived and under misconception that the employment relationship was subsisting.
 - c. The claimant has not explained why between 19.11.2020 when she alleges that the purported disciplinary process aborted by alleged wrongful acceptance of the resignation notice, and the date of filing the suit on 21.12.2022 no demand had been made to the respondent about the claims in the instant suit.it is not pleaded that such demand was ever made. The suit is found to be a mere afterthought and it must fail as unjustified.
 - d. The alleged hire of a laptop is not shown to have been with respondent’s authority and the circumstances of the hire are not explained. The claim is found unjustified.

In conclusion the suit is hereby dismissed with no costs.

SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS FRIDAY 7TH MARCH, 2025



BYRAM ONGAYA
PRINCIPAL JUDGE

