



REPUBLIC OF KENYA



**KENYA LAW**  
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**Saisi v Francis Mulama Kadima t/a Kadima & Company Advocate (Cause  
11 of 2020) [2025] KEELRC 737 (KLR) (7 March 2025) (Judgment)**

Neutral citation: [2025] KEELRC 737 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA  
CAUSE 11 OF 2020  
AK NZEI, J  
MARCH 7, 2025**

**BETWEEN**

**JOHN MAKOKHA SAISI ..... CLAIMANT**

**AND**

**FRANCIS MULAMA KADIMA T/A KADIMA & COMPANY  
ADVOCATE ..... RESPONDENT**

**JUDGMENT**

1. The Claimant herein sued the Respondent vide a Memorandum of Claim dated 13<sup>th</sup> February, 2020 and filed in Court on 14<sup>th</sup> February, 2020, and sought the following reliefs:-
  - a. General damages for constructive dismissal.
  - b. Award of arrears of allowances ..... Kshs.4,597,500/=.
  - c. Unpaid leave allowances ..... Kshs.2,105,000/=.
  - d. Severance pay ..... Kshs.1,610,000/=.
  - e. Commission on sale of 400 acres out of Kilifi/Madzimbani/Mitangoni/B/1 of Kshs.23,900,000/=.
  - f. Remuneration pleaded at paragraph 2.7 (of the statement of claim).
  - g. Costs of the claim.
  - h. Certificate of service.
  - i. Interest from the date of filing claim.
2. The Claimant pleaded that he was on 6<sup>th</sup> May, 2010 hired (employed) by the Respondent as a Legal Assistant and assigned duties through a delegated authority. It was the Claimant's pleading:-



- a. that there was, at the time, pending Disciplinary Proceedings before the Advocates Disciplinary Tribunal whereby the Claimant had petitioned to be restored on the Roll of Advocates and a Judgement and his prayers declined, but granted permission to work and to earn a living in accordance with *the Constitution* of Kenya 2010.
  - b. that pursuant to the said Judgement of the Disciplinary Tribunal, the Law Society of Kenya permitted the Respondent to employ the Claimant for a period of three (3) years starting from 21<sup>st</sup> July, 2011 to 20<sup>th</sup> July, 2014.
  - c. that under the forgoing arrangement, the Respondent was required to give a professional undertaking to the Law Society of Kenya indemnifying it and clients of any loss during the said period of three years and to manage the Claimant's finances by remitting part of his salary to the Law Society of Kenya.
  - d. that the Respondent failed to honour his part of the bargain by remitting part of the Claimant's salary to the Law Society of Kenya, which was a condition to the Claimant re-applying for restoration to the Roll of Advocates.
  - e. that at the end of the three (3) years period aforesaid, the Respondent asked the Claimant to remain in employment, on promise that the Respondent would change the terms of employment in order to meet the target and at the same time [for] the Claimant to earn raw commission at 30% on designated files as part of separation package should the Claimant opt to leave employment upon restoration.
  - f. that pursuant to the foregoing, the Claimant was assigned files from which he would earn commission as aforesaid as his remuneration in addition to monthly allowances of Kshs.210,000/= as from 1<sup>st</sup> October, 2015.
  - g. the assigned eight (8) files are listed at paragraph 7 (i) – (viii) of the statement of claim.
3. The Claimant further pleaded:-
- a. that without consultation or courtesy to inform the Claimant that there were changes in the firm which would impede the arrangement between the Claimant and the Respondent, the Respondent casually informed the Claimant that he (the Respondent) had teamed up with his nephew at Nairobi, whom he had put in charge there, that the staff had been merged and [were] trading as Kadima Advocates and Amadi & Amadi Advocates. That the Respondent was in the process of synchronizing all the files for all offices including Mombasa where the Claimant was stationed.
  - b. that the Respondent became openly abusive, demeaning the Claimant before clients and junior staff under him; who would express disappointment to the Claimant regarding what the Respondent was saying of him.
  - c. that the Respondent created an uncondusive atmosphere at the work place, solely to drive the Claimant out of the employment and the promises that he had privately [and] orally agreed with the Claimant.
  - d. that the foregoing culminated in the Claimant's resignation on 8<sup>th</sup> August, 2019 vide an email of even date; receipt whereof the Respondent acknowledged on 9<sup>th</sup> August, 2019.
  - e. that the Claimant's efforts to have the matter settled amicably failed due to the Respondent's sustained slander campaign against the Claimant.



- f. that the Respondent wilfully withheld deductions and entire allowances, which [fell] in arrears and were carried forward from time to time since 2016, through 2017, 2018 and 2019; purposely to suffocate the Claimant economically so that he could continue serving the Respondent.
- g. that the Respondent ought to have paid the Claimant's dues within one month of his resignation, and that by failing to do so, the Respondent was in breach of Article 41(1) of the Constitution of Kenya 2010 which provides that:-
- “Every person has a right to fair labour practices.”
- h. that the unpaid arrears were as follows:-
- i. 2016..... Kshs. 840,000/=
  - ii. 2017..... Kshs.1,300,000/=
  - iii. 2018..... Kshs.1,400,000/=
  - iv. 2019..... Kshs.1,057,500/=
4. It was the Claimant's pleading that the Respondent, after the expiry of the period of three (3) years allowed to him by the Law Society of Kenya to employ the Claimant, changed the terms of employment and based them on commission as pleaded.
5. The Respondent filed Response to the Claimant's claim on 13<sup>th</sup> March, 2020, and admitted having employed the Claimant as a Legal Assistant for three (3) years, from 21<sup>st</sup> July, 2011 to 20<sup>th</sup> July, 2014, on permission granted by the Law Society of Kenya; on condition that the Respondent gave a professional undertaking to the Law Society of Kenya, but denying having been obligated to remit part of the Claimant's salary to the Law Society of Kenya. That it was entirely the Claimant's duty to do so.
6. The Respondent further:-
- a. pleaded that it was the Claimant who insisted on being retained after the expiration of three (3) years, and that no agreement as to commission on files was ever entered into; and put the Claimant to strict proof of his allegations.
  - b. on the allegation of the Claimant being entitled to commission on some designated files, the Respondent pleaded that having been disbarred and not having been in a position to practice as an Advocate and/or attend Court pursuant to Section 37 of the Advocates Act, the claim was untenable. The Respondent denied the same.
  - c. the Respondent denied having caused the Claimant to resign, and further pleaded that the Claimant resigned after he on 24<sup>th</sup> March, 2019 masqueraded in Court and applied for confirmation of grant in High Court Succ. Cause No. 141 of 2016 (Estate of Seif Abdalla Mohammed) and being afraid that he would be confronted and questioned over his attempt to swindle the Respondent of his professional fees.
  - d. the Respondent further pleaded that upon the Claimant's resignation, the Respondent unsuccessfully made attempts to invite the Claimant for a meeting to have his matter resolved amicably. That the Claimant had not been paid his dues as per the Respondent's Accounts Department's Records, because he had not cleared with the Company (filled a Clearance Form) before payment, if any.



- e. that the Claimant's suit contravened the *Advocates Act*, the *Employment Act*, the Law Society Act and the *Evidence Act*.
7. The Respondent subsequently filed a witness statement dated 23<sup>rd</sup> November, 2020 and an evenly dated list of documents listing 21 documents. The listed documents included copies of the Advocates Disciplinary Committee's Judgment dated 7<sup>th</sup> March, 2011, an indemnity dated 29<sup>th</sup> July, 2011, the Claimant's job application dated 29<sup>th</sup> April, 2010, a letter of appointment dated 6<sup>th</sup> May, 2010, the Respondent's letter to the Senior Principal State Counsel, Kakamega dated 26<sup>th</sup> October, 2010, the Claimant's letter of appointment as Head of Legal Department (dated 8<sup>th</sup> May, 2013), a letter of appointment as Senior Manager, Legal and Corporate Affairs dated 17<sup>th</sup> November, 2014, resignation letter dated 9<sup>th</sup> August, 2019, letters dated 9<sup>th</sup>, 13<sup>th</sup>, 15<sup>th</sup>, 16<sup>th</sup> and 20<sup>th</sup> August, 2019 respectively and a letter dated 4<sup>th</sup> September, 2019, among other documents. The Respondent also filed a further list of documents dated 19<sup>th</sup> September, 2022, listing a bundle of what the Respondent referred to as Account Statements. What was filed with the said further list of documents were, however, some unsigned calculations, the Respondent's list of net salaries for July 2019 and copies of petty cash vouchers. On the same date (20<sup>th</sup> August, 2022), the Respondent filed a one paragraph witness statement of Moses Ajega Amisi, dated 19<sup>th</sup> September, 2022 "regarding disbursement of salary/allowances to the Claimant".
8. Trial opened before me on 20<sup>th</sup> September, 2022. The Claimant, duly sworn, abandoned his claim contained in paragraphs 2.7(i) – (viii), 2.8, 2.9 and 2.10 of his statement of claim. The said paragraphs/claims relate to alleged unpaid commission and creation by the Respondent of an unconducive environment at the work place aimed at driving the Claimant out of his employment.
9. Further, the Claimant abandoned paragraphs 4.4, 4.5, 4.6 and 4.8 in his statement of claim. The said paragraphs relate to the claim for alleged unpaid remuneration on commission basis, and claim for general damages for constructive dismissal.
10. Further, the Claimant abandoned the claims contained in paragraphs 5.1, 5.5, 5.6, 5.7 and 5.9 in the statement of claim; and stated that he would be pursuing the rest of the claims. The said paragraphs, that is paragraphs 5.1, 5.5, 5.6, 5.7 and 5.9 are prayers/claims for general damages for constructive dismissal, unpaid commission, costs of the claim and interest from the date of filing suit.
11. The Claimant adopted his witness statement dated 20<sup>th</sup> November, 2020 as his testimony in as far as it related to the remaining claims as set out in the Statement of Claim. He produced in evidence the documents listed on his list of documents dated 13<sup>th</sup> February, 2020, and a letter dated 24<sup>th</sup> May, 2016 and listed as item No. 2 on a supplementary list of documents dated 28<sup>th</sup> August, 2020. The letter was marked as the Claimant's exhibit No. 20. The rest of the documents listed on the said supplementary list of documents were not produced in evidence.
12. The Claimant further testified that the summary of his claim was contained in paragraph 4.1 of his statement of claim. It was the Claimant's testimony that he was claiming Kshs.4,597,500/=, based on his exhibit No. 20 which summarised his salary, which was being referred to as allowances. That based on the said letter, the Claimant's annual salary was Kshs.2,526,000/=. That in 2016, the Claimant was paid a total of Kshs.1,235,400/=, leaving a balance of Kshs.1,290,600/=. That in 2017, he was paid Kshs.1,226,000/=, leaving a balance of Kshs.1,300,000/=. That in 2018, the Claimant was paid Kshs.795,000/= leaving a balance of Kshs.1,731,000/=. which was carried forward.



13. It was the Claimant's further testimony that in 2019, he worked for seven months and was entitled to Kshs.1,473,500/=. That he was paid Kshs.1,256,000/=. leaving a balance of Kshs.217,500/=. That the total outstanding salary was Kshs.4,539,100/=. which he was claiming.
14. The Claimant further testified that during the nine (9) years and nine (9) months that he worked for the Respondent, he did not take leave, and that the only time that he took a break was during Christmas holidays because the office would be closed. That he claimed a one month salary for each year worked, for ten (10) years (at the rate of Kshs.210,500/=), a total of Kshs.2,105,000/=. That he was also claiming severance pay for the years worked, a total of Kshs.1,610,000/=. That his grand total claim was for Kshs.8,312,500/=. less statutory deductions.
15. Cross-examined, the Claimant testified that payment of his salary/allowances during the years 2016 to 2019 was erratic. That from the documents that he had, it was hard for him to know for which months payment was being made as records were held by the Respondent. That he (the Claimant) had computed his claim from what he knew as not having been paid. Regarding the claim for untaken/unpaid leave, the Claimant testified that he never took leave, and even remained as others took leave during Christmas. The Claimant abandoned Prayer No. 5.4 (the claim for severance pay).
16. The suit was initially listed for defence hearing on 13<sup>th</sup> February, 2023, a date on which the Respondent and his Counsel did not attend Court. The Respondent's case was closed by the Court, and directions on filing of submissions were given. The Respondent, however, filed an evenly dated Notice of Motion seeking the setting aside of the Court's Orders dated 13<sup>th</sup> February, 2023 and re-opening of his case. The Claimant conceded to the application on 9<sup>th</sup> March, 2023, and the same was allowed and the suit was fixed for defence hearing on 3<sup>rd</sup> July, 2023.
17. When the suit came up for defence hearing on 3<sup>rd</sup> July, 2023, the Respondent did not testify. His witness, Moses Ajega Amisi, testified as RW-1. He told the Court that he worked with Kadima & Company Advocates as the Manager of Operations and Support Services. He adopted his filed witness statement dated 19<sup>th</sup> September, 2022 as his testimony, and produced in evidence the bundle of documents listed on the Respondent's further list of documents and referred to in paragraph 7 of this Judgment.
18. RW-1 testified that according to the Respondent's summary of payments made to the Claimant, the Claimant had been paid a total of Kshs.7,999,000/= between 2010 and 2017. That in the year 2018, the Claimant had been paid Kshs.795,000/=. while in 2019 he had been paid Kshs.1,256,000/=. That the unpaginated bundle of petty cash vouchers were evidence of some of the payments made to the Claimant.
19. RW-1's attempt to produce in evidence the Respondent's 21 documents listed on the Respondent's list of documents dated 23<sup>rd</sup> November, 2020 was objected to by the Claimant on ground that only the Respondent himself could produce the documents. On hearing both parties on the issue, the Court allowed production by RW-1 of the documents listed on the said list of documents as item Nos. 8, 9, 10, 16, 17, 18, 19, 20 and 21, which were then marked as the Respondent's exhibits Nos. 2 to 10 respectively. The said 8 documents include an application for LLM Programme dated 10<sup>th</sup> September, 2015, payment for the said programme and best wishes thereon, the Claimant's resignation letter dated 9<sup>th</sup> August, 2019, and letters dated 13<sup>th</sup>, 15<sup>th</sup>, 16<sup>th</sup> and 20<sup>th</sup> August, 2019; and 4<sup>th</sup> September, 2019 respectively. The rest of the documents listed on the aforesaid list of documents (dated 23<sup>rd</sup> November, 2020) were marked as the Respondent's MFI – 11, 12, 13, 14, 15, 16, 17, 18, 19, 20 and 21 respectively; and were never produced in evidence.
20. Cross-examined, RW-1 testified:-



- a. that the Respondent had not produced in Court any audited accounts for the period covered by the summary of payments to the Claimant which RW-1 had produced in court.
  - b. that he (the witness) did not have a bank statement confirming that the cheque referred to in the petty cash voucher dated 23<sup>rd</sup> July, 2019 was paid.
  - c. that the petty cash voucher dated 13<sup>th</sup> June, 2019 was in respect of a refund to the Claimant who was the Head of Legal Department (HLD).
  - d. that the petty cash voucher dated 30<sup>th</sup> January, 2019 was in respect of a commission to the Claimant.
  - e. that the petty cash voucher dated 19<sup>th</sup> April, 2018 was in respect of refund to the Claimant.
  - f. that the petty cash voucher dated 22<sup>nd</sup> March, 2018 was for refund to the Claimant on Turskys Matters.
  - g. that the petty cash voucher dated 29<sup>th</sup> September, 2017 was in respect of salaries to all the staff, and that there was no indication on what was paid to the Claimant.
  - h. that regarding the Family Bank receipt dated/stamped 31<sup>st</sup> August, 2017, there was no bank statement to show that the amount stated on the receipt was credited to the Claimant's bank account.
21. Re-examined, RW-1 testified that the petty cash vouchers that the Claimant had cross-examined him on were not part of the summary that he had produced in Court. That the two Family Bank receipts produced in evidence by him (RW-1) were in respect of two transactions whereby cash was deposited in the Claimant's bank account. That on 31<sup>st</sup> August, 2017, Kshs.479,700/= was deposited in the Claimant's bank account, while another Kshs.311,800/= was deposited in the Claimant's bank account on a date that is not clear from the bank receipt. That the Claimant never complained that he had not received the money.
  22. Having considered the pleadings filed by both parties herein and the evidence adduced thereon, and having deliberately summarised such evidence in detail, the sole issue that falls for determination, in my view, is whether the Claimant is entitled to the reliefs sought.
  23. It ought to be noted that although the Claimant is shown by the evidence presented to have been in the Respondent's employment since 2010, the claim regarding salary/allowances arrears is shown by the Claimant to cover the period 2016, 2017, 2018 and 2019.
  24. From the evidence on record, the Respondent adjusted the Claimant's earnings vide a letter dated 24<sup>th</sup> May, 2016, which stated in part:-

“This is to advise you that the management has reviewed your current duties/responsibilities and in consideration of our Scheme of Service, Your Allowance w.e.f 1<sup>st</sup> June 2016 has been adjusted as follows:-

Current Allowances .....	Kes.103,500
Allowance general increment .....	Kes.50,000
Responsibility Allowance .....	Kes.30,000
KAD Welfare Contribution increment .....	Kes.2,000
LSK Remittances .....	Kes.25,000



New Allowances ..... Kes.210,500

25. I have noted from both the Claimant's pleadings and the evidence presented herein that the words "salary" and "allowances" are used interchangeably. It is clear from the evidence adduced, however, that payment of the salary/allowances was being made by the Respondent to the Claimant for services rendered by the Claimant, and that the Claimant was at the material time an employee of the Respondent.
26. The Claimant testified that payment of his salary/allowances by the Respondent was erratic, to an extent that he (the Claimant) could not tell the months for which the payment was being made in a given year; as the records were kept by the employer. That he, however, had computed what had been paid to him and what had not been paid/what had been carried forward.
27. The Claimant abandoned his claims regarding alleged unpaid commissions, damages/compensation for constructive dismissal, severance pay, costs of the suit/claim and interest from the date of filing suit. Other claims that the Claimant testified that he was pursuing, over and above the claim for salary/allowance arrears, were the claims for unpaid leave and issuance of a certificate of service.
28. On the claim for unpaid salary/allowances arrears, the Claimant claimed a sum of Kshs.4,597,500/=, made up of arrears falling due during the years 2016, 2017, 2018 and 2019 as set out at paragraph 3(g) and (h) of this Judgment.
29. The Claimant is not shown to have been issued with any itemised pay statement (payslip) at any time during the entire period of employment. Section 20(1) of the Employment Act provides as follows:-

"An employer shall give, a written statement to an employee at or before the time at which any payment of wages or salary is made to the employee."
30. The foregoing mandatory provision of the statute, in my view, serves to ensure prompt payment of an employee's wages/salary and proper keeping of records thereon. There is no legal provision for payment of an employee's salary in peace meal. Further, an employer is obligated to keep records of employment on employees employed by him. Such records, in my view, include records on compliance by the employer with statutory requirements regarding his employees. Such compliance records include records regarding payment of individual employee's salaries. RW-1 testified that the petty cash vouchers produced in evidence by him were in regard to some of the payment made to the Claimant by the Respondent.
31. RW-1 did not tell the Court that he was the Respondent's accountant, and did not produce in evidence the Respondent's statements of account on salary payment to the Claimant over the period of time in issue, copies of the Claimant's payslips or some form of evidence to show that the Claimant's salary was fully paid as it fell due.
32. From the petty cash vouchers exhibited by RW-1, the total sum shown to have been paid by the Respondent to the Claimant towards the Claimant's salary/allowances during the years 2016, 2017, 2018 and 2019 is Kshs.2,386,000/=. There is a bank deposit slip dated 31<sup>st</sup> August, 2017 vide which Kshs.497,700/= is shown to have been deposited into the Claimant's bank account. This gives a total of Kshs.2,883,700/=: being the total salary/allowances shown to have been paid to the Claimant during the aforesaid period (June 2016 to August 2019).
33. There was a second bank slip exhibited by RW-1, but which was not legible. The witness (RW-1) stated as much in his evidence in Court.



34. It is to be noted that the Claimant's annual salary upon adjustment on 24<sup>th</sup> May, 2016 was Kshs.2,526,000/=; and that the total salary payable from June 2016 to July 2019 ought to have been Kshs.7,788,500/=. The Claimant claims Kshs.4,597,500/=. On a balance of probability, I find and hold that the claim was proved, and I award the said sum to the Claimant.
35. It is to be noted that the said claim (non-payment of salary/allowances) was in the nature of a continuing injury as contemplated in Section 89 (formerly Section 90) of the *Employment Act*; and that the date of cessation of that injury/damage was the date of the Claimant's resignation, which was 8<sup>th</sup> August, 2019. The suit herein was filed on 14<sup>th</sup> February, 2020, which was within twelve months of the said cessation date. The claim was, therefore, filed within the time prescribed by the statute.
36. The claim for unpaid leave days was, in my view, not proved. In his evidence-in-chief, the Claimant testified that he only took a break during Christmas holidays because the office used to be closed. Cross-examined, however, the Claimant testified that others (other employees) took leave during Christmas holidays while the Claimant remained. The Claimant contradicted himself on this issue; and did not tell the Court how long the Christmas holidays break (leave) used to be, and whether days comprising the Christmas leave/break were taken into account by the Respondent in computing leave days for his employees. The claim for unpaid leave days is declined.
37. The claim for issuance of a certificate of service is allowed pursuant to Section 51(1) of the *Employment Act*.
38. In sum, and having considered written submissions filed, Judgment is hereby entered for the Claimant against the Respondent for Kshs.4,597,500/= being salary/allowances arrears.
39. The awarded sum shall be subject to statutory deductions pursuant to Section 49(2) of the *Employment Act*.
40. The Respondent shall issue the Claimant with a Certificates of Service pursuant to Section 51(1) of the *Employment Act* within 30 days of this Judgment.
41. In view of the Claimant's abandonment of the prayer for costs of the suit and interest, each party shall bear its own costs of the suit.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 7<sup>TH</sup> DAY OF MARCH 2025**

**AGNES KITIKU NZEI**

**JUDGE**

**ORDER**

This Judgment has been delivered via Microsoft Teams Online Platform. A signed copy will be availed to each party upon payment of the applicable Court fees.

**AGNES KITIKU NZEI**

**JUDGE**

Appearance:

Mr. John Saisi Claimant (in person)

Mr. Benjamin Amadi for the Respondent

