



**Agunda v Kenya Orient Insurance Limited (Cause E245 of 2023)
[2025] KEELRC 1557 (KLR) (22 May 2025) (Judgment)**

Neutral citation: [2025] KEELRC 1557 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E245 OF 2023**

CN BAARI, J

MAY 22, 2025

BETWEEN

AARON MULIRO AGUNDA CLAIMANT

AND

KENYA ORIENT INSURANCE LIMITED RESPONDENT

JUDGMENT

1. The Claimant's Statement of Claim is dated 22nd March, 2023 and filed in court on 27th March, 2023. The Claimant seeks payment of unpaid salary due and owing from the Respondent.
2. The Respondent lodged a Reply to Memorandum dated 6th June, 2023, denying the Claimant's claim, and further contends that the Claimant voluntarily resigned from their service and his claim of constructive dismissal is unfounded.
3. The suit was first heard on 26th June, 2024, by Hon. Justice Rika, when the Claimant testified in support of his claim. The Respondent's case was heard on 17th October, 2024, before this Court, with Ms. Marion Muende Kiilu testifying in support of the Respondent's case. She adopted her witness statement and produced the Respondent's documents as exhibits in the matter.
4. Submissions were filed for both parties in the matter.

The Claimant's Case

5. The Claimant states that he was employed by the Respondent vide a letter dated 3rd October, 2016 as an IT Associate-Database & System administrator on a monthly basic salary of Kshs. 145,000 and which was later reviewed to Kshs. 156,000/-.



6. It is his case that after confirmation to the position, it became apparent in January, 2017 that he was also expected to render services in respect of another entity from the Respondent's company, which requirement was not made known to him nor agreed upon at his appointment.
7. The Claimant states that under the said arrangement, he and his co-workers were ostensibly classified as 'shared services' even when the arrangement was neither communicated to them nor formalized. He avers that his contract of employment was not revised in view of the significant changes in his role, which amounted to working for two entities while only officially contracted to work for one entity. He avers further that neither his contract nor his job description had provision for the said 'shared services'.
8. The Claimant states that the aforementioned situation persisted until the May, 2020, when yet a third company - Orient Asset Managers, was added to the shared services arrangement, further stretching the scope of his work beyond the terms of his contract, which was once again neither reviewed nor were the new terms regularized.
9. It is his position that the situation created by the Respondent, allowed the three entities to draw from his skills, knowledge and expertise without remunerating him for the services duly rendered beyond the scope of his contract.
10. It is his case that it later came to his knowledge that the two new entities-KOLAL and OAM had been remitting payments to the Respondent for the shared services rendered by himself and other employees, and which amounts were to be used for their remuneration for the services rendered to the two entities.
11. The Claimant avers that he raised concerns both formally and informally, on several occasions in the course of his employment with the Respondent's Human Resource department as well as his head of department regarding the irregularities of the arrangement. The Claimant further avers that despite assurances that the issue would be addressed, the assurances came to naught, thereby frustrating him and causing him to resign from the service of the Respondent.
12. On cross-examination, the Claimant told court that the three companies' IT services did not cut across and that they used different IT systems with different service providers. He further testified that he served the three companies and that their procurement and mail services were different.
13. The Claimant further told court that he did not do the work within his normal working hours as the work at times would overflow, and had to work for 7 straight hours without additional compensation for the extra hours.
14. The Claimant confirmed that the three companies had other shared services that included Human Resources. He also confirmed that he had no evidence showing that the other companies paid the Respondent to compensate him. It is his evidence that under clause 4 of the service agreement, the companies agreed to share services, where the employer would pay salaries and the other companies would contribute 30.
15. The Claimant states that he did not sue the other two entities for reason that his contract was with the Respondent.
16. The Claimant urges the court to allow his claim as prayed.



The Respondent's Case

17. It is the Respondent's case that it employed the Claimant as a System Administrator by a letter dated 3rd October 2016. It avers that the Claimant was based at the Respondent's head office - ICT department, and was reporting to the Respondent's Head of ICT & Projects.
18. It states further that the Claimant's duties were clearly set out in his Job Description (JD) which he duly acknowledged, and which included such other duties as his supervisor, the Head of ICT & projects, would allocate him from time to time.
19. It is the Respondent's position that it provides General insurance services, products and solutions in the market, and has two sister companies, being Kenya Orient Life Assurance (KOLAL) and Orient Asset Managers (OAM), which similarly render life insurance and fund management solutions respectively. That the two entities KOLAL and OAM have common shareholding with the Respondent, and share similar infrastructure and they all offer financial services related businesses.
20. The Respondent states that based on the relationship between the three (3) entities and the commonality of the services they offer as well as the shared infrastructure, it becomes necessary that resources within the three entities are shared from time to time, under an arrangement referred to as "Shared Services", purely as a way of enhancing efficiency.
21. It avers that the Shared Services include: the human resource function, internal audit, actuarial services, marketing services, legal services and information technology services, which use the same infrastructure across the three entities.
22. The Respondent states that the Claimant being an employee in the IT department was one of the shared resources.
23. It is the Respondent's case that in line with the shared services arrangement between the three (3) entities, employees who fall under the category of Shared Services, such as the Claimant, are from time to time assigned duties by their supervisors to render their services to the two related entities KOLAL and OAM on a need basis, and that such assignments, do not constitute a transfer of employment to the related entities but rather a secondment.
24. The Respondent further states that the services rendered by each of the shared resources usually fall within their respective job descriptions as provided for under their respective employment contracts with the Respondent, and that the Claimant did not render any services outside his job description or employment terms and conditions.
25. The Respondent states that the shared services are usually rendered to KOLAL and OAM within the prescribed working hours under the various employees' respective employment contracts and within the same workstation which is at the Respondent's head office at Capitol Hill Towers, and as such, there was no obligation on the part of the Respondent to review the terms of the Claimant's employment contract to provide for additional remuneration or to alter any other terms of the employment contract.
26. It is its case that throughout the employment of the Claimant, the responsibility of paying the Claimant's salaries and meeting all other statutory obligations of an employer remained with the Respondent, and there was never a variation of the Claimant's terms of engagement and was at all material times engaged by the Respondent. It states that the Claimant was only seconded to the two related entities on a need basis.



27. It avers that the employment contract between it and the Claimant did not contain any provision for any additional remuneration as alleged by the Claimant. It states further that the employment contract of the Claimant was final and conclusive as far as the terms of employment, including remuneration, were concerned.
28. The Respondent states that the Claimant tendered his resignation on 4 May 2022, citing health reasons and it accepted the resignation by an email of even date, and that at no point did it coerce or pressure the Claimant into resigning.
29. The Respondent avers that the Claimant's decision to resign was voluntary and not influenced by any form of unfair treatment from the Respondent, hence his claim of constructive dismissal has no basis.
30. The Respondent states that it fulfilled all its obligations towards the Claimant, including payment of salary, throughout the entire duration of his employment, and therefore the claim for unpaid remuneration lacks basis.
31. RW1, Ms. Marion Kiilu testifying for the Respondent, confirmed on cross-examination that she provides services to two of the entities subject herein, and that she was informed that she would be providing shared services with no change in salary.
32. She further told court that the shareholders of the three companies are the same, but each company is a separate legal entity, has its own employees and their managements are separate.
33. She also told court that she does not understand why the fact that the Claimant was going to provide shared services was not included in his contract.
34. RW1 further confirmed that the Claimant raised his concerns, but was not sure how his concerns were addressed. She further stated that there was no change in the Claimant's role, and that he did the same job.
35. The Respondent urges the Court to dismiss the claim with costs to the Respondent.

The Claimant's Submissions

36. It is the Claimant's submission that the Respondent subjected him to unfair labour practices by requiring him to undertake work for other entities not stipulated in the terms and conditions of his employment at the time of appointment.
37. The Claimant submits that the requirement to undertake work for the other entities constituted a change in his role and scope and/or particulars of employment without following due process as required under section 10(5), 13(1) and 13(3) of the *employment Act* of 2017.
38. It is submitted that the Respondent further failed to remunerate the Claimant fairly for the same and also failed and/or refused to address the grievous concerns raised by the Claimant in respect thereof, thereby leading to the Claimant's resignation.
39. It is submitted for the Claimant that the introduction of the shared services arrangement by the Respondent in January, 2017 for KOLAL, and May 2020 for OAM, which was not covered and/or contemplated under the preceding terms of the Claimant's employment contract, constituted a fundamental and material change in the Claimant's particulars of employment.
40. The Claimant submits that the Respondent was legally bound to consult with the employee, and revise the contract to reflect the changes, and to notify the employee of the change in writing, yet no evidence of any such consultations, or any statement containing any particulars of change, as required



by law, has been adduced by the Respondent. He submits that it is therefore manifestly clear that the Respondent acted in breach of express provisions of the law in failing to do so. He placed reliance in the case of *Boniface Mukohe Ismond v Metal Cans and Closure Kenya Limited & another* [2021] eKLR to buttress this assertion.

41. The Claimant submits that he has sufficiently demonstrated that the Respondent's actions were in violation of his rights to fair labour practices, fair remuneration, reasonable working conditions and the right to information guaranteed under Article 41(1),(2)(a) and (2)(b), and Article 35(1)(b) respectively.
42. It is his further submission that the Respondent's actions were in breach of express and mandatory provisions of the law under Section 10(5), Section 13(1), and 13(3) of the *Employment Act* of 2007.
43. The Claimant prays that judgment be entered against the Respondent as prayed in the Statement of Claim dated 22nd March 2023.

The Respondent's Submissions

44. It is the Respondent's submission that shared service arrangements, such as the one in question, are a common and widely accepted business practice, particularly among corporate groups aiming to optimize resources and prevent role duplication. It submits further that these arrangements do not, in themselves, constitute unfair labour practices, as employee remuneration remains intact. The Respondent sought to rely in the United Kingdom Court of Appeal's decision in *Heis & Ors v MF Global UK Services Ltd* [2016] EWCA Civ 569 for the holding that:-

“.. I have taken into account that large corporations frequently use a service company to employ their staff, and then second those staff to the various operating companies in the group as happened here. I am conscious also of the difficulties that could have occurred (but apparently did not) had there been several operating companies with staff moving between them.But in the end I have concluded that the established relationship between UK and Services by which Services employed UK's staff and recharged all the costs of doing so to UK is only explicable in the particular circumstances of this case on the basis that it had a contractual foundation. ”

45. The Respondent submits further that the shared services arrangement did not in any way alter the terms of the Claimant's employment. That the Claimant's primary employer remained the Respondent, as per his contract of employment, with the Respondent being solely responsible for the payment of his remuneration. It submits that the cost-sharing mechanism did not create an independent employment relationship with KOLAL or OAM, but merely reflected an internal financial arrangement within the group.
46. The Respondent submits that there was no variation of the Claimant's employment contract, and that it was well within its rights to implement an efficient operational structure and the Claimant suffered no prejudice as a result.
47. It finally urges the Court to uphold the employer's managerial prerogative and dismiss the Claimant's assertions that this arrangement by itself was an unfair labour practice.
48. It is the Respondent's submission that it did not unilaterally alter the Claimant's job description or terms of employment as alleged or at all, and argues that the shared services arrangement did not amount to a fundamental change in his role, but was merely an internal cost-sharing mechanism between related entities.



49. The Respondent submits that the claim for payment of additional salaries by KOLAL and OAM as sought in the claim is legally and factually untenable as the Claimant freely negotiated and accepted his salary and terms of engagement under his employment contract and there is no legal basis and none has been shown for the Court to impose additional salary obligations beyond the express terms of the contract.
50. It is the Respondent's submission that it is not in dispute that it was the sole employer of the Claimant and not KOLAL or OAM, and that at all times, the Claimant's employment contract was exclusively with the Respondent, he operated from the Respondent's offices, and was under the direct supervision of the Respondent's Head of ICT & Projects, and finally that his salary was paid by the Respondent, and his duties were fully integrated into the Respondent's business.
51. The Respondent urges this Court to dismiss this suit with costs.

Analysis and Determination

52. I have considered the pleadings in the matter, the witnesses' testimonies and the submissions by both parties. The issues for determination are:-
 - i. Whether the Claimant was subjected to unfair labour practices
 - ii. Whether he is entitled to the reliefs sought

Whether the Claimant was subjected to unfair labour practices

53. The Claimant's position is that he was employed by the Respondent as an IT Associate-Database & System administrator, and after confirmation to the position, it became apparent in January, 2017 that he was also expected to render services in respect of another entity from the Respondent's company, which requirement was not made known to him nor agreed upon at his appointment.
54. It is the Claimant's assertion that he, and his co-workers were classified as 'shared services' even when the arrangement was neither communicated to them nor formalized. He avers that his contract of employment was not revised in view of the significant changes in his role, which amounted to working for three entities while only officially contracted to work for one entity. He contends that neither his contract nor his job description had provision for the said 'shared services'.
55. The Claimant maintains that arising from the new arrangement, the Respondent failed to remunerate him fairly for the work done, and that despite him raising concerns, the Respondent failed and/or refused to address his concerns leaving him no option but to resign.
56. The Respondent's position is that the Claimant worked in what it refers to as a shared services department, and that in line with the shared services arrangement between their three (3) entities, employees who fall under the category of Shared Services, are from time to time assigned duties by their supervisors to render their services to the two other related entities on a need basis, and that such assignments, do not constitute a transfer of employment to the related entities, but rather a secondment.
57. The Respondent further argues that the services rendered by each of the shared resources fell within their respective job descriptions as provided for under their respective employment contracts with the Respondent, and that the Claimant did not render any services outside his job description or employment terms and conditions.



58. The Respondent asserts that the shared services are rendered to the other two entities within the prescribed working hours under the various employees' respective employment contracts, and within the same workstation, and as such, there was no obligation on its part to review the terms of the Claimant's employment contract to provide for additional remuneration or to alter any other terms of the employment contract.
59. The Respondent's witness (RW1), in her oral testimony, told court that she did not understand why the fact that the Claimant was going to provide shared services was not included as a term in his contract. She further confirmed on cross-examination that she provides services to two of the entities subject herein, and that she was informed that she would be providing shared services with no change in salary.
60. Article 41 of *the Constitution* of Kenya provides: -
- “ 1. Every person has the right to fair labour practices.
 2. Every worker has the right—
 - a. to fair remuneration;
 - b. to reasonable working conditions;....”
61. Further, Section 10 (5) of the *Employment Act*, 2007: -
- “Where any matter stipulated in subsection (1) changes, the employer shall, in consultation with the employee, revise the contract to reflect the change and notify the employee of the change in writing.”
62. There is no doubt that with the introduction of the two new entities whom the Claimant was required to render service to, aspects such as the name of the employer, the Claimant's job description and the place of work, just to mention a few, are aspects of the Claimant's contract of service that had changed substantially. In *Kenya Medical Practitioners, Pharmacists and Dentists Union v Kenya Hospital Association t/a the Nairobi Hospital* [2020] eKLR, the Court rendered itself thus: -
- “An employer purporting to reserve to itself the mandate to change the prescribed employment particulars, in the view of the Court, would be acting contrary to both the text and spirit of the need for consultations in the first place. Such a practice could have found favour in the mediaeval times when a contract of service was characterised as that of a master and servant. The employment relationship in modern times is not that of a master and servant.
- In these contemporary times, the promotion of social justice in the workplace has been recognised by the International Labour Organisation (see ILO Declaration on Social Justice for a Fair Globalisation). Such social justice in the workplace cannot be realised without dialogue between the tripartite partners and where labour is not organised, directly with the workers.”
63. It is not disputed that the Claimant was not consulted on the changes, and nor was his contract revised to reflect the expanded scope of his contract. Similarly, the Claimant's salary did not change to reflect this expanded scope of work.
64. In my view, the Respondent was legally bound to consult the Claimant and revise the contract to reflect the changes, or at the very least, notify the Claimant of the changes in writing, which it did not. The



- Respondent instead, allowed the two new entities to draw from the Claimant's skills, knowledge and expertise without remunerating him for the services duly rendered beyond the scope of his contract.
65. In the case of *Moses Kamau & 6 others v Signature Holdings (E A) Ltd* [2020] eKLR also cited by the Claimant, the Court opined: -
- “Under Section 10(5) of the *Employment Act*, 2007, for such a variation and/or alteration to pass the legal test, the employee should be consulted and agreement secured.”
66. Further, the Respondent's confirmation that the Claimant was providing shared services that were not provided for under his contract, and neither was it disclosed to him and the same formalized, amounts to variation of his contract. In the case of *Boniface Mukohe Ismond v Metal Cans and Closure Kenya Limited & another* [2021] eKLR, the Court stated thus: -
- “Any changes to the employment particulars ought to have been communicated to the claimant in writing and his consent obtained. Such is contrary to the provisions of section 10(5) of the *Employment Act*, 2007.”
67. This court therefore returns that to onboard an employee on clear contract terms, and then proceed to expand the scope of those terms without consultation with the employee, and especially in respect of compensation for the expanded role, is no doubt an unfair labour practice.
68. The Respondent together with its subsidiaries, obviously got a way to pay less by introducing two new entities for the same salary and under the same contract terms, hence an exploitation of the Claimant's knowledge, skills and experience without compensation.
69. In the end, I find and hold that the Respondent in expanding the scope of the Claimant's contract devoid of consultation and compensation, is a grave violation of Article 41 of *the Constitution* that guarantees a worker the right to fair remuneration and to reasonable working conditions.

Whether the Claimant is entitled to the remedies sought

70. The Claimant sought a declaration that the Respondent's actions were in violation of his right to fair labour practices, a declaration that the Respondent violated the *Employment Act*, an award of remuneration in respect of the Claimant's services to Kenya Orient Life Assurance Limited (KOLAL) and remuneration in respect of his services to Orient Assets Management (OAM), compensatory damages for violation of his rights under *the constitution*, interests and costs.
71. On the prayer for remuneration for services rendered to both KOLAL and OAM, the Claimant seeks awards equivalent to the salary the Respondent was paying him monthly in respect of the two companies for the period he was in the service of the Respondent.
72. These prayers are in my view not tenable, on the premise that it would not have been humanely possible for the Claimant to earn three salaries for services rendered within the same time frame. Further, for reason that the Court has no way of coming up with a figure of how much each entity should have paid for the shared services, an award for unfair labour practices will in my view sufficiently compensate the Claimant. This claim therefore fails.
73. On compensatory damages for violation of the Claimant's constitutional rights, this court has found that the Respondent violated the Claimant's right to fair labour practice, which entitles him to compensation in this respect.



74. Considering that the Claimant rendered services to three entities for a record five years without compensation, I deem an award of Kshs. 3,000,000/- sufficient compensation for violation of his Constitutional rights.
75. In whole, the Claimant's claim succeeds and orders granted in the following terms: -
- a. A declaration that the Respondent's actions were a violation of the Claimant's right to fair labour practices
 - b. An award of Kshs.3,000,000/- on a count of violation of the Claimant's right to fair labour practices.
 - c. The Respondent will bear the costs of the suit together with interest from the date of this judgment until payment in full.
76. Orders accordingly.

SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS 22ND DAY OF MAY, 2025.

C. N. BAARI

JUDGE

Appearance:

Mr. Marwa present for the Claimant

Mr. Odhiambo h/b for Ms. Weru for the Respondent

