



REPUBLIC OF KENYA



KENYA LAW
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**Njeru v Banda Homes Limited (Cause E489 of 2021)
[2025] KEELRC 1324 (KLR) (9 May 2025) (Judgment)**

Neutral citation: [2025] KEELRC 1324 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E489 OF 2021**

B ONGAYA, J

MAY 9, 2025

BETWEEN

MOSES MUREITHI NJERU CLAIMANT

AND

BANDA HOMES LIMITED RESPONDENT

(Before Hon. Justice Byram Ongaya on Friday, 9th May 2025)

JUDGMENT

1. The claimant filed the statement of claim dated 15.06.2021 through AKMK Advocates LLP. He prayed for judgment against the respondent for:
 - a. Unpaid salary arrears of Kshs. 2,700,000/= with interest at court rates from the date of default.
 - b. General damages for unfair dismissal.
 - c. An order that the Kshs. 400,000/= owed to the respondent from the loan to acquire motor vehicle KCT 575A be set off against the unpaid salary arrears of Kshs. 2,700,000/=.
 - d. An order that motor vehicle KCT 575A be transferred to the claimant and the executive officer of this Honourable Court be directed to sign all relevant documents to facilitate the transfer of the vehicle to the claimant.
 - e. Costs of the suit and interest.
 - f. Another relief that this Honourable Court shall deem fit to grant.
2. The claimant's case was that the respondent employed him as a General Manager in charge of operations between 05.01.2018 and 20.12.2020. At the beginning of 2019, his starting net salary of Kshs. 200,000/= was increased to Kshs. 300,000/=. The respondent later offered him a car loan of



- Kshs. 1,000,000/= to purchase motor vehicle KCT 575A during the said employment. It was agreed that the respondent would deduct Kshs. 50,000/= every month from the claimant's pay slip towards settling the loan facility. The respondent went on to effectuate deductions on the car loan repayments amounting to Kshs. 600,000/= from February 2019 until the time the claimant's employment came to an end, with the outstanding balance of the car loan repayments standing at Kshs. 400,000/=.
3. According to the claimant, he left the respondent's employment on or about December 2020 due to unpaid salary for nine (9) months, totalling about Kshs. 2,700,000/=. He averred that the respondent's failure to pay his monthly salary for nine (9) months amounted to constructive dismissal. Furthermore, despite the respondent owing him substantial amounts, it was demanding through its director, Mr. Andrew Kamau, that the claimant return the subject motor vehicle because he had not finished paying for the same. The said Mr. Kamau then resorted to using the police to try and repossess the subject motor vehicle that is in the custody and use of the claimant.
 4. It was the claimant's further case that the respondent's claim over motor vehicle KCT 575A is unjust, unconscionable, illegal, and amounts to unjust enrichment. He averred that the respondent cannot have a legitimate claim over the said vehicle in light of the colossal sums of money it owes the claimant.
 5. The respondent's statement of response dated 08.10.2021 was filed through H. Kago & Company Advocates. It prayed that the claimant's suit against it be dismissed with costs to the respondent. Its case was that the claimant had failed and/or neglected to complete the payment of motor vehicle KCT 575A by September 2020, as agreed upon in the agreement signed between them. It denied that there are nine (9) months of unpaid salaries owed to the claimant and averred that the claim that its director tried to repossess the vehicle using the police is a means of tarnishing the respondent's good reputation.
 6. The respondent's further case was that the claimant absconding from work around December 2020 without any notice to it resulted in losses to the company. It averred that the claimant cannot claim that the respondent owes him any sums of money and should, as such, pay the amount owed for the subject motor vehicle, or if the same cannot be met, return the vehicle to the respondent. It argued that he who comes to equity must come with clean hands, and contracts should thereby be honoured. It also denied having received a demand and notice of intention to sue from the claimant and posited that the claimant has no reasonable cause of action against it.
 7. The parties tendered their evidence before the Court and thereafter filed their respective submissions. The Court returns as follows.
 8. To answer the 1st issue there is no dispute that parties were in a contract of service.
 9. To answer the 2nd issue, the Court finds that the termination was not unfair. The claimant failed to attend and offer evidence to show the alleged unfair termination. On the other had the respondent's witness (RW) attended and testified that the claimant absconded duty or disappeared from work as pleaded for the respondent. The respondent's case is upheld accordingly. Per RW during the COVID 19 situation employees worked from home and the claimant disappeared never to resume work. His claims of unfair termination and compensation must fail.
 10. To answer the 4th issue, the claimant is bound by the car loan contract and it was that he is deducted from his salary until full payment. The claimant has not shown by evidence that the respondent owes him dues flowing from the employment relationship from which the outstanding car loan said to be Kshs.400,000.00 can be paid out as a set off.
 11. To answer the 5th issue the Court returns that RW confirmed by evidence that the claimant was not owed any money as claimed. In particular, the respondent paid him on commission and not salary



based on sales he made. Further, the claimant offered no evidence that he worked and deserved to be paid for 9 months prior to December 2020 when he left or walked away never to return to work.

12. Thus the claimant's case is liable to dismissal with costs.

In conclusion the suit is hereby dismissed with costs.

**SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS
FRIDAY 9TH MAY, 2025.**

BYRAM ONGAYA

PRINCIPAL JUDGE

