



**Njiriri v Zizu Investments Limited (Cause E404 of 2021)  
[2025] KEELRC 1313 (KLR) (9 May 2025) (Judgment)**

Neutral citation: [2025] KEELRC 1313 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E404 OF 2021**

**B ONGAYA, J  
MAY 9, 2025**

**BETWEEN**

**FRANCIS KIGERA NJIRIRI ..... CLAIMANT**

**AND**

**ZIZU INVESTMENTS LIMITED ..... RESPONDENT**

**JUDGMENT**

1. The claimant filed the memorandum of claim dated 12.05.2021 through Dennis Anyoka Moturi & Company Advocates. He prayed that the Court do order and make award for:
  - i. Unpaid annual leave days (21 days) = Kshs. 112,000
  - ii. Unpaid salary (April, 2020) = Kshs. 160,000
  - iii. Compensation for unfair termination (Kshs. 160,000 x 12 months) = Kshs. 1,920,000  
Total Kshs. 2,192,000
  - iv. Costs of the suit.
  - v. Interest on (i), (ii) and (iii) above.
2. The claimant's case was that the respondent employed him as an Accountant on or about January 2014 and he was based in Nairobi at all material times. Over time, his salary was increased to Kshs. 160,000/- per month. He was paid his salary in two (2) parts - one by the respondent and the other through the respondent's director's mother's account, one Zulekha Nizar Samji, which the director had controlling power over. He averred that despite discharging his duties diligently, the respondent served him a termination letter on or about 19.04.2020 that effectively terminated his employment without any justifiable cause. He had not been accorded any hearing to ventilate on the issues, if any, that may have



resulted in the unlawful and illegal termination. He sought remedy for the unfair termination through a demand letter dated 15.02.2021.

3. The respondent's response to the memorandum of claim and respondent's counterclaim dated 11.06.2021 was filed through Mola, Kimosop & Njeru Advocates. Its case was as follows:

- i. The respondent is a different entity and person from Zulekha Nizar Samji.
- ii. The respondent employed the claimant from 05.07.2015 until April 2020. The claimant failed to complete his contract by absconding and absenting himself from employment upon receiving a 30-day notice of termination of employment. At the time of absconding from his employment, the claimant's gross salary was Kshs. 40,000/-.
- iii. The termination of the claimant's employment did not take effect immediately and was to crystallize on 19.05.2020, but he absented himself from employment from 23.04.2020, thus breaching the terms of his employment.
- iv. The termination of the claimant's employment was made with justifiable cause because the reasons for termination were valid, as the respondent, whose major business is various gymnasium outlets in the country, was forced to close all its branches following the government's directive in March 2020 on the COVID-19 pandemic. Therefore, it could not retain the claimant at the time as per the operational requirements of the company. The termination further followed a fair procedure, as the claimant was given a notice of termination to allow him to ventilate any concerns. Instead, the claimant absented himself from employment soon thereafter.
- v. The respondent fully paid the claimant all his accrued leave days, and he has failed to particularize his claim for leave days and for which year it is based. Without prejudice, the claimant's leave days for 2020 had not accrued.
- vi. This Honourable Court does not have jurisdiction to hear and determine this cause and to issue the orders sought as per Gazette Notice No. 6024 of 10<sup>th</sup> June 2018, as the claimant was earning Kshs. 40,000/- at the time of absconding from his employment.

4. In the counterclaim, the respondent reiterated that the claimant breached his contract of employment when he absconded from his employment and failed to complete the terms of the employment contract. Despite various communications, the claimant failed, neglected and/or declined to return to work and required that the notice of termination be vacated first before he could finish his contract. Consequently, the company suffered loss and damage as follows:

- a. Costs incurred to contract external contractor to file tax returns, prepare accounts and regularize issues arising - Kshs. 340,200/-
- b. Costs incurred to conduct audit of the company - Kshs. 116,000/-
- c. Costs incurred to replace and repair various cabinets, and unlocking laptops and other coded accounts – Kshs. 100,000/-

Total.....Kshs. 556,000/-\

5. The respondent therefore prayed that the claimant's claim be dismissed with cost to the respondent and for:

- a. Damages for breach of contract.....Kshs. 556,000/-



- b. Salary in lieu of notice for 1 month.....Kshs. 40,000/-
  - c. Costs of the counterclaim plus interest on (a) and (b) from date of filing suit.
6. The claimant's response to statement of response and defence to counterclaim dated 15.07.2022 was filed through Dennis Anyoka Moturi & Company Advocates. He asserted as follows:
- a. The date the respondent refers to as the date of his employment is the date the system captured in the payslip. However, the date in the payslip cannot be relied upon since it had been severally erroneous, and the payslips of January, February and March had captured the joining date as 1900.
  - b. From his salary of Kshs. 160,000/-, the respondent paid him Kshs. 40,000/-, while the rest was paid from Zulekha Nizar Samji's account after deduction of 5% withholding tax. The same is evidenced by bank statements.
  - c. Whereas his initial salary was Kshs. 40,000/-, the same was increased over time as shown hereunder:
    - i. An email dated 07.01.2019 from Rahim Samji to the claimant regarding the claimant's holiday bonus stated, "I will pay a cash bonus of total Ksh. 65k which is half month salary to you. Payment terms are Ksh. 35k by end of this month and Ksh. 30k by End February." The claimant's salary was increased from Kshs. 40,000/- to 130,000/-.
    - ii. An email dated 13.05.2019 from accounts Zizu to Rahim Samji and copied to the claimant stated, "We have met and below are the points...Salary increment of 30k will take effect from July 1<sup>st</sup> 2019." The claimant's salary was increased from Kshs. 130,000/- to 160,000/- and a follow-up email sent on 12.08.2019 to the claimant set out the conditions of the salary increment.
  - d. This Honourable Court therefore has jurisdiction to hear this suit as the claimant's salary at the time of his termination was Kshs. 160,000/-.
  - e. When the termination notice was served upon the claimant on Monday, 20.04.2020, the respondent sought to frustrate him by asking him to do a stock-take of the auditor's work, which was impossible. The director's respondent then asked him not to report to work the next day after he was unable to do stock-taking, and told him he had been terminated from employment. He tried going back to work on 23.04.2020 and later wrote an email dated 26.04.2020 addressing his dissatisfaction with the process of termination, but the director responded that his employment had been terminated.
  - f. Whereas the respondent purports the claimant's employment was terminated under circumstances of COVID-19, its defence is that he was terminated for failing to report to work after being served with the termination notice. In any event, the respondent never invited him to air out his views or give any explanation before the termination, and the termination was therefore irregular and unprocedural.
  - g. In response to the counterclaim, there was no need to engage an external contractor since the claimant had prepared monthly returns being VAT, PAYE, NHIF, and NSSF and submitted accounts to the auditor before he was terminated from employment. Secondly, the company was ideally to pay the auditor's fees and a statutory audit should have been done whether or not he was still an employee at the company. Lastly, there were no costs incurred in unlocking any laptops as he availed the required passwords in an email dated 29.04.2020, and the repairing



and replacing of various cabinets was done at the respondent's own volition, not as a result of his action or omission. Further, the respondent is not entitled to salary in lieu of notice since he did not abscond from duty, as the company's director was the one who asked him not to report to work.

7. The parties tendered their evidence before the Court and thereafter filed their respective submissions. The Court has considered the parties' respective cases and testimonies of the witnesses and returns as follows.
8. To answer the 1<sup>st</sup> issue, the Court finds that the claimant was employed by the respondent as an account at Kshs.40, 000.00 per the payslips exhibited and PAYE was deducted accordingly. The further evidence is that while in the respondent's employment the claimant was consulted to do some work for one Zulekha Samji upon which the claimant raised monthly fee notes of Kshs.120,000.00 and withholding tax was withheld accordingly. The Court finds that the consultancy arrangement with the third party was a separate engagement from the employment relationship between the parties. The Court upholds the respondent's case in that behalf.
9. To answer the 2<sup>nd</sup> issue, the Court returns that the respondent's case that the court lacked jurisdiction is trapped by the principle of approbation and reprobation. It is that the respondent cannot be heard at ago to say that the Court lacks jurisdiction to hear and determine suit for claimant who earned Kshs. 40,000.00 per month because the pecuniary jurisdiction belonged to the Magistrates Court and at the same time urge that the Court has jurisdiction to determine the counterclaim. It was such an absurd pursued and the Court finds that under section 12(1) of the *Employment and Labour Relations Court Act*, 2011, the Court has exclusive original and appellate jurisdiction to hear and determine all disputes referred to it in accordance with Article 162(2) of *the Constitution* and provisions of the Act or any other written law which extends jurisdiction to the Court relating to employment and labour relations. The Court considers that the parties properly invoked the jurisdiction of the Court.
10. To answer the 3<sup>rd</sup> issue, the Court returns that as submitted for the respondent the termination was not unfair. The Court has taken judicial notice that it was COVID 19 pandemic period. Enterprises were undergoing difficult financial times. The respondent then opted to terminate the contract of service by giving a thirty days' notice per section 35(1) (c) of the *Employment Act*, 2007. The claimant urges a case for redundancy but in the circumstances of the case, the respondent clearly opted to invoke the provision on termination by giving the minimum notice. It appears to the Court that the respondent had an election to go for termination by giving notice or by invoking redundancy. The parties had a dispute about the date of employment and the Court while finding that it was as per the claimant's pleaded case, in absence of a redundancy the date of commencement may not have a profound impact on the possible remedies. The termination notice of 19.04.2020 stated thus, "I regret to inform you that you are on a 30 day notice termination of your employment starting on April 20, 2020. Due to the COVID 19 Pandemic we are forced to reduce our expenses and therefore will not be able to keep you as staff." The evidence is that after receiving the notice the claimant appears to have absconded duty instead of seeking to offer himself to work and even engage the respondent on alternatives in view of the COVID 19 situation. The Court has found that the respondent adopted a fair procedure and a fair reason was established to justify the termination. in any event to confirm that the termination was by a valid notice, no reliefs were prayed for the claimant such as severance pay and notice pay as would be contemplated in section 40 of the Act in event of redundancy.
11. To answer the 4<sup>th</sup> issue the Court finds that the remedies prayed for the claimant are not justified. There was no unfair termination and no compensation can issue. As submitted for the respondent, the claimant has not set out the particulars of the period for which leave is claim. Such special damages required particularised pleading and to be strictly proved. That was not done. The prayer must fail. The



evidence is that the claimant did not work in April after he received the notice to terminate. The Court considers that no pay will flow as claimant without demonstrated services rendered in that respect.

12. To answer the 5<sup>th</sup> issue, the Court finds that the Counterclaim must fail because of the following reasons:
  - a. Once the claimant abandoned duty after receiving the notice the respondent must have construed that the relationship had come to an end. The relationship ended effective the date the respondent noted the claimant's secondment. The parties' rights and obligations lapsed once the contract ended.
  - b. The evidence by RW1 was that he did not know whether it was the claimant or one Kennedy who may have tampered with the computer passwords or the cabinet keys. On a balance of probabilities, the claimant has not been shown culpable and cannot be held liable to meet the expenses of the claims for recovery of the keys or passwords. Similarly, after separation, the respondent hired consultants and was liable to pay. In any event, the statutory provision is that the respondent would only recover to the extent of the wages the claimant was allegedly absent. He had separated or absconded in the respondent's own words, no disciplinary process was initiated and in any event the respondent is not pursuing notice pay in view of the absconding.
13. In conclusion, the claimant's suit and the respondent's counterclaim are both dismissed with orders each party to bear own costs.

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

**BYRAM ONGAYA**

**PRINCIPAL JUDGE**

