



REPUBLIC OF KENYA



KENYA LAW
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Kiragu v M/S Jiangxi Youse Construction (Group) Company Limited (Cause E032 of 2024) [2025] KEELRC 1864 (KLR) (26 June 2025) (Judgment)

Neutral citation: [2025] KEELRC 1864 (KLR)

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MERU
CAUSE E032 OF 2024
ON MAKAU, J
JUNE 26, 2025

BETWEEN

DAVID BUNDI KIRAGU CLAIMANT

AND

M/S JIANGXI YOUSE CONSTRUCTION (GROUP) COMPANY LIMITED RESPONDENT

(Before Hon. Justice Onesmus N Makau on 26th June, 2025)

JUDGMENT

Introduction

1. The claimant brought this suit against the respondent seeking the following reliefs:
 - a. Kshs.2,340,952/= plus interest at commercial rates.
 - b. Any other and or such other better orders as may meet the ends of justice.
 - c. Costs of the suit.
2. The respondent never entered appearance upon service of pleadings and summons and therefore the suit proceeded by formal proof.

Facts of the case

3. The claimant was employed by the Resident Engineer Kenya Rural Roads Authority, (KERRA) in a Road construction works involving Coca-cola-Mpuri-Kitaku-Katheri & Kithurine-Kariene-Kagma/Gaitu-Giaki roads under a contract between the Government of Kenya and Ms Northern Construction Company Limited (contractor). Wages, accommodation and overtime allowances for



- the staff of the Resident Engineer were to be paid by the contractor and recovered from the Government interim payment certificates as per the instructions issued by the Resident Engineer.
4. By an Agreement for Assignment of Works dated 28th December 2020, the contractor, with concurrence of the Government of Kenya, assigned the work of upgrading to Bitumene Standard and maintenance of the said roads to the respondent. Under the said Agreement, the respondent was to pay the staff of the Resident Engineer salaries, accommodation and overtime allowances as instructed by the Resident Engineer and recover the said cost from the interim payment certificate just as was provided in the main contract.
 5. According to the claimant, from February 2021, the respondent failed to pay his salary, accommodation and other allowances and when it did, it was irregular and intermittent. Under his appointment letter dated 1st January 2021, the claimant's salary was Kshs.44,748, house allowance of Kshs.30,000 and Airtime of Kshs.1,000.
 6. He prayed for Kshs.2,230,942 made up of unpaid salaries for 14 months, house allowance for 30 months and overtime for 15 months.
 7. During the hearing, he adopted his written statement dated 13th September 2024 and produced a bundle of 17 documents. He never called any witness but he filed written submissions after the hearing. The evidence and submissions merely repeated the facts summarized above.
 8. Having considered the pleadings, evidence and submissions, the issue for determination is whether the claimant is entitled to the reliefs sought.

Analysis

9. There is no dispute that the claimant was employed by the Resident Engineer in the material Road Construction Project. His appointment letter dated 1st January 2021 set out his monthly remuneration package of Kshs.44,784 salary, Kshs.30,000 house allowance and Kshs.1,000 Airtime.
10. In paragraph 8 of the statement of claim, the claimant pleaded as follows: -

“That the respondent absorbed the claimant and kept its part of the bargain until sometime in February 2021 when it inexplicably failed to pay the claimant his salaries, accommodation and other allowances and when it did the same was intermittent and irregular.”
11. The foregoing paragraph does not indicate how much was paid and how much was left outstanding as salary, house allowance and other allowances. Instead, the claimant stated in paragraph 11 of the statement of claim that the total claim of unpaid wages and allowances was Kshs.2,340,952. No particulars were pleaded for the unpaid salary and wages and the attendant period.
12. In addition, no documentary evidence was adduced to support the claim by the claimant. In fact, among documents produced, no letter or statement emanates from the Resident Engineer indicating that the claimant was owed any salary or allowances.
13. The only relevant letter by the Engineer is the one dated 15th May 2023 on non-remittance of statutory deductions by the Respondent. There are also statements of NHIF and NSSF indicating gaps in remittances. The said gaps do not mean non-payment of salaries and allowances, otherwise the Resident Engineer would have made a formal demand as it did with respect to statutory deductions.
14. Having considered the pleadings and evidence presented to the court, it is clear that the claimant has failed to prove his case on a balance of probability. He did not plead the particulars of his claim and



he did not prove it by evidence. Consequently, I dismiss the suit with no order as to costs since the respondent never entered appearance.

DATED, SIGNED AND DELIVERED AT NYERI THIS 26TH DAY OF JUNE, 2025.

ONESMUS N MAKAU

JUDGE

Order

This judgment has been delivered to the parties via Teams video conferencing with their consent, having waived compliance with Rule 28 (3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

