



**Arogo v Board of Management Nyanchwa Preparatory School & another
(Appeal E004 of 2024) [2025] KEELRC 1783 (KLR) (18 June 2025) (Judgment)**

Neutral citation: [2025] KEELRC 1783 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISII
APPEAL E004 OF 2024
NZIOKI WA MAKAU, J
JUNE 18, 2025**

BETWEEN

DAVID AROGO APPELLANT

AND

**BOARD OF MANAGEMENT NYANCHWA PREPARATORY
SCHOOL 1ST RESPONDENT
SEVENTH DAY ADVENTIST CHURCH (E.A LTD SOUTH KENYA
CONFERENCE) 2ND RESPONDENT**

*(Being an appeal from the judgment and decree of Hon. Dr C. A. Ocharo
(SPM) in KISII MELRC CAUSE NO. 3 OF 2020 dated 2nd October 2024)*

JUDGMENT

1. Via a statement of claim dated 29th January 2020 the Appellant sued the Respondents before the Magistrate's court at Kisii seeking the following reliefs:
 - i. A declaration that the Respondent's conduct was unlawful, unjust and constituted unfair labour practices;
 - ii. Immediate payment in full of accumulated withheld salary and deductions of Kshs. 144,400/-;
 - iii. Salary in lieu of notice;
 - iv. Immediate remittance or payment of KRA payee tax and NSSF deduction up to the date of resignation;
 - v. Costs of the case to be borne by the Respondents; and
 - vi. Any further relief the court may deem fit and just to grant.



2. On 1st February 2022, prior to the commencement of the hearing, the Trial Court entered a judgment on admission in the sum of Kshs. 130,420/-. The Court noted that Kshs. 130,420/- of that sum had already been paid leaving a balance of Kshs. 70,420/-. Consequently, the sum left to be litigated upon was Kshs. 13,980/-. On the same day, the matter proceeded to hearing with the Appellant testifying and closing his case.
3. When the matter came up for defence hearing on 14th March 2023, Counsel for the Respondents sought an adjournment on grounds that witness statements had not been filed. The Trial Magistrate, in a ruling delivered the same day, declined the application, citing that the Respondents had failed to provide a satisfactory explanation for their inaction since 2020. Aggrieved by the said ruling, the Respondents filed an appeal before this Court. As a condition for stay of proceedings pending appeal, the Court directed the Respondents to deposit the sum of Kshs. 350,000/- in court as security. The appeal was subsequently dismissed by a ruling delivered on 29th November 2023. Thereafter, on 17th April 2024, Counsel for the Respondents informed the court that the decretal sum had been fully settled upon the release of the deposited security to the Appellant, leaving only the issue of costs in contention. The Appellant disputed this position, contending that the sum of Kshs. 350,000/- together with a further payment of Kshs. 134,060/- did not fully satisfy the claims in the three related matters. He argued that additional damages remained to be assessed. The Court consequently directed parties to file written submissions and reserved the matter for judgment on 2nd October 2024.
4. In her judgment the Trial Magistrate held that the suit had been fully settled upon release of the Kshs. 350,000/- deposited as security. The Learned Magistrate further dismissed the Appellant's claims for salary in lieu of notice, unpaid leave, and for remittance of KRA and NSSF deductions.
5. Dissatisfied with the decision, the Appellant preferred the present appeal on the following grounds:
 - a. That the Learned Magistrate erred in law and fact by failing to properly compute the total award payable, despite the claim being uncontroverted;
 - b. That the Trial Court failed to recognize that the partial judgment on admission had not been paid and should have been included in the final computation;
 - c. That the Learned Magistrate's conclusion that the Appellant's claim had been fully settled by the Kshs. 350,000/- deposited as security was erroneous and lacked legal basis;
 - d. That the Court failed to appreciate that the said sum of Kshs. 350,000/- was in relation to three different cases, namely MCELRC Nos. 2, 3 & 4 of 2020;
 - e. That the security deposit of Kshs. 350,000/- together with the additional payment of Kshs. 136,060/- made on 29th January 2024 was inadequate to satisfy the claims in all three cases;
 - f. That the Trial Magistrate based his conclusions on speculation and conjecture; and
 - g. That the Court erred in law in failing to award unpaid leave as prescribed by law.
6. On the basis of the foregoing grounds, the Appellant urged this Court to set aside the decision of the Trial Court and to re-compute the sums payable in accordance with the law. He further prayed for the costs of the appeal and for such other orders as the court may deem just.
7. In compliance with the Court's directions, both parties filed written submissions.



Appellant's Submissions.

8. The Appellant, acknowledged that a total sum of Kshs. 484,060/- comprising the Kshs. 350,000/- security and Kshs. 134,060/- further payment of 29th January 2024, in relation to the three connected claims had been received. He specified that he had been paid Kshs. 60,000/- on 1st February 2022; Arthur Oluoch Misiani (Appellant in Kisii ELRCA E003 of 2024) had been paid Kshs. 50,000/-; while Mauti Dennis (Appellant in Kisii ELRCA E005 of 2024) had received Kshs. 70,000/- bringing the total disbursed amount to Kshs. 664,060/-. Nonetheless, the Appellant maintained that the total amounts claimed by the three Appellants were Kshs. 144,000/- (by himself), Kshs. 746,646.15 (by Mr. Arthur Oluoch), and Kshs. 284,577/- (by Mr. Mauti Dennis), cumulatively amounting to Kshs. 1,175,623/-. Thus, after offsetting the payments received (Kshs. 664,060/-), a balance of Kshs. 511,563/- remained outstanding.
9. The Appellant further submitted that the judgment on admission was never honoured, and should have been factored into the Court's final computation. Additionally, he asserted that he was entitled to 63 days unpaid leave, having not proceeded on annual leave for three years, as provided under section 28 of the *Employment Act*.

Respondent's Submissions.

10. The Respondents submitted that the Magistrate correctly held that the Appellant's salary arrears had been fully settled. He highlighted the fact that the Appellant had acknowledged receipt of a total of Kshs. 90,000/-, plus regular monthly instalments of Kshs. 10,000/-. Additionally, they drew attention to the release of the Kshs. 350,000/- held as security, all of which the Learned Magistrate took into consideration.
11. With respect to the claims for unpaid leave and statutory deductions, the Respondents submitted that the same were properly dismissed for want of evidence. They asserted that monetary claims must be specifically pleaded and strictly proved and in the absence of such proof, the Trial Magistrate could not lawfully award the claims. Furthermore, they asserted that the Appellant had failed to demonstrate that he had made a follow up on the alleged unpaid remittances. In view of the foregoing the Respondents urged this Court to dismiss the appeal and uphold the judgment of the Trial Court in its entirety.

Disposition.

12. The responsibility of a court on appeal is duty bound to revisit and exhaustively re-evaluate and reexamine the evidence presented before the trial court to arrive at its own independent conclusions all the while bearing in mind that unlike the Learned Magistrate, the appeal court did not have the advantage of seeing and hearing the witnesses testify and give due allowance for that disadvantage. The Appellant herein was partly successful and even had some sums paid after admissions by the Respondents. From a reading of the decision of the Learned Magistrate, it is clear there was consideration of the various claims presented by the Appellant. He was unsuccessful on a number of them. For instance, the claims for unpaid leave and statutory deductions, were dismissed, in my considered view, as they should, for want of evidence. In any monetary claim, such must be specifically pleaded and strictly proved. The Learned Magistrate was correct to decline to award the same in the absence of proof. She cannot be faulted on that score.

Orders accordingly.

DATED AND DELIVERED AT KISII THIS 18TH DAY OF JUNE 2025

NZIOKI WA MAKAU, MCIARB.



JUDGE

