



**Misiani v Board of Management Nyanchwa Preparatory School & another  
(Appeal E003 of 2024) [2025] KEELRC 1791 (KLR) (18 June 2025) (Judgment)**

Neutral citation: [2025] KEELRC 1791 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISII  
APPEAL E003 OF 2024  
NZIOKI WA MAKAU, J  
JUNE 18, 2025**

**BETWEEN**

**ARTHUR ALUOCH MISIANI ..... APPELLANT**

**AND**

**BOARD OF MANAGEMENT NYANCHWA PREPARATORY  
SCHOOL ..... 1<sup>ST</sup> RESPONDENT  
SEVENTH DAY ADVENTIST CHURCH (EA LTD SOUTH KENYA  
CONFERENCE) ..... 2<sup>ND</sup> RESPONDENT**

*(Being an appeal from the judgment and decree of Hon. Dr C. A. Ocharo  
(SPM) in KISII ELRC CAUSE NO. 4 OF 2020 dated 2nd October 2024)*

**JUDGMENT**

1. Vide a statement of claim dated 20<sup>th</sup> 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. 746,646.15;
  - 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 1<sup>st</sup> February 2022, prior to the commencement of the hearing, the trial court entered a judgment on admission in the sum of Kshs. 481,191.35, out of which Kshs. 90,000/- had been paid. Consequently, the sum left to be litigated upon was Kshs. 265,454.80. On the same day, the matter proceeded to hearing with the Appellant testifying and closing his case. When the matter came up for defence hearing on 14<sup>th</sup> 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.
  3. 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. The appeal was subsequently dismissed by a ruling delivered dated 29<sup>th</sup> November 2023. Thereafter, on 17<sup>th</sup> 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 claim. 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 2<sup>nd</sup> October 2024.
  4. In her judgment the Trial Magistrate dismissed the Appellant's suit. It was her contention that the Appellant had failed to prove his claim given the admission that he had received some monies and some money had also been deducted to cover his children's school fees. Given the foregoing she found that it was impossible to grant the claim based on the documentary and oral evidence. 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 29<sup>th</sup> January 2024 was inadequate to satisfy the claims in all three cases;
    - f. That the Trial Magistrate failed to properly evaluate the evidence resulting in a decision based on speculation and guesswork.
    - 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, in his submissions, acknowledged that a total sum of Kshs. 484,060/- comprising Kshs. 350,000/- security and Kshs. 134,060/- further payment of 29<sup>th</sup> January 2024, in relation to the three connected claims had been received. He specified that he had been paid Kshs. 50,000/- on 1<sup>st</sup> February 2022; Mauti Dennis (Appellant in Kisii ELRCA E005 of 2024) had been paid Kshs. 70,000/-; while David Aogo (Appellant in Kisii ELRCA E004 of 2024) had received Kshs. 60,000/-. Bringing the total disbursed amount to Kshs. 664,060/-.
9. Nonetheless, the Appellant maintained that the total amounts claimed by the three Appellants were Kshs. 746,646.15 (by himself), Kshs. 284,577/- (by Mauti Dennis), and Kshs. 144,000/- (by David Aogo), cumulatively amounting to Kshs. 1,175,623/-. Thus, after offsetting the payments received (Kshs. 664,060/-), a balance of Kshs. 511,563/- remained outstanding.
10. 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*.

### **Respondents' Submissions**

11. 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. 170,000/-, and a further sum of Kshs. 123,000/- had been deducted to cater for his children's school fees. Additionally, they drew attention to the release of the Kshs. 350,000/- held as security, all of which the magistrate took into consideration.
12. 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**

13. The responsibility of a court on appeal is clear. The appellate Court 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. The Appellant had received some monies and some money had also been deducted to cover his children's school fees. Given the foregoing the Learned Magistrate found that it was impossible to grant the claim based on the documentary and oral evidence. The Learned Magistrate properly held there was no evidence and dismissed the Appellant's claims for salary in lieu of notice, unpaid leave, and for remittance of KRA and NSSF deductions. 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.

14. The Court has re-evaluated the evidence adduced before the Learned Magistrate. This Court would not have made a determination markedly different as I am not persuaded the Appellant was entitled to all the sums he claims. He received payments which he concedes were claimed from the Respondent. As such, if there was any merit in the claims it would have been plain and obvious. The Appellant did not adduce sufficient evidence to warrant any additional awards from the Court.
15. Regarding the sums conceded, the same were paid and if the concessions entailed some give and take, the Appellant cannot expect to recover the balance through the Appeal. As such, the Court has found absolutely no reason to interfere with the decision of the Learned Magistrate. There is no re-computation that will be done and the appeal before this Court fails and is accordingly dismissed with costs to the Respondent.

Orders accordingly.

**DATED AND DELIVERED AT KISII THIS 18<sup>TH</sup> DAY OF JUNE 2025**

**NZIOKI WA MAKAU, MCIArb.**

**JUDGE**

