



**Miyare v Stabex International Limited (Cause E125 of 2024)
[2025] KEELRC 1744 (KLR) (13 June 2025) (Judgment)**

Neutral citation: [2025] KEELRC 1744 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E125 OF 2024**

**SC RUTTO, J
JUNE 13, 2025**

BETWEEN

SIMON MIYARE CLAIMANT

AND

STABEX INTERNATIONAL LIMITED RESPONDENT

JUDGMENT

1. It is not in dispute that the Claimant was employed by the Respondent as an LPG Manager and that he resigned from employment on 2nd November 2022.
2. According to the Claimant, the Respondent responded to his letter of resignation on 3rd November 2022 and attached a schedule of his salary dues in the sum of Kshs.353,333.33.
3. The Claimant contends that despite a demand letter dated 3rd February 2023, the Respondent is adamant and has refused to pay him his terminal dues.
4. The Claimant further avers that failure by the Respondent to pay the terminal dues owed to him amounts to gross violation of his employment contract and rights under the *Employment Act*. Consequently, the Claimant has asked the Court to award him the sum of Kshs. 353,333.33 being his terminal dues as well as compensation for loss and damages suffered.
5. The Respondent countered the Claim through a Response dated 15th March 2024. It is the Respondent's contention that the Claimant has failed to account for and /or pay Kshs.511,450/= being the value of LPG Cylinders and LPG which he had requisitioned for purposes of sale prior to his resignation.
6. According to the Respondent, it is ready to pay the Claimant his final dues as soon as he accounts for and/or pays Kshs. 511,450/=.



7. The Respondent further avers that the Claimant had filed Thika Small Claims Case No. E191 of 2023, seeking payment of the same amount, but the case was struck out with costs for want of jurisdiction.
8. To this end, the Respondent avers that the Claimant is not entitled to the prayers sought.
9. The Respondent has further filed a Counterclaim and Set Off against the Claimant for the sum of Kshs. 529,250/= being unaccounted LPG and LPG cylinders and costs awarded in Thika Small Claims Case No. E191 of 2023. Consequently, the Respondent has asked the Court to dismiss the Claimant's suit with costs and enter judgment in its favour in respect of the Counterclaim and Set Off.
10. On 3rd March 2025, both parties consented to have the matter determined by way of documentary evidence in terms of Rule 59 of the Employment and Labour Relations Court (Procedure) Rules, 2024.
11. Subsequently, the Court directed the parties to file and exchange written submissions within specified timelines.

Submissions

12. It was submitted by the Claimant that the Respondent did not adduce evidence to show how he occasioned the alleged loss of the LPG cylinders. Citing Section 107 of the *Evidence Act*, the Claimant argued that the Respondent bore the burden of proving its allegations against him. That having failed to substantiate its claim against him, the Respondent's claim must fail. In the Claimant's view, this was a calculated veil to justify the Respondent's failure to pay him his dues.
13. In its submissions, the Respondent admitted that the Claimant's claim is merited save for failure to account for the value of the LPG cylinders and LPG worth Kshs 511,450/=.
14. The Respondent further submitted that the Claimant did not file a response to the Counterclaim and Set Off and therefore the same is deemed as undefended. In the Respondent's view, judgment for Kshs 529,250/= ought to be entered in its favour.

Analysis and Determination

15. It is worth pointing out that in its Response, the Respondent has admitted the Claimant's claim in the sum of Kshs 353,333.33. Indeed, the Respondent has admitted as much in its submissions. Therefore, the singular issue that remains outstanding is whether the Respondent has proved its Counterclaim.
16. It is the Respondent's case that at the time of his resignation, the Claimant failed to account for and or pay Kshs 511,450/= being the value of LPG and LPG cylinders which he had requisitioned for purposes of sale prior to his resignation. The Respondent further sought the sum of Kshs 17,800/= being costs awarded in Thika Small Claims Case No. E191 of 2023.
17. Notably, the Claimant did not respond to the Counterclaim, hence it was undefended. Be that as it may, the Respondent was still bound to prove its Counterclaim on a balance of probabilities. As was held in the case of *Gichinga Kibutha v Caroline Nduku* [2018] KEELC 3981 (KLR); "It is not automatic that in instances where the evidence is not controverted, the Claimant's claim shall have his way in Court. He must discharge the burden of proof. He must proof (sic) his case however much the opponent has not made a presence in the contest."
18. In this case, the first limb of the Counterclaim is with respect to the value of the LPG and LPG cylinders, which the Respondent contends was not accounted for by the Claimant. In support of the Counterclaim, the Respondent annexed to the Response a document titled "Customer Statement"



bearing a number of columns including credit amount, debit amount and balance. The balance column shows a deficit in the sum of Kshs 511,450/= which is the sum claimed by the Respondent in the Counterclaim with respect to the LPG and LPG cylinders.

19. Beyond the said statement, the Respondent did not demonstrate the manner in which the deficit with respect to the LPG and LPG cylinders is attributable to the Claimant. Put differently, the Respondent did not link the Claimant to the deficit amount appearing in the balance column.
20. Needless to say, the Respondent has failed to prove to the requisite standard that the Claimant is responsible for the loss of the LPG and LPG cylinders hence rendering him liable for the sum of Kshs. 511,450/=.
21. With respect to the second limb of the Counterclaim, the Respondent annexed to its Response a copy of a Decree and Certificate of Stated Costs with respect to Thika Small Claims Comm. Case No. E191 of 2023; Simon Miyare vs Stabex International Ltd.
22. As per the said Decree, the Claim was struck out with costs to the Respondent. In this regard, the costs were assessed in favour of the Respondent in the sum of Kshs 17,800/=. There is no evidence on record that the Certificate of Stated Costs has been set aside or varied or that the Claimant has settled the same. This being the case, the amount appearing in the Certificate of Stated Costs being the sum of Kshs. 17,800/= is due to the Respondent.
23. To this end, the Counterclaim succeeds to the extent of Kshs 17,800/=.

Orders

24. In the final analysis, judgment is entered in favour of the Claimant as per the Memorandum of Claim and he is awarded the sum of Kshs. 353,333.33 being his terminal dues.
25. The Counterclaim is partly allowed and the Respondent is awarded the sum of Kshs 17,800.00 being costs awarded in Thika Small Claims Comm. Case No. E191 of 2023; Simon Miyare vs Stabex International Ltd.
26. The sum of Kshs 17,800/= will be set off against the Claimant's award of Kshs. 353,333.33, hence the final award due to the Claimant stands at Kshs. 335,533.33.
27. The final award shall attract interest at court rates from the date of Judgment until payment in full.
28. In view of the fact that the Claim has been allowed and the Counterclaim has partly succeeded, the Respondent shall bear 50% of the taxed costs.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 13TH DAY OF JUNE 2025.

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STELLA RUTTO

JUDGE

In the presence of:

For the Claimant Ms. Njigina

For the Respondent Mr. Kiprono

Court assistant Millicent

Order



In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court had been guided by Article 159(2)(d) of *the Constitution* which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of *the Constitution* and the provisions of Section 1B of the *Civil Procedure Act* (Chapter 21 of the Laws of Kenya) which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

STELLA RUTTO

JUDGE

