



**Njoroge v Waiganjo Investments Limited (Cause 1319 of 2015)
[2024] KEELRC 668 (KLR) (21 March 2024) (Judgment)**

Neutral citation: [2024] KEELRC 668 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 1319 OF 2015
MA ONYANGO, J
MARCH 21, 2024**

BETWEEN

NORMAN MWANGI NJOROGE CLAIMANT

AND

WAIGANJO INVESTMENTS LIMITED RESPONDENT

JUDGMENT

1. Vide a Memorandum of Claim dated 28th July 2015 and filed in court on 31st July 2015, the Claimant seeks the following reliefs against the Respondent: -
 - a. Kshs. 8,375,165 being terminal benefits and other dues which is tabulated as below: -
 - i. Agreed Bonus Payments in arrears
2013 from Farran Kshs 1,500,000
 - ii. Agreed Bonus Payment in arrears
2014 Farran Estate Kshs 1,500,000
 - iii. Total salary arrears for 2014 both
Farran and Waiganjo Group Kshs 4,124,259
 - iv. Terminal dues Farran Estate...Kshs 200,906
 - v. Terminal dues Waiganjo
Group Investments Kshs 1,050,000TOTAL Kshs. 8,375,165
 - b. Exemplary damages
 - c. Interest at court rates on (a) and (b) above



d. Costs of this suit

e. Any other order this court may deem fit the grant

1. According to the Claimant, he was employed by the Respondent with effect from 1st January 2010 as the General Executive Manager of Farran Estate for a period of 5 years from 2nd January 2010 until 31st December 2014. That his responsibilities were spelt out in the letter dated 19th December 2009, being to oversee the general day to day running of the farm with executive powers. His salary was Kshs. 80,000 per month.
2. The Claimant avers that he undertook his assigned duties and exhibited exemplary work ethics and business etiquette, integrity, competency and overall responsibility including accounting, planning and tax matters. He avers that he also handled matters of Waiganjo Group of Investments, a constituent of the Respondent's businesses as assigned to him by the Respondent as extra duties that were not part of his contract with Farran Estate.
3. It is the Claimant's case that he was formally employed by the Respondent for a second five-year contract to turn around Waiganjo Group Investments. That the said contract was to end on 31st December 2014 at the same time with the contract for Farran Estate. The Claimant states that according to the terms of the contract for Waiganjo Group Investments, his salary was subject to review every calendar year. That on 16th February 2012, his salary was reviewed upwards in writing from Kshs 200,000 to Kshs 300,000.
4. The Claimant averred that he was earning a total monthly salary of Kshs 371,028 for both contracts, made up of Kshs 71,028 for Farran Coffee Estate and Kshs 300,000 for Waiganjo Group Investments Limited.
5. The Claimant avers that throughout the period he was employed by the Respondent, he was never issued with any notice or warning of termination of his contract and that his contract was never nullified by the directors of Farran Estate or directors of the Respondent as alleged by the Respondent.
6. The Claimant avers that the malicious and unfair manner in which the Respondent has inordinately refused and/or declined to settle his dues after his adequate and satisfactory work to the Respondent has caused him untold mental anguish, and has affected his ability to live a dignified life and to provide for his family.
7. In response to the Claimant's claim, the Respondent filed a Response on 21st March 2016 denying the averments made by the Claimant. It contended that there was no valid contract of employment between the parties at the time material to this claim. It urged the court to dismiss the instant claim with costs.
8. It is the Respondent's contention that the Claimant was not entitled to any bonuses or commissions for the entire period he worked for the Respondent because he did not satisfy the agreed criteria for payment of bonuses and commissions.
9. The Respondent accused the Claimant of deliberately falsifying records to purport that he had helped run the Respondent's business to profitability when, in fact the business made. It is the Respondent's case that the sole purpose for the falsification was to earn commissions which were not due to the Claimant.



10. The Respondent alleged that the Claimant absconded duty from April 2014 and all efforts to get him to explain his whereabouts failed. It is contended that the Respondent sent the Claimant letters in a bid to find out his whereabouts but the Claimant did not return to work. That as a result his contract was lawfully terminated by letter dated 4th September 2014.
11. In its Counter Claim, the Respondent alleged that the Claimant owed it money that was paid to him as bonuses or commissions but which were not earned. The Respondent further counter claimed for salaries paid to the Claimant to manage Farran Coffee Farm from 1st July 2011 and rent arrears for the leasing of Farran Coffee Farm.
12. In a Reply to the Response to the Memorandum of Claim and Response to Counterclaim dated 11th April 2016 the Claimant denied falsifying any records and absconding duty as alleged by the Respondent. He also distanced himself from the alleged termination of his contract by letter dated 4th September 2014 and averred that his contract was neither discharged nor suspended.
13. In his defence to the Respondent's Counter-Claim, the Claimant denied owing the Respondent any rent arrears, salaries, bonuses or commissions.
14. After several adjournments at the instance of the Respondent, the suit was set down for full hearing on 4th November 2019. Mr. Kiluma was present for the Claimant holding brief for Ms. Kinyua but there was no representation for the Respondent. Upon being satisfied that the Respondent had been properly served with the hearing notice, the court directed that the hearing proceeds in the absence of the Respondent.
15. The Claimant testified as CW1 and adopted the contents of the Memorandum of Claim as part of his evidence in chief. He also relied on his documents attached to the Claim in support of his case.
16. It was the Claimant's case that he was first employed by the Respondent as an Executive General Manager of Farren Estate, the Respondent's constituent business, with effect from 1st January 2010. He referred the court to his appointment letter dated 19th December 2009 filed as Exb A14. The Claimant told the court that he worked for Farran Estate for 3 months. That thereafter he worked for both Farran Estate and Waiganjo Group Investments earning a salary of Kshs 80,000 and 300,000 from the two companies respectively.
17. The Claimant testified that his claim against Farran Estate was for salary of Kshs 80,000 per month for 12 months, Kshs 1.5 Million bonuses for 2013 and Kshs 1.5 Million for the year 2014. He further testified that he was not paid salary for Farran Estate from January to December 2014.
18. The Claimant further testified that he filed documents with his claim demonstrating the profits generated and what he was entitled to as bonuses.
19. He testified that he had a contract with the Respondent and his salary was increased from Kshs 200,000 to Kshs 300,000. It is the Claimant's evidence that he was never paid salary in 2014. That he was also not paid his dues and leave days.



20. The Claimant denied the allegation by the Respondent that the contract of employment was terminated by mutual agreement. The Claimant told the court that he demanded for the salary and bonuses owed by the Respondent when his contract came to an end but his pleas fell on deaf ears. He urged the court to dismiss the Respondent's Counter-claim with costs and grant him the prayers he sought in his Memorandum of Claim.
21. At the close of the Claimant's case, the court directed both parties to file written submissions. The Claimant was directed to notify and serve the Respondent with the mention date of 29th January 2020 for purposes of confirming filing of submissions.
22. From the record, the Claimant filed his submissions on 29th November 2019 pursuant to the directions of the court. When the matter was mentioned on 29th January 2020, Mr. Malanga appeared for the Claimant holding brief for M/s Kinyua while Mr. Githinji appeared for the Respondent. The Respondent had filed an application dated 6th January 2020 seeking to re-open the case. The Claimant's counsel sought leave to file a response.
23. The application was heard on 31st October 2022. In its detailed ruling delivered on 21st September 2023, the court at page 17 observed:
 - “...53. From the letters it is evident that it is the Respondent who withdrew instructions from their advocate. It is also evident that the Respondent was served with the hearing notice by both the Claimant's counsel and by its own advocates.
 54. It is further evident that on 10th June 2019, the Deputy Registrar directed the Claimant to serve counsel and the Respondent
 55. The Deputy Registrar did not direct the manner of service upon the Respondent. It only directed that the Respondent be served personally in addition to service upon the advocates, based on the fact that the Respondent's advocates had indicated to court that the Respondent had withdrawn instructions from the said advocates. It is clear that even if service was effected upon the Respondent physically there would have been no difference as the Respondent was already aware of the hearing date from its advocates.
 56. In any event, the rules of this court prescribe the manner and timelines for filing of documents, witness statements as well as verifying affidavits. Physical service upon the Respondents would have not changed the timelines prescribed in the rules.
 57. I find the grounds adduced by the Respondents in support of their application to be frivolous and the application is undeserving. The same is accordingly dismissed with costs.”

Analysis and determination



25. Having considered the pleadings on record, the evidence and submissions of the Claimant, the only issue for determination is whether the Claimant has proved that he is entitled to the reliefs he is seeking.
26. The Claimant in his Memorandum of Claim prayed for Kshs. 8,375,165 being alleged unpaid salary for the year 2014 and bonuses that the parties had agreed upon in their engagement.
27. It is not in dispute that the Claimant was engaged by the Respondent to run Farran Coffee Estate and Waiganjo Investments Group as evidenced by the document titled "Performance Contract of Employment" marked as Appendix A in the Claimant's list of documents.
28. From the contract it is clear that the Claimant was entitled to the benefits set out therein. The Contract reads:

15th February, 2010

Norman Mwangi Njoroge

Box 56301-00200

NAIROBI

REF: PERFORMANCE CONTRACT OF EMPLOYMENT

The Managing Director/C.E. O and owner of Farran Estate, MR. JOHN WAIGANJO has hired the services of NORMAN MWANGI NJOROGE as the Executive General Manager of Farran Estate to turn around the Estate to profitability after many years of loss making.

1. This agreement shall come into force with effect from January, 2, 2010 and shall bind the parties for a period of five years ending 31st December 2014.
2. The monthly pay for NORMAN NJOROGE shall be Kshs 80,000 subject to review according to MR, JOHN WAIGANJO'S satisfaction.
3. End of every financial year, the profits generated by the Coffee Estate, NORMAN MWANGI NJOROGE shall be entitled to a 10% stake annually.
4. After years of misappropriation of funds, loss making, theft of fertilizers, diesel, firewood, chemicals, existence of Ghost workers on Payroll, over paid fees for services etc, NORMAN MWANGI NJOROGE shall end this wastage. NORMAN MWANGI NJOROGE shall introduce cost cutting measures (drastic) in overhead running expenditure. This shall translate in money saved by directors and NORMAN MWANGI NJOROGE shall get 20% pay for the amount saved from expenses annually for the term of his contract comparable to 2009.
5. Subject to the provisions of this Agreement, NORMAN MWANGI NJOROGE shall be terminated without notice if he gets involved in misappropriating of hinds, or theft and no dues shall be paid.
6. If for any reason the Directors of Farran Estate nullified the contract, then they would be obligated to pay NORMAN MWANGI NJOROGE his dues and entitlements stated above for the entire period of contract.

MR JOHN WAIGAJO NORMAN MWANGI NJOROGE

C.E.O/MANAGING DIRECTOR EXECUTIVE GENERAL MANAGER



Signed Signed

29. On 16th February 2012 another agreement was signed between the Claimant and the Respondent in which it was agreed that the Claimant's salary be increased from Kshs. 200,000 to Kshs. 300,000 for running Waiganjo Investment Limited abbreviated as WIL. The documents on record contain evidence of the relationship between the Claimant and the Respondent together with evidence of payment of the salary of Kshs. 300,000 to the Claimant. From the above contract, it is clear that the Claimant was engaged by the Respondent for a period of five years.
30. The Claimant testified that he was not paid his salary for the year 2014 and further that he was not paid bonuses for the year 2013 and 2014 as agreed with the Respondent.
31. In its Reply to the Memorandum of Claim the Respondent averred that the Claimant was not entitled to any bonuses or commissions for the entire period he worked for the Respondent because he did not satisfy the agreed criteria for payment of commissions.
32. It is also the Respondent's averment that the Claimant absconded duty from April 2014 and that its efforts to trace the Claimant bore no fruits. There is no evidence on record to prove that the Claimant was issued with any warning letter for allegedly absconding duty.
33. From the documents on record and particularly the cheques paid by the Respondent to the Claimant in the year 2013, there is no doubt that the Claimant was earning a salary of Kshs 300,000. Apart from the said salaries, I have perused Appendix E, at page 99 of the Claimant's bundle of documents which is a document titled, "Profitability of Farran Estate in the financial year 2011". The document indicates that the Claimant was paid 10% commission of Kshs 208,046 on 30th May 2012. There is a cheque evidencing the said payments.
34. The Claimant's Performance Contract of employment provides for payment of commission at clause 3 as follows:

"End of every financial year, the profits generated by the Coffee Estate, NORMAN MWANGI NJOROGI shall be entitled to a 10% stake annually."
35. The Claim for payment of bonuses is in the nature of special damages. I have perused the Claimant's bundle of documents and find that the Claimant gave a full disclosure of the amount of commission he was initially paid as stipulated by his contract. He has also demonstrated that the Respondent owed him some unpaid bonuses which claim was not controverted.
36. There is on record, a letter addressed to the Respondent by the Claimant demanding for payment of Kshs 8,268,259 which is reproduced hereunder:

To,

MR. JOHN WAIGANJO GICHURI

Waiganjo Investment Limited

Dear Sir, Happy New Year

REF: DEMAND FOR SALARY PAYMENTS FOR THE YEAR 2014 AS PER CONTRACTUAL AGREEMENTS FOR WAIGANJO INVESTMENTS AND FARRAN ESTATE AT 371.028 KSH MONTHLY.

ANNUAL BONUS PAYMENTS AS PER CONTRACT FOR FARRAN ESTATE FOR THE YEARS 2013 AND 2014 AT 1.5M ANNUALLY.



REPAYMENT OF BALANCE OWED ON THE 3M LOAN ADVANCED TO YOURSELF PAY KRA OVER DUE TO DATE BALANCE BEING 832.923KSH AS AT 19TH JANUARY TOTAL AMOUNT IN DEMAND 8,285,259M.

The purpose of this letter to make demands for payment owed as stated above with full details known to you.

I have repeatedly requested for payment in a polite manner, but my demands for the same have been ignored.

My salary has been overdue a year since January 2014 to December 2014 upon the expiry of each contract. The 3 million advanced to yourself as agreed was repayable in 3 months since December 2013 which is overdue.

As you can see, I have been overly patient with you in an extreme manner.

I have attempted to get in touch with you by phone but you have disconnected and other times ignored it all together, in spite of promises to settle.

Your response has forced me to take a course of action I would not have taken otherwise.

It is extremely regretful and unfortunate to resort to such an action my dear brother after five years of exceedingly great, exceptional and dedicated labour above reproach in all aspects.

Please be informed that I will proceed with further action legal or otherwise to pursue justice in this matter, but I would prefer to give you an opportunity to settle payments in brotherly love and avoid legal action.

Please give this matter your prompt attention and the seriousness it deserves.

Please see to the matter.

Yours sincerely,

Signed.

37. I have carefully interrogated the documents filed by the Claimant. There is no evidence of termination of the Claimant's employment as alleged by the Respondent. There is further no evidence of payment of salary for 2014.
38. As stated at paragraph 6 of his contract, the Claimant is entitled payment of his salary.
39. I thus find on a balance of probability that the Claimant was not paid salary for 2014 which I award him at Kshs.300,000 per month being kshs.3,600,000.
40. I however find no evidence or basis for payment of bonus as no accounts were furnished to the court to prove the profits earned by either Farran Estate of Waiganjo Investment Limited for the years claimed. Apart from filing voluminous documents showing transactions, no tabulation has been made to prove the amount claimed.
41. I further find no proof that the Claimant was entitled to payment of terminal dues as the Claimant's contract did not provide for the same. What the Claimant was entitled to according to his contract was 10% of the profits for every financial year and 20% of savings on expenses. As I have already stated above, no tabulation of the amount claimed has been presented to the court.
42. The Respondent having not prosecuted its counter claim, the same is dismissed with costs.



43. In the end, judgment is entered for the Claimant against the Respondent in the sum of Kshs.3,600.000/=.
44. The Respondent shall pay interest on this amount with effect from the date of this Judgment and the Claimant's costs for both this suit and the counter claim.

DATED, SIGNED AND DELIVERED VIRTUALLY ON

THIS 21ST DAY OF MARCH 2024

MAUREEN ONYANGO

JUDGE

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NRB ELRC NO. 1319 OF 2015 JUDGMENT

