



**Muiruri v ANMG Limited & another (Cause E045 of 2023)  
[2024] KEELRC 733 (KLR) (5 April 2024) (Judgment)**

Neutral citation: [2024] KEELRC 733 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E045 OF 2023**

**SC RUTTO, J**

**APRIL 5, 2024**

**BETWEEN**

**ANDREW NGOTHO MUIRURI ..... CLAIMANT**

**AND**

**ANMG LIMITED ..... 1<sup>ST</sup> RESPONDENT**

**CRYSTAL RECRUITMENT LIMITED ..... 2<sup>ND</sup> RESPONDENT**

**JUDGMENT**

1. Through a Memorandum of Claim filed on 26<sup>th</sup> January 2023, the Claimant avers that through a fixed-term employment contract dated 2<sup>nd</sup> August 2021, the 2<sup>nd</sup> Respondent seconded him to work at the 1<sup>st</sup> Respondent's Nairobi office as the SEO Project Director for a period of 24 months effective 16<sup>th</sup> August 2021.
2. The Claimant further avers that his remuneration was a consolidated monthly gross salary of Kshs 323,000.00. He was also entitled to a further Kshs 77,000.00 per month paid out as stock at €6 per share over the 24 months' period.
3. He further states that following a 12 months successful stint, he issued a 30 days termination notice of his engagement with the 1<sup>st</sup> Respondent on 26<sup>th</sup> August 2022, commencing on 30<sup>th</sup> August 2022. The notice took effect on 30<sup>th</sup> September 2022.
4. It is the Claimant's case that at the time his notice period commenced, the 1<sup>st</sup> Respondent owed him salary arrears from July to September 2022. Further, the 1<sup>st</sup> Respondent owed him Kshs 1,001,000.00 being company stock for the period of employment.
5. That further, pursuant to Paragraph 15 of the employment contract, the 2<sup>nd</sup> Respondent made an undertaking to him that upon the termination of the contract, it would cause the 1<sup>st</sup> Respondent to settle any outstanding remuneration for services performed prior to the effective date of termination.



6. The Claimant further avers that through a demand letter dated 19<sup>th</sup> October 2022, he sought for the payment of Kshs 1,605,945.00 being the aggregate of the outstanding salary arrears and company stock.
7. That whilst the 1<sup>st</sup> Respondent has acknowledged that it owes him the outstanding arrears, it has failed to settle the same in full or give a commitment on when the arrears will be settled in full. Instead, the 1<sup>st</sup> Respondent has opted to settle the arrears as and when it feels like, to his detriment.
8. In regards to the Company Stock, the 1<sup>st</sup> Respondent issued him with a Share Certificate for 1,435 shares at €6 each, without a commitment as to when the shares will be liquidated.
9. It is on account of the foregoing that the Claimant prays for Judgment severally and jointly against the Respondents for:
  - a. A declaration that the withholding of his salary is unlawful and in violation of his right to fair labour practices.
  - b. The immediate settlement of the outstanding salary arrears of Kshs 421,072.00.
  - c. The immediate liquidation and settlement of €8,610 being the company stock owed to him.
  - d. Interest on (a) and (b) at court rates from 30<sup>th</sup> September 2022 until payment in full.
  - e. Costs.
10. The Respondents did not enter appearance despite being served with the Summons and Statement of Claim. In this regard, the Claimant filed an Affidavit of Service sworn by one Charles Njaow on 22<sup>nd</sup> November 2023.
11. Subsequently, the matter was set down for formal proof hearing on 23<sup>rd</sup> November 2023, during which the Claimant testified in support of his case.
12. During the hearing, the Claimant sought to rely on his witness statement to constitute his evidence in chief. He further produced the list and bundle of documents filed alongside the Memorandum of Claim as his exhibits before Court.
13. The Claimant told the Court that he did not have any dispute with regards to the contract of employment save for payment of his salary arrears.

### **Submissions**

14. The Claimant submitted that failure by the 1<sup>st</sup> Respondent to release his salary is a breach of his employment contract and an affront to his right to fair labour practices. In support of his submissions, the Claimant sought to rely on the case of [\*Naftali Mogaka Nyaboga v Kisii Cuntly Government & another\*](#) (2022) eKLR.

### **Analysis and Determination**

15. Arising from the Claim before me, the evidence on record and the Claimant's submissions, it is apparent that the singular issue for determination is whether the Claimant is entitled to the reliefs sought.
16. Evidently, the Claimant's claim against the Respondents is for payment of his outstanding salary and liquidation of his share of stock.



17. In support of his claim, the Claimant exhibited a copy of his employment contract which provides at clause 4 that his monthly gross salary was Kshs 323,000.00 and Kshs 77,000.00 as stock.
18. The Claimant further exhibited a copy of an email dated 13<sup>th</sup> December 2022 from one Mr. James Cannon Boyce of the 1<sup>st</sup> Respondent company in which he stated in part:
- “ According to our records, your client is owed
- July 81,495
- August 200,000
- September 200,000
- for a total of Kshs 481,945”
19. Fundamentally, the 1<sup>st</sup> Respondent admitted owing the Claimant the sum of Kshs 481,945.00 in salary arrears. According to the Claimant, the 1<sup>st</sup> Respondent had partly settled the salary arrears as follows:
- a. Kshs 92,131.65 settled on 2<sup>nd</sup> November 2022;
  - b. Kshs 24,302.00 settled on 15<sup>th</sup> December 2022; and
  - c. Kshs 36,558.00 settled on 18<sup>th</sup> January 2023.
20. It is the Claimant’s case that the 1<sup>st</sup> Respondent still owes the sum of Kshs 421,072.00 in salary arrears. As stated herein, the Respondents did not file a Defence nor participate in the hearing. Therefore, the Claimant’s claim was not controverted.
21. It has further not been denied that the Claimant rendered his services to the 1<sup>st</sup> Respondent during the period in question.
22. Section 17(1) of the [Employment Act](#), requires an employer to pay the entire amount of wages earned by or payable to an employee in respect of work done by the employee in pursuance of a contract of service. As a matter of fact, this is a cardinal rule in any employment relationship.
23. In this case, the 1<sup>st</sup> Respondent has not proffered any justification for withholding the Claimant’s salary noting that it did not defend the claim.
24. To this end, the 1<sup>st</sup> Respondent breached the contract of employment and a mandatory statutory provision when it failed to pay the Claimant salary for the services rendered.
25. In light of the foregoing, the Court returns that the Claimant is entitled to a sum of Kshs 421,072.00 being unpaid salary.
26. With regards to the claim for liquidation and settlement of stock, the Claimant exhibited a copy of a share certificate indicating that he holds 1435 ordinary shares of €6 each in the 1<sup>st</sup> Respondent company. Again, the 1<sup>st</sup> Respondent did not proffer any evidence to prove that the Claimant’s claim was settled as appropriate. As such, the Court returns that the Claimant is entitled to be paid the sum of €8,610 being his share of stock in the 1<sup>st</sup> Respondent company.
27. As I pen off, I find it imperative to address the 2<sup>nd</sup> Respondent’s liability with regards to the claim herein. It is notable that clause 15 of the contract of employment, provides that the 2<sup>nd</sup> Respondent who is identified as a contractor, was to ensure that the Claimant was paid remuneration for services satisfactorily performed upon termination of the contract. As such, the 2<sup>nd</sup> Respondent is equally liable in this case.



## Orders

28. In the final analysis, Judgment is entered in favour of the Claimant against the Respondents jointly and severally as follows:
- a. The Claimant is awarded the sum of Kshs 421,072.00 being outstanding salary arrears;
  - b. The Claimant is entitled to liquidation and settlement of €8,610 being his share of stock in the 1<sup>st</sup> Respondent company.
  - c. Interest shall apply on the amount in (a) and (b) at court rates from the date of filing the suit until payment in full.
  - d. The Claimant shall have the costs of the suit.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 5<sup>TH</sup> APRIL DAY OF APRIL 2024.**

.....  
**STELLA RUTTO**

**JUDGE**

In the presence of:

For the Claimant Mr. Mungai

For the Respondents No appearance

Court Assistant Millicent Kibet

## 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 15<sup>th</sup> March 2020 and subsequent directions of 21<sup>st</sup> 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**

