



**Ngugi v Orient Sacco Society Limited (Cause 154 of 2020)  
[2024] KEELRC 1304 (KLR) (29 May 2024) (Judgment)**

Neutral citation: [2024] KEELRC 1304 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE 154 OF 2020**

**B ONGAYA, J  
MAY 29, 2024**

**BETWEEN**

**JOHN MWANGI NGUGI ..... CLAIMANT**

**AND**

**ORIENT SACCO SOCIETY LIMITED ..... RESPONDENT**

**JUDGMENT**

1. The claimant filed the memorandum of claim dated 13.03.2020 through Wairimu Kiongera & Company Advocates. The claimant prayed for judgment against the respondent for:
  - a. One-month notice payment Kshs. 199, 500.00.
  - b. Salary arrears January 2017 to March 2017 Kshs. 598, 500.00.
  - c. House allowance  $15/100 \times 199,500.00 \times 84$  months served = Kshs. 2, 513, 700.00.
  - d. Service pay Kshs.  $199, 500 \times 15/100 \times 7$  years = Kshs. 209, 475.00.
  - e. Compensation for unlawful loss of employment Kshs.  $199, 500 \times 12$  = Kshs. 2, 394, 000.00.
  - f. Severance payment 15 days for each year served = Kshs.498, 750.00.
  - g. Accrued annual leave  $21/30 \times$  Kshs.  $199, 500 \times 7$  = Kshs. 977, 550.00.
  - h. Certificate of service
  - i. Total amount claimed Kshs. 7, 391, 475.00.
2. The claimant pleaded and alleged as follows:
  - a. The respondent employed the claimant on 17.12.2012 as the Chief Executive Officer until his summary dismissal on 13.03.2017.



- b. The respondent is a Savings and Credit Cooperative Society limited regulated under the [Cooperative Societies Act](#) Cap 490 Laws of Kenya.
  - c. At employment, the claimant earned Kshs. 110, 000.00 per month. He was confirmed in appointment on 17.12.2013. In 2014 salary was increased to Kshs.155,000.00 and to Kshs. 199,500.00 in 2015. He alleged throughout service he never went on annual leave.
  - d. He alleges he was unlawfully dismissed on 13.03.2017 and without notice. He was not paid terminal dues.
3. The respondent's case is based upon the amended memorandum of response dated 18.10.2022 filed through Muli & Company Advocates. The respondent prayed for judgment against the claimant for:
- a. Kshs. 4, 701, 572.00 loan owed to the respondent.
  - b. Kshs. 42, 150, 800.00 surcharge by the Commissioner of Co-operatives.
  - c. Costs of the suit.
  - d. Interest on (a) (b) and (c) above at court rates.
  - e. Any other relief that the Honourable Court may deem fit to grant.
4. The respondent pleaded as follows:
- a. It is admitted that the respondent employed the claimant as the CEO as pleaded for the claimant. The claimant was the principal advisor to the board of management and as the board's ex-officio member. In his tenure the respondent got into a financial crisis manifested in the failure to meet members' financial needs. Salaries paid to members through the respondent were not honoured. The respondent became unable to advance loans to members. The board members and management especially the claimant squandered the respondent's money. The claimant approved loans to himself and members of staff against provisions of the law. The loans advance to staff in 2014 to 2016 were Kshs. 14, 204, 750.00 against their cumulative shares of Kshs. 1, 014, 500.00 being above that allowed by law. He conspired with auditors to negligently manipulate accounts to falsify dividends for 2013, 2014, and 2015 and money used to pay dividends was actually borrowed from banks being Kshs. 95, 798, 860.00.
  - b. In conjunction with the board at material time the claimant withdrew Kshs. 21, 508, 000.00 from various respondent's bank accounts and not paid to respondent's members or put to known respondent's needs.
  - c. The claimant reported Kshs. 9, 280, 000.00 unsupported board expenses for the period November 2014 and February 2015.
  - d. Withholding tax on the falsified dividends was declared but not remitted to KRA.
  - e. In a conspiracy, the claimant paid board members sitting, travel and subsistence allowances.
  - f. The respondent failed to handover records including on his annual leave.
  - g. In the circumstances, towards the end of 2016 the respondent's members failed to access funds in their FOSA accounts; and, payment for various business enterprises such as tealeaves, milk, and pension. 548 members signed a memorandum to Commissioner of Co-operatives to call a Special General Meeting. The claimant and board members were aware of the looming vote of no confidence at the meeting. They prepared their defences for the meeting held on



07.12.2016. The claimant attended the meeting and the record of proceedings shows that he admitted to the accusations of theft, misuse of respondent's funds, issuing fictitious dividends, cooking of books of accounts and other allegations. The Court has perused the minutes on record and indeed the claimant admitted and owned up. The meeting resolved to suspend the entire board and 5 interim officials were elected. The minutes show that the statutory regulator SASRA had taken over management of the respondent on 02.12.2016 and as at that date the respondent was operating at a loss of Kshs. 66 million with liabilities of Kshs. 686 million. The regulator assured members that all losses would be followed up to last coin.

- h. The respondent engaged a forensic auditor Ronalds & Associates, Certified Public Accountants and report tabled at special general meeting of 11.03.2017. The malpractices during the claimant's tenure were exposed.
  - i. The claimant was invited to give his response. It was at a meeting held on 11.03.2017. The claimant had handed over on 08.12.2016 and thereafter-absconded duty. The respondent suspended him on 22.02.2017 for absconding from duty and to pave way for investigations. The claimant confirmed in his testimony in Court that he attended the meeting of 11.03.2017. It is at that meeting that members deliberated the forensic report and passed a vote of no confidence in the claimant.
  - j. Thereafter the claimant was summarily dismissed by the letter dated 13.03.2017. He was dismissed on account thus, "Reference is made to your involvement in falsification of financial records for bank loans that have now plunged the Sacco Into problems. Attached is your admission letter to the Authority (SASRA) dated 13.10.2016. You were also adversely mentioned in the forensic audit report tabled to the Special General Meeting on 11<sup>th</sup> March 2017. The board has decided to summarily dismiss you from employment immediately."
  - k. The Sacco Societies Regulatory Authority (SASRA) has found the claimant culpable of misconduct. The Ministry of Industry, Trade and Cooperatives through the Commissioner for Co-operative has surcharged the claimant Kshs. 42, 150, 800.88 being part of the sums of money the claimant embezzled from the respondent.
  - l. On 23.06.2022, the Co-operative Tribunal at Nairobi entered judgment against the claimant for the respondent for Kshs. 42, 150, 800.88.
  - m. In his testimony and as pleaded for the respondent, the claimant confirmed he participated in the enquiry set up by the Ministry.
  - n. The respondent stated that upon dismissal, the claimant was paid outstanding leave days and other lawful dues and, in any event accrued leave days were forfeited per respondent's policies.
  - o. The respondent counter-claimed as prayed for.
- 5. To answer the 1<sup>st</sup> issue, parties were in a contract of service and there is no dispute in that regard per the pleadings.
  - 6. To answer the 2<sup>nd</sup> issue, the Court returns that the contract of service was terminated by the letter of summary dismissal dated 13.03.2017.
  - 7. To answer the 3<sup>rd</sup> issue, the Court returns that the respondent had not adopted unfair procedure to dismiss the claimant and the reasons were valid. The procedure included the role played by the regulator SASRA and the claimant at the special meeting of 07.12.2016 admitted to culpability. The Court considers that the claimant having admitted to the reasons for termination and thereafter-absconded



duty, the submission that he ought to have been subjected to a notice and a hearing per section 41 of the *Employment Act*, 2007 would amount to a superfluous process. In any event, he subsequently saw the forensic report and attended the meeting of 11.03.2017. The procedure and reasons were fair per section 45 of the *Act*. The claimant fully contributed to his dismissal. It was not unfair at all. The claim for compensation and notice pay will collapse per section 44(1) of the *Act* as submitted for the respondent – that in gross misconduct, shorter or no notice is available during summary dismissal.

8. To answer the 4<sup>th</sup> issue, the issues in the Counterclaim are before other lawful forum in Co-operative Tribunal Citmisappl/ E13/2022 and Ctc 127/21 and the Court will not interfere as parties must exhaust that alternative statutory path.

9. The 5<sup>th</sup> issue is on the other claims by the claimant. The Court returns as follows:

a) The claim is for salary arrears January 2017 to March 2017 Kshs. 598, 500.00. The Court finds that the respondent has established that the claimant absconded and thereafter was on suspension. He did not work during the period and the culpability was established. Further, the claimant did not exhibit his salary account statement to show he was not paid. The claimant will collapse especially as submitted for the respondent; it has not been strictly proved.

c) House allowance  $15/100 \times 199,500.00 \times 84$  months served = Kshs. 2, 513, 700.00 will collapse. The claimant pleaded and confirmed he earned a consolidated salary, which was increased overtime. The same is deemed to have included provision for rent for reasonable housing per section 31(2) of the *Act* on consolidated pay inclusive reasonable provision for housing. The claimant has not given any contractual or other basis for the claim. It will fail as unjustified.

d) As submitted for the respondent service pay Kshs.  $199, 500 \times 15/100 \times 7$  years = Kshs. 209, 475.00 is not due because he was a member of NSSF and per section 35(5) as read with section 35 (6) (a) of the *Act*, service pay is not due.

e) The claim for severance payment 15 days for each year served = Kshs.498, 750.00 is not due as it was a case for summary dismissal under section 44 of the *Act* and not redundancy under section 40 of the *Act*. The submissions made for the respondent is upheld.

g) As submitted for the respondent the claimant failed to provide evidence for accrued annual leave  $21/30 \times$  Kshs.  $199, 500 \times 7 =$  Kshs. 977, 550.00. The court finds that the claimant has as well failed to justify the same base of the claim throughout service. There appears to have been no grievance about leave during the service. Clause 7.1.1 of the respondent's Human Resource and Administration Manual required the claimant to complete leave forms on leave days carried forward but which are not exhibited at all. The court finds the claim is an afterthought.

h) Certificate of service is not contested. It should issue.

The suit is hereby determined with orders:

a. The respondent to deliver the certificate of service within 21 days from today.

b. Each party to bear own costs of the suit.

**SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS WEDNESDAY 29<sup>TH</sup> MAY 2024.**

**BYRAM ONGAYA**

**PRINCIPAL JUDGE**

