



**Mwinzi v Jeyfine Wines Limited (Cause E307 of 2023)
[2024] KEELRC 1513 (KLR) (14 June 2024) (Judgment)**

Neutral citation: [2024] KEELRC 1513 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E307 OF 2023**

**J RIKA, J
JUNE 14, 2024**

BETWEEN

JOSEPH MUSYIMI MWINZI CLAIMANT

AND

JEYFINE WINES LIMITED RESPONDENT

JUDGMENT

1. This Claim is undefended.
2. It was filed on 13th April 2023.
3. The Affidavit of Service of the Notice of the Summons and the Statement of Claim on record, shows that service was effected on the Respondent physically and through e-mail.
4. There was no appearance or response filed by the Respondent.
5. The Claimant gave evidence and closed his case, on 28th February 2024.
6. He states that he was employed by the Respondent on 30th June 2022, as a Senior Accountant. His salary was Kshs. 130,000 monthly.
7. On 6th December 2022, he was locked out by the Respondent. He was prevented from discharging his normal duties.
8. His salary for November, December 2022, and January 2023, was withheld without explanation. He urges the Court to find that he was constructively dismissed, and grant him the following orders: -
 - a. Declaration that constructive dismissal was unfair and unlawful.
 - b. 12 months' salary in compensation.
 - c. Salary arrears of Kshs. 430,000.



- d. Notice pay.
 - e. Annual leave pay at Kshs. 61,250.
 - f. Costs and interest.
9. He relied on his witness statement dated 26th February 2024. He exhibited 4 documents, including his pay slip, e-mail dated 11th December 2022, e-mail and letter dated 8th February 2023 and a copy of final dues computation.
 10. The Claim was last mentioned before the Court on 3rd April 2024, when the Claimant confirmed filing of his closing submissions.

The Court Finds:-

11. The Claimant states that he was employed by the Respondent as a Senior Accountant, on 30th June 2022. He has not provided the Court with any document showing the terms and conditions of service.
12. He exhibited a pay slip. The pay slip indicates a net monthly salary of Kshs. 130,000. He also exhibited correspondence between him and the Respondent's Management, relating to non-payment of his salary, and his decision to resign, as a consequence thereof.
13. There is adequate evidential material to support his position that he was an Employee of the Respondent. In the absence of any pleadings, evidence and documents from the Respondent, the Court has no reason to doubt that the Claimant was an Employee of the Respondent.
14. He resigned on 8th February 2023. Again in the absence of any pleadings, evidence and documents from the Respondent, the Court agrees with the Claimant that he was frustrated out of employment by the Respondent's fundamental breach of the terms of his contract. The breach was twofold- non-payment of salary and lockout.
15. He is granted the prayer for arrears of salary at Kshs. 430,000 as prayed and notice at Kshs. 130,000.
16. He said nothing about annual leave in his evidence, and in any event, he was not working from 6th December 2022 when he states he was locked out, until 8th February 2023, when he tendered resignation. He was resting at home, or engaging in other beneficial undertakings. He was not working for the Respondent for 2 months, leading to his resignation. The prayer for annual leave is declined.
17. He worked actively for a brief period of 6 months, and was locked out for another 2 months. Cumulatively, he was an Employee of the Respondent for 8 months. He did not specify how long he expected to continue working, but for his premature resignation. He did not inform the Court whether he secured alternative employment. He is granted equivalent of 2 months' salary in compensation for constructive, unfair and unlawful dismissal at Kshs. 260,000.
18. Costs to the Claimant.
19. Interest granted at court rate from the date of Judgment till payment is made in full.

In sum, it is Ordered : -

- a. It is declared that the Claimant was constructively, unfairly and unlawfully dismissed by the Respondent.



- b. The Respondent shall pay to him arrears of salary at Kshs. 430,000; notice at Kshs. 130,000; and compensation for constructive, unfair and unlawful dismissal equivalent of 2 months' salary at Kshs. 260,000 – total Kshs. 820,000.
- c. Costs to the Claimant.
- d. Interest granted at court rate, from the date of Judgment, till payment is made in full.

DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY, AT NAIROBI, UNDER PRACTICE DIRECTION 6[2] OF THE ELECTRONIC CASE MANAGEMENT PRACTICE DIRECTIONS, 2020, THIS 14TH DAY OF JUNE 2024.

JAMES RIKA

JUDGE

Court Assistant: Emmanuel Kiprono

Ogembo & Associates, Advocates for the Claimant

No appearance for the Respondent

