



Njoroge v Standard Engineering Works (Employment and Labour Relations Cause E593 of 2022) [2024] KEELRC 2614 (KLR) (24 October 2024) (Judgment)

Neutral citation: [2024] KEELRC 2614 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS CAUSE E593 OF 2022**

**MN NDUMA, J
OCTOBER 24, 2024**

BETWEEN

DANIEL MWANGI NJOROGE CLAIMANT

AND

STANDARD ENGINEERING WORKS RESPONDENT

JUDGMENT

1. The claimant filed suit on 26/8/2022 against the respondent seeking the following prayers:-
 1. House allowance six (6) months Kshs. 4,380 x 6 = Kshs. 26,280.00
 2. Outstanding basic salary pay six (6) months Kshs. 54,057 x 6 = Kshs. 324,324.00.
 3. Compensation for constructive dismissal (12 months) Kshs. 648,648.00.
 4. Gratuity pay (21 days) for each year worked (17 years & 1 month) Kshs. 742,244.00Total Kshs. 1,741,550.00
2. The facts of the case as set out in the witness statement adopted as evidence in chief is that the claimant was employed by the respondent as a machine operator and a fitter on 1/9/2023 at a monthly basic salary of Kshs. 54,057/= and a monthly house allowance of Kshs. 4,380/=. That the claimant was a member of Kenya Engineering Workers Union and the Collective Bargaining Agreement (CBA) guided his terms of employment.
3. That the claimant served the respondent for a period of 17 years up to 19th January 2021 when the claimant was forced to resign from employment due to failure by the respondent to pay his full salary monthly but instead started paying him by instalments. That after a while, the respondent stopped paying the claimant his salary for a period of six (6) months though the claimant continued to work



- daily and diligently. That the claimant became financially challenged and could no longer continue to facilitate his transport to and from work and therefore decided to resign.
4. The claimant states that he was constructively dismissed from employment and is entitled to the reliefs sought.
 5. The respondent filed a memorandum of response to the claim dated 13/2/2023 in which the respondent admits that it had employed the respondent as set out in paragraph 3 and 4 of the statement of claim. Accordingly, the respondent admitted that the claimant worked as a machine operator and earned a monthly basic salary of Kshs. 54,057/= and house allowance of Kshs. 4,380/= set out in a copy of pay slip dated June 2020.
 6. The respondent however denied that it had stopped paying the salary of the claimant from August 2020 and stated that the claimant resigned not due to non-payment of salary and frustration by the respondent but did so voluntarily.
 7. The respondent admitted the contents of paragraph 13 of the statement of claim that the respondent by a letter dated 27/1/2021 had accepted to pay the claimant the outstanding six month's salary and subject to a counter claim of three months' salary in lieu of three months' notice.
 8. The respondent however failed to attend the hearing of the suit and so, the case proceeded undefended.

Determination

9. The court finds that by dint of the admissions made by the respondent in its statement of claim that the claimant has proved that he was paid a monthly salary of Kshs. 54,057/= and a house allowance of Kshs. 4,380/= and that the respondent had failed to pay the claimant for a period of six (6) months in the sum of Kshs. 324,342, basic salary and Kshs. 26,280 house allowance.
10. This admission by the respondent is sufficient to prove that the respondent had fundamentally breached the contract of employment of the claimant by failing to pay his remuneration for a period of six (6) months.
11. The claimant was entitled to treat his contract of employment to have been repudiated by the respondent by the fact of failure to honour a fundamental clause of the contract of employment, being payment of monthly salary upon providing services to the respondent.
12. Accordingly, the claimant has also proved that his employment was constructively dismissed by the respondent for the aforesaid reasons. The counter claim by the respondent fails accordingly since the claimant was not obliged to give notice of resignation having been constructively dismissed by the respondent.
13. The court takes judicial notice of the COVID-19 pandemic which affected many enterprises at this time and considers the breach of the employment contract to be mitigated by the hardships of the time.
14. The court finds that the claimant is entitled to payment of termination gratuity in terms of the CBA between the respondent and the union as claimed and calculated at 21 days salary for each completed year of service being 17 years and 1 month in the sum of Kshs. 742,244/=.
15. The court finds that this is not a proper case to award compensation to the claimant for the constructive dismissal since the same is visited by sufficient mitigation circumstances.
16. In the final analysis the court enters judgment in favour of the claimant against the respondent as follows: -



- a. Kshs. 324,342/= being unpaid six (6) months basic salary.
- b. Kshs. 26,280/= being unpaid house allowance for six months.
- c. Kshs. 742,244/= being unpaid terminal gratuity
- d. Total sum Kshs. 1,092,866/=
- e. Interest at court rates from date of judgment till payment in full.
- f. Costs of the suit

DATED AT NAIROBI THIS 24TH DAY OF OCTOBER 2024

MATHEWS NDUMA

JUDGE

Appearance:

Mr. Abuye for claimant

M/s. Kyalo for respondent/applicant

Mr. Kemboi – Court Assistant

