



**Chimwani v Solfin Solutions Limited (Cause E054 of 2023)  
[2024] KEELRC 13478 (KLR) (19 December 2024) (Judgment)**

Neutral citation: [2024] KEELRC 13478 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA  
CAUSE E054 OF 2023  
M MBARÚ, J  
DECEMBER 19, 2024**

**BETWEEN**

**ALI MBARAK CHIMWANI ..... CLAIMANT**

**AND**

**SOLFIN SOLUTIONS LIMITED ..... RESPONDENT**

**JUDGMENT**

1. The respondent employed the claimant as a chief accountant at a wage of Ksh.25, 000 per month, which was gradually increased to Ksh.60 000 from 1 April 2018 and, after that, increased annually. The last salary paid was Ksh.80, 000.
2. The claim is that in early 2022, the respondent started delaying salaries or making partial payments while the rest of the employees were paid in full. The claimant was restricted from accessing bank records and other transactions, yet he was expected to prepare and maintain financial reports.
3. Through a letter dated 31 December 2022, the claimant issued his resignation notice with effect from January 2023. His salary arrears were not paid, his terminal dues amounting to Ksh.994, 772.73 being:
  1. Gratuity pay from April 2017 to March 2020 Ksh.327,272.73;
  2. Service pay from April 2020 to March 2023 Ksh.212,500;
  3. Accrued 19 leave days Ksh.105,000;
  4. Salary arrears for October 2022 ksh.50,000;
  5. Salary arrears for November 2022 Ksh.100,000;
  6. Salary arrears from December 2022 Ksh.100,000;
  7. Salary arrears for January 2023 Ksh.100, 000.



4. The non-payment of salaries amounted to a breach of contract, forcing the claimant to resign from his employment. The respondent's actions were in breach of Article 41 of *the Constitution* and the *Employment Act*, and hence, the claim for terminal dues amounting to Ksh.994,772.73, together with the costs of the suit.
5. The claimant testified in support of his case that he was forced to tender his resignation as the chief accountant for the respondent due to nonpayment of his salaries while other employees were getting full payments. He could not do his duties since the respondent denied him access to the financial records necessary for his role. He felt humiliated and treated in an inhumane manner and, hence, was forced to resign. It was not a voluntary resignation, as the respondent has alleged. The alleged COVID-19 impact needs to be corrected since different companies were affected. During this period, he was allowed to work from home. At the time of my resignation, an ongoing audit was not completed.
6. The claimant testified that he is aware that one of the respondent's directors is from his appointed lawyers, who represent him in court. He has not breached any accounting codes of ethics or disclosed confidential information.
7. In response, the respondent argues that the claim for service pay and accrued leave is not due as claimed. During COVID restrictions, the respondent provided the claimant with a conducive working environment and allowed him to work from home. His salary was increased by 100% with flexible working hours and allowances.
8. The respondent was issued with an Agency Notice by the Kenya Revenue Authority (KRA) that led to delays in salary payments. This resulted in a cash crunch, almost resulting in a winding up. The claimant failed to perform his duties, including maintaining financial records and processing audited accounts each year and failed to complete the 2022 books of accounts, resulting in penalties. This forced the respondent to outsource the function.
9. The claimant is not entitled to severance pay for breach of contract, force majeure, frustration, and estoppel. He failed to complete his duties and violated the human resources policies and principles of accountant confidentiality by entering personal and private contracts with the respondent's business partners. He failed to maintain company records and divulged secrets to unauthorized persons, and the claim should be dismissed with costs.
10. No witness was called. The respondent should have attended during the hearing.
11. At the close of the hearing, parties were allowed to file written submissions. These were analyzed, and the issues that emerged for determining whether the remedies sought should be issued and who should pay the costs.
12. Through notice dated 31 December 2022, the claimant resigned from his employment with the respondent on the basis that there were persistent delays in the payment of his salaries. His terminal dues for the contract ending 1 April 2020 had been delayed, and for three months, his salaries had not been paid.
13. The claimant also noted that he had been denied access to records critical to the performance of his duties and felt frustrated, hence the resignation.
14. He claimed the following;
  1. his contract terminal dues from April 2017 to March 2020 contract Ksh.327,272.73;
  2. salary arrears from October 2022 Ksh.50,000;



3. salary arrears November 2022 ksh.100,000;
  4. salary arrears December 2022 Ksh.100,000;
  5. salary for January 2023 Ksh.100,000;
  6. The contract terminal dues from April 2020 to March 2023 are Ksh.212, 500.
15. Nonpayment of salary is a breach of the employment contract, and the employee is justified in terminating employment. The terms and conditions of employment outlined under Section 26 of the *Employment Act* require the employer to secure the employee's rights by ensuring that the salary is paid in arrears. Under Sections 17 and 18 of the *Employment Act*, the salary due should not be withheld unless for a justified cause that must be brought to the employee's attention and notice issued to the Minister.
  16. The law requires the payment of salary for work done. Nonpayment of salary without good cause breaches Article 41 of *the Constitution* and the *Employment Act* and amounts to unfair labour practices.
  17. In response, the respondent asserts that the claimant failed to diligently undertake his duties, breached his role as the chief accountant, and frustrated his employment.
  18. Where an employee fails to do his duties properly or poorly, the employer can invoke the legal protections under Section 41 of the *Employment Act*. Notice must be issued to the employee to allow him to attend and address the issue. Leaving the employee at large and then making allegations that he failed to do his duties, such as being farfetched.
  19. The respondent did not call any evidence, and the records filed do not support the allegation in the Response.
  20. Whatever reasons resulted in the termination of employment, the claimant is entitled to his lawful terminal dues for work done.
  21. Each claim should be assessed on the merits and the applicable law.
  22. He did not claim under constructive dismissal.
  23. On the claim for gratuity pay under the contract for the period 1 April 2017 to March 2020, the claimant filed his employment contracts;
    1. The contract dated 1 April 2017, and clause 11 indicated that it was for a term of 3 years;
    2. The contract was dated 1 April 2020, and clause 6 indicated the duration was 3 years.
  24. Regarding the gratuity claim, the first contract provided that the claimant would be paid 30 days of the respective net salary for each year worked at the end of the contract.
  25. This contract ended on its terms on 31 March 2020.
  26. Any claims arising out of the first contract should have been addressed within the provisions of Section 90 of the *Employment Act*, 2007. Such required claims out of an employment contract be addressed within 3 years from when the cause of action arose.
  27. The claim herein was filed on 11 June 2023. This is a period of over three years from 31 March 2020, when the contract lapsed on its terms, and a new contract was issued on 1 April 2020. Each contract period is distinct and separate from the next, and what accrues from one contract term to the next is regulated under the *Employment Act*.



28. The claims for Gratuity pay from April 2017 to March 2020 Ksh.327, 272.73 is time barred.
29. On the claim for service pay from April 2020 to March 2023, Ksh.212, 500 such is due under the provision of Section 35(5) and (6) of the *Employment Act*. Where the employer fails to register the employee under the social security fund or other medical scheme. Under clause two on remuneration, various items are noted, including statutory deductions for NSSF, NHIF and PAYE. These were to be deducted and remitted to the statutory body. Service pay is not due or listed as a gratuitous benefit under the subject contract.
30. Section 28 of the *Employment Act* confers the right to annual leave to every employee on accrued 19 leave days. At the end of employment, the leave days due should be paid. The respondent, as the employer, did not file any work records on the leave days taken by the claimant.
31. The claim for accrued 19 leave days Ksh.105, 000 is justified.
32. Section 18 of the *Employment Act* requires the employer to pay for work done. Whatever reasons result in termination of employment, the salary due is payable.
33. Section 18(4) of the *Employment Act* requires that;
  - (4) Where an employee is summarily dismissed for lawful cause, the employee shall, on dismissal, be paid all moneys, allowances and benefits due to him up to the date of his dismissal.
34. Even in a serious case of summary dismissal, the salary due is payable.
35. In this case, the salary arrears for October to December 2022 and January 2023 are due at Ksh.Ksh.350, 000.
36. On costs, refusing to pay terminal dues, particularly salaries earned, is an employment offence. It denies the employee a fair chance to enjoy the fruits of his labour. In this regard, the claimant is entitled to his costs.
37. Accordingly, judgment is hereby entered for the claimant against the respondent in the following terms;
  1. 19 accrued leave days Ksh.105,000;
  2. Unpaid salaries ksh.350,000;
  3. Costs of the suit.

**DELIVERED IN OPEN COURT AT MOMBASA THIS 19<sup>TH</sup> DAY OF DECEMBER 2024.**

**M. MBARŪ**

**JUDGE**

In the presence of:

Court Assistant: Japhet

..... and .....

