



Kituku v Jubilee Party of Kenya (Employment and Labour Relations Cause E6515 of 2020) [2024] KEELRC 13358 (KLR) (5 December 2024) (Judgment)

Neutral citation: [2024] KEELRC 13358 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS CAUSE E6515 OF 2020**

**MN NDUMA, J
DECEMBER 5, 2024**

BETWEEN

JOSEPH MULILI KITUKU CLAIMANT

AND

JUBILEE PARTY OF KENYA RESPONDENT

JUDGMENT

1. The claimant by an amended memorandum of claim dated 18/6/2021 seeks the following orders: -
 - a. A declaration that the non-payment of the claimant's salary by the respondent was unlawful thus null and void.
 - b. Payment of total outstanding salary amounting to Kshs. 2,240,000.00 for the months of May 2020 to June 2021 and the subsequent months.
 - c. Costs of the suit
 - d. Interest on (b) above.
2. CW1, the claimant testified under oath and relied on a witness statement dated 18/6/2021 as his evidence in chief. He stated that he was employed by the respondent as a Finance Director at United Republican Party (URP) on 1/4/2014 where he worked until when the said political party merged with others to form the Jubilee Party Coalition, the respondent herein. The respondent took over the assets and liabilities of the individual political parties as per the memorandum of understanding entered into.
3. That sometime in 2018, by a letter dated 15/10/2018, the claimant was reassigned by the respondent to become one of the Regional Directors of the party at the headquarters and remained an employee of the respondent.



4. That the claimant served the respondent diligently as a Regional Director earning a gross monthly salary of Kshs. 168,422.00
5. That on 16th May 2020, by a circular of even date, the respondent released its staff, including the claimant due to the COVID 19 pandemic.
6. That respondent failed to pay the claimant salary for the months of May 2020 up to June 2021, the time of filing the amended statement of claim and that no payment has been received to date.
7. That the respondent has since commencement of employment continued to withhold Kshs. 8,422.00 per month as withholding tax as though the claimant was a consultant and not an employee contrary to the *Employment Act*. That respondent ought to have remitted pay as you earn (PAYE) to the tax authorities and not withholding tax.
8. That the court do find that non-payment of the claimant's salary was unlawful and unfair and grant the prayers sought. The claimant produced demand letters written to the Executive Director seeking payment of the reliefs sought and copy of relief tax certificate in respect of the Kshs. 168,422.00 paid to the claimant by Jubilee Party, the respondent to the claimant for the period 2/7/2020 to 31/10/2020. The claimant also produced letter dated 15/10/2018 written to the claimant by the respondent, reassigning the claimant to the position of Regional Director at the party Headquarters.
9. Under cross-examination, the claimant denied that he worked for UDA stating that he started working for Jubilee from 10/9/2016. The claimant emphasized that the statements before court show Jubilee paid him until 5/5/2020 when payment stopped. That withholding tax was paid in September 2016. That Jubilee ought to have paid PAYE and not withholding tax. That the amount paid directly to the claimant was the agreed net payment. That prior to the year 2017, Jubilee Party paid the claimant in cash. Claimant added that he was not told why his salary was stopped. The claimant stated that he reported to the Executive Director of Jubilee Party.
10. The respondent filed a statement of response, dated 18/6/2021 in which it made bare denial of the claim set out by the claimant. The respondent did not call any defence witness to contradict the evidence adduced by the claimant. The suit by the claimant is therefore largely undefended. The court finds that the testimony by the claimant was credible, and consistent even under cross-examination by counsel for the respondent.
11. The court therefore finds that the claimant has discharged the onus placed upon him under sections 107 and 108 of the *Evidence Act*, Cap 80 Laws of Kenya.
12. The claimant has proved that he was an employee of the respondent in the position of Regional Director and earned a monthly salary of Kshs. 168,422.00.
13. The court finds that the claimant worked for the respondent until the 16th March 2020, when the respondent released its staff including the claimant to work from home due to COVID 19 pandemic. The court finds that the respondent paid the salary of the claimant until April 2020. The respondent thereafter stopped paying the salary of the claimant despite continuing to work for the respondent as a Regional Director.
14. In terms of the initial contract of employment between the claimant and United Republican Party, dated 1/4/2014, the contract of employment of the claimant was for a period of five years from 1st April 2014 upto 31st August 2022.



15. The letter by the Executive Director of Jubilee to all staff titled “scaling down of operations” dated 16/3/2020, released all staff by close of business on 16/3/2020. The staff, were “expected to be on call on short notice as and when is required.”
16. There is no evidence that this position was ever revised by the respondent thereafter.
17. The claimant tendered evidence that the respondent continued to withhold tax in respect of the unpaid salary in the sum of Kshs. 168,422.00 from 31/5/2020 up to 31/10/2020.
18. This is a clear indication of the intention by the respondent to continue paying the salary of the claimant for this particular period.
19. The claimant has specifically claimed payment of salary for the month of May 2020 up to June 2021 in the sum of Kshs. 2,240,000.00 and grants the claimant the said amount against the respondent accordingly.
20. There being no evidence that the employment between the parties subsisted beyond the claimed period, the court declines to award any further amounts beyond the month of June 2021.
21. In the final analysis judgment is entered in favour of the claimant against the respondent as follows: -
 - a. Kshs. 2,240,000.00 being unpaid salary for the month of May 2020 to June 2021.
 - b. Interest at court rates from date of judgment till payment in full.
 - c. Costs of the suit

DATED AT NAIROBI THIS 5TH DAY OF DECEMBER 2024

MATHEWS NDUMA

JUDGE

Appearance:

M/s. Tisime for claimant

Mr. Macharia for respondent

Mr. Kemboi – Court Assistant

