



**Ngunjiri v Sony Trading Company Limited (Cause 770 of 2016)  
[2023] KEELRC 786 (KLR) (29 March 2023) (Judgment)**

Neutral citation: [2023] KEELRC 786 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE 770 OF 2016  
J RIKA, J  
MARCH 29, 2023**

**BETWEEN**

**CAXTON KIGOTHO NGUNJIRI ..... CLAIMANT**

**AND**

**SONY TRADING COMPANY LIMITED ..... RESPONDENT**

**JUDGMENT**

1. The Claimant filed his Statement of Claim on May 5, 2016. He states that he was employed by the Respondent as a Mechanic, on or around December 1, 2011.
2. He worked for 4 years. His salary all through, was Kshs 30,000 monthly. He was not paid his salary from January 2015 to September 2015, amounting to Kshs 434,000. The Respondent admitted owing this amount to the Claimant, in its letter dated September 30, 2015.
3. He did not go on annual leave over a period of 4 years. He was not subscribed to the NSSF or other Pension Plan, and claims service pay under Section 35[5] of the *Employment Act, 2007*. He was not provided housing, or paid house allowance. He prays for house allowance at the rate of Kshs 10,000 per month, over a period of 4 years.
4. In sum he prays for Judgment against the Respondent for: -
  - a. Kshs 434,000 in salary arrears, with interest at court rate, from the date of filing the Claim.
  - b. Annual leave of 84 days at Kshs 84,000.
  - c. Service pay at Kshs 60,000.
  - d. Kshs 480,000 in arrears of house allowance.
  - e. Damages for withholding of salaries, equivalent of 1- year salary at Kshs 360,000 with interest a court rate, from the date of Judgment.



- f. Certificate of Service.
  - g. Costs.
  - h. Any other suitable relief.
5. The Respondent filed its Statement of Response, on May 30, 2016. Its position is that the Claimant was not its Employee. He was contracted independently, to repair the Respondent's vehicles, whenever need arose. He was paid in accordance with the agreement entered into with the Respondent, specific to each vehicle repaired. The documents exhibited by the Claimant as exhibit 1 and 2, are forgeries, aimed at extorting money from the Respondent. The author, Nicholas Bolo Genga, had no mandate to contract on behalf of the Respondent, and issue letters to the Claimant. Annual leave, house allowance and other benefits claimed, are not payable to the Claimant, as he was never an Employee of the Respondent. The Claimant acted in collusion with Genga, in generation the forged documents, to enable him make this Claim. The Respondent prays the Court to dismiss the Claim.
  6. The Claimant gave evidence and closed his case on October 21, 2021. The Respondent did not attend Court when scheduled to present its Response, on December 9, 2021. The Court ordered hearing closed on December 9, 2021. Parties however agreed to re-open the hearing, through an order recorded on February 1, 2022. Supervisor Samuel Njenga Ngige, gave evidence for the Respondent on December 1, 2022. The Claim was last mentioned before the Court on February 3, 2023, when Parties confirmed filing and service of their Final Arguments.
  7. The Claimant adopted his Witness Statement and 4 Documents in his evidence- in-chief. Cross-examined, he told the Court that he was employed on December 1, 2011. He did not have a letter of employment. The Accountant was Nicholas Genga. The Director was James Njenga. The Claimant did not find a Human Resource Manager at the Respondent, on recruitment. The letter dated September 30, 2015, confirming that the Claimant was an Employee of the Respondent, and was owed salary arrears, is signed by Nicholas Genga. Genga was acting for the Respondent. It is not true that the Claimant was called in, only when it was necessary to attend to a vehicle. He was a regular Employee, in the payroll of the Respondent. The Director was aware about the Claimant's salary arrears, when Nicholas Genga wrote the letter dated September 30, 2015. The Claimant did not conspire with Genga, to defraud the Respondent. Redirected, the Claimant told the Court that Genga normally paid the Employees' salaries. The Documents exhibited by the Claimant, originated from the Director's office.
  8. Samuel Njenga Ngige told the Court that he was a Supervisor in Respondent's accounts department. The Claimant was a Mechanic. He was called to repair the Respondent's vehicles when necessary. The vehicles used to be repaired at Country Bus Station, Nairobi. The Claimant was a casual. Nicholas Genga was the Chief Accountant. The amount computed by Genga at Kshs 434,000 is not correct. The Claimant was not in the payroll. The Claimant does not merit house allowance, annual leave and service. He was not an Employee of the Respondent. He left employment voluntarily, around March 2014. The company reduced its operations.
  9. On cross-examination, Ngige told the Court that he had worked for the Respondent for 9 years. He was an Accountant. He was initially an Assistant Accountant. He replaced Nicholas Genga, in February 2016 as Chief Accountant. He maintained all accounts entries. He processed salaries with the approval of the Director. At the time Ngige was employed, the Claimant was already being engaged. Ngige learnt about the terms of the Claimant's engagement from Genga. The Respondent is engaged in public service transport. Ngige did not have a record showing when the vehicles were repaired. The Claimant's Documents are forgeries. There was no report on forgeries, made to the Police. Genga was dismissed



for theft. A criminal case was instituted against him. Ngige did not have evidence of such a criminal case. Genga left in January 2016. His letter issued to the Claimant, is dated September 30, 2015. Genga was Ngige's Supervisor at the time. Any letter had to be signed by one of the Directors. There was no Human Resource Policy to this effect. The schedule of payments dated September 30, 2015 is not signed by Genga.

10. The issues are whether the Claimant was an Employee of the Respondent; and whether he is owed salary arrears and other benefits as pleaded.

### **The Court Finds**

11. There is adequate evidence that the Claimant was employed by the Respondent as a Mechanic, on or about December 1, 2011. Ngige told the Court that the Claimant was Respondent's Mechanic. He told the Court that Respondent's Drivers would take the vehicles for repairs to the Claimant, and indicate the event on the vehicle manifests, for office records.
12. The Respondent did not produce any of these manifests in Court. There was no evidence presented by the Respondent, to show that the Claimant was an independent contractor. The Respondent did not exhibit any independent contract document, or any form of document showing the mode of paying the Claimant, and amount of money paid to the Claimant as an Independent contractor. If there was any office record regarding the relationship between the Claimant and the Respondent, why did not the Respondent exhibit any Document?
13. The Claimant exhibited 2 Documents, which are alleged to originate from the Respondent's then Chief Accountant, Nicholas Genga. It is not in dispute that Genga was the Chief Accountant of the Respondent, at the time the Documents issued. It is not denied by the Respondent, that the Documents were issued by Genga.
14. The 2 Documents are both dated September 30, 2015. Genga was still in the position of Chief Accountant at the time. He left the following year, in January 2016. The letter confirms that the Claimant was an Employee of the Respondent. Secondly, it confirms that the Claimant was owed salary arrears of Kshs 434,000 as of September 30, 2015. The Court cannot doubt information which has been supplied by the Chief Accountant of the Respondent. The Chief Accountant would know who is owed by the Company, and who owes the Company.
15. The other Document is a schedule prepared by the Chief Accountant, Genga, breaking down the amounts payable to the Claimant, resulting in the amount of Kshs 434,000, dating from January 2015 to September 2015.
16. The Court does not have a reason to doubt the authenticity of the 2 Documents. The author, Genga issued the Documents in September 2015, and went on serving the Respondent as Chief Accountant, until January 2016 when he was replaced by his understudy, Ngige.
17. There were 2 letters issued by the Claimant to the Respondent, demanding payment of his salary arrears and other benefits, before filing of the Claim. The first letter is dated November 15, 2015. The second is dated January 19, 2016. Both make reference to the letter from the Respondent dated September 30, 2015, which admitted debt and confirmed the Claimant was an Employee of the Respondent.
18. There is no letter from the Respondent, replying to any of the 2 demand letters. There is no denial of the truthfulness of the contents in any of the demand letters.



19. Ngige made attempts to discredit Genga in his evidence, alluding to theft by Genga, and ensuing criminal proceedings. He did not have evidence of theft, or criminal proceedings against the former Chief Accountant. Importantly, he did not suggest any link between the alleged theft, the criminal proceedings, and the Documents issued by Genga to the Claimant, dated September 30, 2015. The 2 Documents, were never subjected to any form of criminal enquiry. Ngige alluded to reduction of operations by the Respondent, and that the Claimant left employment voluntarily. The Claimant, in his demand letter dated January 19, 2016, states that he resigned on or around September 30, 2015, after the Respondent failed to pay his monthly salary, in accordance with the Claimant's contract. This evidence firms up the claim that the Respondent was unable to meet its obligations to the Claimant, as and when they fell due, resulting in arrears of salary.
20. The Court is persuaded that the prayer for salary arrears at Kshs 434,000 is merited.
21. There is no support for the rest of the prayers on house allowance, unpaid annual leave, service pay and damages for withheld salary. There was no demand for any other benefits, in the Claimant's demand letter of November 15, 2015. The demand for annual leave and service was made in afterthought in the second letter dated January 19, 2016. The demand for house allowance was not in any of the 2 letters. It was made first in the Statement of Claim. These prayers are not well –founded and are declined.
22. Certificate of Service to issue.
23. No order on the costs.
24. The salary of an Employee is protected under Section 17 of the *Employment Act*, and ought to be paid as and when it falls due. The Claimant's salary has been withheld unreasonably for years, and illegally from the date he left employment, on September 30, 2015. The prayer for interest from the date of default, is merited.

#### **It Is Ordered**

- a. The Respondent shall pay to the Claimant arrears of salary at Kshs 434,000 with interest at court rate, from September 30, 2015.
- b. Certificate of Service to issue.
- c. No order on the costs.

**DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY AT NAIROBI, UNDER THE MINISTRY OF HEALTH AND JUDICIARY COVID-19 GUIDELINES, THIS 29<sup>TH</sup> DAY OF MARCH 2023.**

**JAMES RIKA**  
**JUDGE**

