



**Mutemi v Kenya Meat Commission (Cause 902 of 2015)
[2023] KEELRC 705 (KLR) (23 March 2023) (Judgment)**

Neutral citation: [2023] KEELRC 705 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 902 OF 2015
MA ONYANGO, J
MARCH 23, 2023**

BETWEEN

PATRICK SAU MUTEMI CLAIMANT

AND

KENYA MEAT COMMISSION RESPONDENT

JUDGMENT

1. The Respondent is a state Corporation established under the [Kenya Meat Commission Act](#) cap 363 of the Laws of Kenya with the mandate to procure, process and market meat and meat products with the objective of providing a ready market for livestock farmers and high quality meat and meat products to consumers.
2. The Claimant is a former employee of the Respondent, having worked for the Respondent from 1st October, 2011 until 27th May, 2013 when he gave 3 months' notice of resignation.
3. It is the Claimant's case that his resignation letter was accepted by the Respondent who however failed to pay his terminal dues. That as a result, First Community Bank which had granted the Claimant a car loan wrote to the Respondent in July, 2014 seeking to know when the Claimant's terminal dues would be paid. That because the dues were never released the Claimant's motor vehicle that was funded by the car loan was subsequently seized and sold through public auction by the Bank to recover the loan.
4. In his statement of claim dated 25th May, 2015 and filed on 26th May, 2015 the Claimant prays for the following reliefs-
 - i) A declaration that the Respondent's action/decision to withhold and/or refuse and/or fail to pay gratuity and leave allowance is a breach of Claimant's terms of service.
 - ii) An order that the Claimant be paid Gratuity of Ksh 2,139,000.00 with interest @ 12% from the date of filing suit.



- iii) An order that the Claimant be paid his outstanding leave allowance and 47.5 days amounting to Ksh. 1,345,545.00 with interest from the date of filing suit.
 - iv) Interest on Ksh 811,983.92 at 25% p.a. from 26 August, 2013.
 - v) The cost of the cause.
 - vi) Interest at courts rate on all the above prayers.
5. The Respondent filed a response to the claim on 13th April 2016 and later filed an amended response with a counter claim on 19th June 2019. In the amended response and counterclaim the Respondent prays that the claim be dismissed and judgment entered for the Respondent in terms of the counter claim as follows:-
- i) The Claimant's claim be dismissed with costs to the Respondent.
 - ii) Ksh 3,078,364/= on account of money had and received.
 - iii) Ksh.443,920/= on account of accumulated rent arrears.
 - iv) Costs of the counterclaim plus interests thereon.
 - v) Any other or further relief that the Honourable Court May deem fit and just to grant.
6. At the hearing the Claimant testified on his behalf and reiterated the averments in the statement of claim. The Respondent called as its witnesses Julius Mutie, an Accounts Assistant of the Respondent, Diana Akinyi Odongo, a Senior Accountant, Isaac Okero Onsarigo, the Respondent's Human Resource Officer and Charles Ngugi Mwaura, an Auditor from Treasury.
7. RW1 JULIUS MUTIE testified about the procedure for procurement of animals in cash. He testified that the Livestock Manager raises a memo addressed to the Chief Executive Officer (CEO) for approval. Once approval is given a voucher is prepared in the name of the cashier who collects the money from the bank. A team is then selected which goes to the field to purchase the animals. The team thereafter accounts for the funds used to purchase animals from the market.
8. RW2 Diana Akinyi Odongo who in April 2012 at the time material to this suit an Accounts Assistant, testified that she was called by the Chief Accountant Mr. Evans Gikundo who informed her that a cheque had been written in her name for Ksh.3,078,000 which she should encash at Co-operative Bank and take the money to the Chief Finance Officer Mr. Patrick Mutemi, the Claimant which she did. That later when there was an audit query over the said money the documents relating to the transaction could not be traced.
9. RW3 Okero Isaac Onsarigo testified that the Claimant's terminal dues were not paid due to an anti-corruption case against him where he was charged together with other former employees of the Respondent for the loss of Ksh. 11,500,000. He further testified that the Claimant was paid an advance of gratuity in the sum of Ksh.500,000. He testified that the Claimant owed the Respondent rent of Ksh.443,920 for the staff house which he continued to occupy after he resigned and Ksh. 3,078,363 which was issued to him but he failed to account for.
10. RW3 further testified that the Claimant was entitled to gratuity and unpaid leave.
11. RW4 testified that he together with other auditors from Treasury were assigned to carry out an audit of Kenya Meat Commission, the Respondent. The audit was part of an investigation concerning malpractices. He produced the audit report dated 21st August 2013.



12. He referred to page 22 of the Audit report at pages 136 and 137 of the Respondent's bundle where there is a finding on a supplier by the name Dahabu Bindu Wario who was originally a supplier to the Respondent and later became a customer. The audit reflected that as supplier Dahabu was owed Ksh.7,639,497 which was paid in installments of Ksh.3,078,363 on 18th May, 2012 vide cheque No. 018020 and Ksh.600,000 on 6th August 2012 vide cheque No. 010488 leaving a balance of Ksh.3,961,134.
13. After becoming a customer the supplier requested the Respondent to convert the debt into credit which he used to purchase products from the Respondent for export on 6th August 2012. That Ksh.3,078,364 was withdrawn by the cashier vide cheque No.18652 purportedly for payment to the same supplier.
14. RW5 further testified that the audit report revealed that the cash book was manipulated as the payee in the cashbook and cheque counter foil was Dahabu Bindu Wario while the Bank Statement reflected Diana Akinyi as the payee. The payment voucher to support the payment was not available and the payment was not accounted for.

Analysis and determination

15. The parties filed written submissions following close of the hearing. From the pleadings, evidence and written submissions the issues arising for determination are:
 - (i) Whether the Claimant is entitled to the prayers in the statement of claim; and,
 - (ii) Whether, the Respondent is entitled to the prayers in the counter claim.

Gratuity

16. The Claimant prayed for gratuity in the sum of Ksh. 2,139,000 with 12% interest from date of filing suit. He however did not produce a copy of his employment contract where the gratuity is provided for. He further did not produce any copy of his payslips where his salary is provided for. He only produced an unsigned document which he alleges was sent to him through email by Rajab Barasa, the Finance Officer of the Respondent but without any evidence to support the same.
17. The Respondent does not deny that the Claimant is entitled to the gratuity as this was stated in the response to the Claimant's letter of resignation dated 3rd June, 2013. The letter states that the Claimant is entitled to pro-rated gratuity upto 26th August, 2013. According to the Respondent the gratuity is Ksh.1,282,370.10, being 31% of the Claimant's basic salary on a pro-rata basis.
18. Since the Claimant did not prove the amount he is claiming. I award the Claimant gratuity in the sum of Ksh. 1,282,370.10 as admitted by the Respondent.
19. The second prayer is Ksh. 1,345,545 being in respect of outstanding leave of 47.5 days. As in the case of gratuity, no evidence was adduced by the Claimant to support the claim of 47.5 days. Further no tabulation has been given to the court by the Claimant on how the said sum that he claims was arrived at.
20. The Respondent has only admitted the sum of Ksh. 72,065.70 which I award the Claimant.
21. The Claimant further prayed for interest on Ksh.811,983.92 at 25% per annum on the car loan advanced to the Claimant by First Community Bank. This being a debt owed by the Claimant to the bank, he cannot transfer liability on the same to the Respondent. The prayer accordingly fails and is dismissed.



22. With respect to the counter claim the Respondent prayed for Ksh.500,000 gratuity paid in advance, Ksh.3,078,364 received by the Claimant that was not accounted for and Ksh.11,500,000 approved by the Claimant to be paid to the Managing Commissioner of the Respondent Mr. Ibrahim Haji Isaak. The Respondent further prayed for rent arrears from the Claimant in the sum of Ksh.443,920.
23. Gratuity of Ksh.500,000 is reflected in the Discharge Certificate signed by the Claimant on 19th June, 2013. When asked about it in cross-examination the Claimant responded that he could not recall the same. He however did not deny that he was paid the money or that he signed the Discharge Certificate where the same is reflected as a payment owed by him to the Respondent.
24. I find that the Respondent paid the Claimant advance gratuity of Ksh. 500,000 which it is entitled to recover from the gratuity payable to the Claimant.
25. With respect to house rent due from the Claimant, it was the Respondent's evidence that upon resignation the Claimant did not vacate the official residence until September, 2016. The rent of Ksh. 12,000 per month therefore continued accruing and at the time of vacating the premises was Ksh. 443,920 as per schedule annexed to the clearance certificate.
26. The Claimant did not deny that he was in occupation of the house without paying rent upto September, 2016. He testified that he vacated in October, 2016. He however stated he was not allowed to vacate the house earlier as he had not been cleared by the Respondent. There is however no evidence adduced by the Claimant to indicate that he was prevented by the Respondent from vacating the said premises. The Claimant did not dispute the amount.
27. In the circumstances it is my finding that the Claimant is liable to pay the rent for the premises until the date he vacated. I thus award the Respondent the said sum of Ksh.443,920.
28. With respect to the claim for Ksh.3,078,368 claimed by the Respondent, RW2 Diana Akinyi testified that she was called by the Chief Accountant and informed that a cheque had been prepared for her to withdraw cash from the Respondent's account at Co-operative Bank which she withdrew and handed over to the Claimant who was then the Chief Finance Officer. Diana testified that transport was arranged for her to go to the bank to collect the money. That after encashing the cheque she took the money which was in a gunny bag to the Claimant in his office and put it in a safe in the Claimant's office. That she as per instructions of the Chief Accountant Mr. Evans Bikundo. She testified that she was issued with a loose cheque with no supporting documents and that the voucher for the payment could not be traced at the time of audit. The evidence of RW2 is supported by the Audit Report dated August, 2013 and the evidence of RW5 to the effect that the entry in cheque book and cheque counter foil reflected that the payment was to supplier turned customer Dahabu Bindu Wario while the Bank statement showed that Diana Akinyi was the payee. That payment vouchers in respect of the payment were never availed to the auditors.
29. In his evidence the Claimant stated that this was never brought to his attention by the time he resigned.
30. Based on the evidence on record, I have no reason to doubt the evidence of RW2 as supported with the evidence of RW5 and the audit report. The Claimant having been the Chief Finance Officer, and therefore responsible for all finances of the Respondent, cannot feign lack of knowledge of such payment.
31. I find that the Claimant received the sum of Ksh. 3,078,363 from Diana Akinyi, the then cashier, which he did not account for and is therefore responsible to refund and/or account for the same.
32. The prayer for Ksh. 11,500,000 is on account of money that was paid to the Managing Commissioner of the Respondent Mr. Ibrahim Haji Isaak. Evidence in the Audit report and proceedings in Anti-



Corruption Case No. 9 of 2015 reflect that the said Mr. Isaak received the money and accounted for it, albeit by unrelated expenses. The said sum was for purchase of animals on behalf of the Respondent. The audit report further reflects that the withdrawal of the money was irregular. In view of the fact that the person who was paid the money is known and was the supervisor of the Claimant, I find no reason to hold the Claimant liable for the same. The prayer is accordingly dismissed.

33. In conclusion, I enter judgment for the Claimant against the Respondent as follows.

- i) Gratuity Ksh. 1,282,370.10
- ii) Pay in lieu of outstanding leave days Ksh. 72,065.70
- iii) Total 1,354,435.80
- iv) The prayer for interest on Ksh.811,983.92 is dismissed.

34. The said payment is subject to PAYE.

35. With respect to the counterclaim I enter judgment for the Respondent against the Claimant as follows:

- i) Advance Gratuity Ksh. 500,000
- ii) Arrears of house Rent Ksh. 443,920
- iii) Money received and not accounted for Ksh. 3,078,363

36. The Respondent is at liberty to off-set the amount owed by the Respondent to the Claimant from the amount due from the Respondent to the Claimant.

37. Each party shall bear its costs.

DATED, SIGNED AND DELIVERED VIRTUALLY AT ELDORET ON THIS 23RD DAY OF MARCH, 2023

MAUREEN ONYANGO

JUDGE

