



**Odera v Skytop Technologies Limited (Cause 1572 of 2018)  
[2023] KEELRC 690 (KLR) (17 March 2023) (Judgment)**

Neutral citation: [2023] KEELRC 690 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE 1572 OF 2018  
J RIKA, J  
MARCH 17, 2023**

**BETWEEN**

**STEPHEN UMEME ODERA ..... CLAIMANT**

**AND**

**SKYTOP TECHNOLOGIES LIMITED ..... RESPONDENT**

**JUDGMENT**

1. The Claimant filed his Statement of Claim on November 30, 2018. He states that he was employed by the Respondent as an Audit Manager, on December 1, 2017.
2. His gross monthly salary was Kshs 150,000.
3. He was not paid his salary for the months of January to May 2018, amounting to Kshs 750,000. He gave a resignation notice of 30 days, dated April 3, 2018. He prays the Court to find that he was constructively dismissed, and award him the following: -
  - a. Unpaid salary at Kshs 750,000.
  - b. 10 days of annual leave at Kshs 57,692.
  - c. 12 months' salary in compensation for constructive dismissal at Kshs. 1,800,000.  
Total...Kshs 2,607,692.
  - d. Costs.
  - e. Interest.
4. The Respondent filed is Statement of Response and Counterclaim, on February 18, 2019. It is conceded that the Respondent employed the Claimant as an Audit Manager, effective December 1, 2017. His gross monthly salary was Kshs 150,000. He was to serve 3 months of probation. On



- successful completion of probation, he would be issued a letter of confirmation. The Respondent did not confirm the Claimant. His contract was terminated lawfully in February 2018. He was negligent, occasioning the Respondent loss of HP Envy Laptop, 3 HP Prodesk computer and 1 Macbook Pro, all valued at Kshs 472,500.
5. The Respondent did not receive the resignation letter dated April 3, 2018. There would be no ground to tender resignation in April 2018, since he had not been confirmed at the end of probation. The Claimant is not entitled to arrears of salary, and the Respondent is in any event, entitled to recover the sum of Kshs 472,500, lost through the Claimant's negligence. He was not entitled to any leave, at the end of probation. The Respondent did not engage in any acts or omissions which would result in constructive dismissal.
  6. The Respondent prays for dismissal of the Claim, and Counterclaims for: -
    - a. Declaration that the Claimant failed to put in place systems and measures to secure Respondents assets, resulting in loss of assets, valued at Kshs 472,500.
    - b. Declaration that the Respondent is entitled to set off the sum of Kshs. 472,500 against any salary arrears that may be found to be due to the Claimant.
    - c. Kshs 172,500 being the sum that the Respondent is yet to recover after setting off the loss that it suffered after the Claimant's negligence.
    - d. Costs.
    - e. Interest.
    - f. Any other suitable relief.
  7. The Claimant filed a Reply to the Statement of Response and to the Counterclaim dated April 22, 2019. He states that he was confirmed vide a letter from the Respondent, dated March 1, 2018. He did not occasion loss of any assets to the Respondent. He reiterates that he merits all the prayers. He urges the Court to dismiss the Counterclaim, and allow the Claim as prayed.
  8. The Claimant gave evidence and rested his case, on February 4, 2022. Managing Director Paniel Mwaura gave evidence for his company, on November 29, 2022 closing the hearing. The Claim was last mentioned on February 24, 2023, when Parties confirmed filing and service of their Submissions.
  9. The Claimant relied on his Witness Statement and 7 Documents, in his evidence. He told the Court that he put in place adequate systems and policies for the Respondent, including adoption of Human Resource, Internal Audit and Finance Operations Policies. He was not derelict. He was not the custodian of the Respondent's assets. The Software Development Manager was the custodian, and would be responsible if any assets were lost.
  10. Cross-examined, the Claimant told the Court that he served the resignation letter on the Respondent. It does not bear the Respondent's stamp. There was a signature of the Respondent's representative. It is not true that the Claimant appended the signature. He did not say in his letter of resignation that failure to pay his salary caused resignation. He did not exhibit the Policies he generated, which were adopted by the Respondent. He participated in a report made to Parklands Police, on loss of assets. He clarified on redirection that he did so, in his capacity as the Audit Manager. He was not a suspect. It was not necessary to mention salary arrears in the letter of resignation.
  11. Paniel Mwaura adopted his Witness Statement and Documents filed by the Respondent, exhibits 1-6. He admitted on cross examination that the Claimant was employed by the Respondent, effective



December 1, 2017. He was on probation of 3 months. He was not confirmed. There was an incident in January 2018, after which the Claimant disappeared. Mwaura did not issue the letter dated March 1, 2018, purporting to confirm the Claimant. The signature on the letter is his, but he did not issue the letter. The Respondent paid to the Claimant salary for the 1<sup>st</sup> month of employment. It experienced financial constraints from the 2<sup>nd</sup> month. The Claimant was the custodian of the Respondent's assets under contract. He left employment when Mwaura informed him he would surcharge him, after the loss of the items. Mwaura did not recall exactly, when the Claimant left employment. He was not paid salary for 2 months. Redirected, he told the Court that the signature on the confirmation letter resembled his.

12. The issues are whether the Claimant was confirmed in employment; whether he was constructively dismissed by the Respondent; and whether he merits the prayers sought.

**The Court Finds: -**

13. Confirmation: There is a letter of confirmation dated March 1, 2018, addressed to the Claimant by Respondent's Managing Director Paniel Mwaura. It is on the letterhead of the Respondent. It is signed by Mwaura. He conceded the signature on the letter is his signature, but offered an unlikely explanation that he was not the author of the letter. The letter is signed by the Claimant in acknowledgement. The Court is persuaded that the letter was issued by the Managing Director Mwaura to the Claimant. Mwaura was not truthful in his evidence that he was not the author of the letter. It is accepted that the Claimant finished his probationary period of 3 months, and was confirmed in writing, on March 1, 2018.
14. Constructive dismissal: The Claimant issued the Respondent a Notice of Resignation dated April 3, 2018. He gave the Respondent 1-month notice, ending May 4, 2018.
15. The Notice does not allude to any hostile working environment created by the Respondent, which made it impossible for the Claimant to continue discharging his duty. He states that it was his personal conviction that his decision was right. He disclosed that he had learnt a lot from his stint with the Respondent. His stay at the Respondent had impacted his career development. He was sorry that his resignation would inconvenience the Respondent. He even offered to procure for the Respondent a suitable replacement, and offered himself for future consultancy services. How would his resignation amount to constructive dismissal? He offered himself for consultancy services in the future, and did not therefore consider the Respondent's workplace a hostile environment. He did not resign believing himself to have been fired, or believing that the Respondent was no longer willing to abide by the terms of the contract.
16. The Claimant resigned and terminated his contract, in circumstances which did not result from a hostile working environment. Failure to pay his monthly salary on its own, was not a hostile working environment. The Respondent acknowledged that it was having financial constraints and was not able to pay the Claimant his salary as contracted. This was an Employer who was going through ordinary financial constraints and who was unable to meet its obligations to its Employee, rather than an Employer who created a hostile working environment. There is no foundation in the prayer for compensation for constructive dismissal.
17. Salary arrears: The Claimant has shown that his salary was Kshs 150,000 monthly. He was not paid salary for January, February, March and April. The Court does not think he merits salary for May 2018, his Notice of Resignation having taken effect at beginning of May 2018, on May 4, 2018. Mwaura told the Court that the Respondent paid the Claimant's salary for the 1<sup>st</sup> month after employment. The Claimant was employed on December 1, 2017. Mwaura testified that the Respondent suffered financial



constraints from the 2<sup>nd</sup> month of employment and was not able to pay the Claimant his salary. This would be from January 2018. The Court allows salary in arrears of 4 months, at Kshs 600,000.

18. There is no evidence of unpaid leave of 10 days.
19. The non-payment of the Claimant's salary as and when it fell due, was based on reasonable ground. The Respondent experienced financial downturn, and the Court would not rush into making the declaratory order sought.
20. Counterclaim: There was no evidence led by Mwaura to establish the Counterclaim. The loss of the Respondent's electronic items, was not attributable to the Claimant. It was not shown that the items were entrusted to the Claimant. He was not reported as a suspect at the Police Station concerning loss of the items. The Respondent did not in its Pleadings and Evidence, establish the nature of systems and measures it expected the Claimant to put in place, to avert loss of the items. The Major Responsibilities assigned to the Claimant, did not include physical custody of the Respondent's assets. The Claimant was the custodian of the Respondent's risk register, not custodian of the assets.
21. There is no evidence to warrant the setting off, of the alleged loss sustained by the Respondent, from the Claimant's arrears of salary. The Counterclaim appears to be a red herring, made for the sole purpose of distracting from the main Claim.
22. It is Ordered: -
  - a. The Respondent shall pay to the Claimant his arrears of salary at Kshs 600,000.
  - b. No order on the costs.
  - c. Interest allowed at court rate, from the date of Judgment, till payment is made in full.

**DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY, AT NAIROBI, UNDER THE MINISTRY OF HEALTH AND JUDICIARY COVID-19 GUIDELINES, THIS 17<sup>TH</sup> DAY OF MARCH 2023.**

**JAMES RIKA**  
**JUDGE**

