



Muhenge v Mariakani Cottage Hospital Limited (Cause E175 of 2022) [2023] KEELRC 1040 (KLR) (27 April 2023) (Ruling)

Neutral citation: [2023] KEELRC 1040 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E175 OF 2022
L NDOLO, J
APRIL 27, 2023**

BETWEEN

ROSEBELLA MUHENGE CLAIMANT

AND

MARIAKANI COTTAGE HOSPITAL LIMITED RESPONDENT

RULING

1. The Claimant filed a Statement of Claim dated March 21, 2022, seeking the sum of Kshs 2,303,744 from the Respondent. According to the Claimant, the sum is made up of:
 - a. Salary arrears.....Kshs 1,867,744
 - b. Illegal deduction.....435,000
2. The Claimant amended her claim on June 14, 2022, to include the following prayers:
 - a. Salary for the months of April and May 2022.....Kshs 290,000
 - b. 3 months' salary in lieu of notice.....435,000
 - c. Service pay for 11 years @ 15 days' pay.....239,250
 - d. 12 months' salary for unlawful termination.....1,640,000
 - e. Unpaid leave for 2021 and 2022.....290,000
3. The Respondent filed a Memorandum of Defence and Counterclaim dated October 4, 2022, to which the Claimant responded on November 23, 2022.
4. The Claimant then filed a Notice of Motion dated November 24, 2022 asking that judgment be entered against the Respondent for the sum of Kshs 1,435,621 together with interest. It is this Motion that is the subject of this ruling.



5. The Motion is supported by the Claimant's own affidavit and is based on the following grounds:
 - a. That the Respondent has admitted owing the Claimant the said amount on account of unpaid salary;
 - b. That the Respondent has, on several occasions, promised to pay only to renege on its promises;
 - c. That the Claimant urgently requires the said amount to enable her pay her loan with NCBA Bank, which is in the process of auctioning her property;
 - d. That the foreclosure and intended auction of the Claimant's property has been caused by the Respondent's failure to pay the loan arrears to the Bank as promised;
 - e. That the Claimant, who is now unemployed, will lose her property if the arrears to the Bank are not paid;
 - f. That the amount admitted should not await the hearing of the suit, which may take some time;
 - g. That the Claimant does not have any other way of enforcing payment of the admitted amount other than procuring and executing judgment;
 - h. That it is in the interest of justice that judgment be entered for the amount admitted to enable the Claimant to execute;
 - i. That despite the admission and promise to pay, the Respondent has refused and/or failed to pay the arrears, thereby placing the Claimant's property in jeopardy;
 - j. That the Respondent is using the court process to delay settlement of the admitted amount.
6. The Respondent opposes the Claimant's Motion by way of a replying affidavit sworn by its Administrator, Rose Kyaterereka on February 6, 2023.
7. Kyaterereka depones that the application before the Court is based on the allegation of facts that can only be determined, ascertained and/or proved upon full trial and not through an interlocutory application.
8. She further depones that the Claimant owes the Respondent the sum of Kshs 1,214,082 which was entrusted to her during her employment, together with costs and interest as stated in the Counterclaim.
9. According to the Respondent, judgment cannot be entered on the amount claimed in the application as the Claimant owes the Respondent the aforesaid substantial amount that can only be proved during the hearing.
10. The parties urged their respective positions by way of written submissions.
11. The Claimant relies on Order 13 Rule 2 of the [Civil Procedure Rules](#) which provides as follows:
 2. Any party may at any stage of a suit, where admission of facts has been made, either on the pleadings or otherwise, apply to the Court for such judgment or order as upon such admission he may be entitled to, without waiting for the determination of any other question between the parties; and the Court may upon such application make such order, or give such judgment, as the Court may think just.
12. In [Choitram v Nazari](#) (1984) KLR 237 it was held that for purposes of this provision, admission may be express or implied, either in a pleading or by way of correspondence.



13. The Claimant referred the Court to the decision in *Scanad Kenya Limited v Independent Electoral & Boundaries Commission* [2021] eKLR where it was held that judgment may be entered on an implied admission so long as the facts relied on are clear and unambiguous.
14. As held in *Cassam v Sachania* (1982) KLR 191, the power to enter judgment on admission is discretionary to be exercised sparingly in plain cases where the admission is clear and unequivocal.
15. On its part, the Respondent relies on the decision in *Agricultural Finance Corporation v Kenya National Assurance Company Limited* [1997] eKLR where the Court of Appeal stated the following:

“Order 12 Rule 6 empowers the court to pass judgment and decree in respect of admitted claims pending disposal of disputed claims in a suit. Final judgment may not be passed on admissions unless they are clear, unambiguous and unconditional. A judgment on admission is not a matter of right; rather it is a matter of discretion of the Court and where a defendant has raised objections that go to the very root of a case, it would not be proper to exercise this discretion.”
16. In pursuing her plea for judgment on admission, the Claimant relies on letters written by the Respondent. The first letter is to the Claimant’s Advocates under reference ‘Salary Arrears of Ms Rosebella Muhenge’. In this letter, the Respondent’s Managing Director, Dr C B Natalo-Were, states as follows:

“I do agree that Mariakani Cottage Hospital owes Ms Rosebella Muhenge salary arrears total 1,455,621/=.”
17. In a second letter dated February 22, 2022 addressed to the Advocates for NCBA Bank, which had advanced the Claimant a mortgage facility, Dr C B Ntalo-Were states:

“Ms Rosebella Muhenge is our Company Operations Manager and I do agree that as a Company we owe her salary arrears amounting to Kshs 1,455,621/=. We take responsibility for her debt and arrears since as Company we owe her salary arrears which we have not been able to pay her monthly salary on time to enable her pay her loan.”
18. These letters, which were not issued on a ‘without prejudice’ basis are a clear and unequivocal admission by the Respondent that the sum of Kshs 1,455,621 is owed to the Claimant, on account of salary arrears. On this limb of the Claimant’s claim, there is no issue in controversy and the fact that the Claimant has made other claims and the Respondent has raised a Counterclaim does not change this fact.
19. In the result, I will allow the Claimant’s application dated November 24, 2022 and thereby enter judgment on admission in the sum of Kshs 1,435,621 in favour of the Claimant as against the Respondent.
20. The costs of the application will be borne by the Respondent.
21. Orders accordingly.

DELIVERED VIRTUALLY AT NAIROBI THIS 27TH DAY OF APRIL 2023

LINNET NDOLO

JUDGE

Appearance:



Mr Mwangi for the Claimant

Mr Burugu for the Respondent

