



**Nyamai v Naivasha Rocky Eco-Lodge Aka Rocky Resort (Employment and Labour Relations Cause E003 of 2023) [2023] KEELRC 1334 (KLR) (25 May 2023) (Judgment)**

Neutral citation: [2023] KEELRC 1334 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU  
EMPLOYMENT AND LABOUR RELATIONS CAUSE E003 OF 2023**

**HS WASILWA, J**

**MAY 25, 2023**

**BETWEEN**

**DANIEL NZIOKA NYAMAI ..... CLAIMANT**

**AND**

**NAIVASHA ROCKY ECO-LODGE AKA ROCKY RESORT ..... RESPONDENT**

**JUDGMENT**

1. The claimant instituted this claim vide a memorandum of claim dated January 9, 2023, alleging that his employer, Naivasha Rocky Eco-lodge had not paid him his salary from June, 2019 till March, 2020 when he was forced to resign from employment because of non-payment of salaries. He sought for the following reliefs; -
  - a An order directing the Respondent to pay the monthly salaries for June, July, August, September, October, November, December OF 2019 and salaries for January, February and March of 2020 all totaling o Kshs 800,000.
  - b An order directing the Respondent to pay the claimant unpaid leave for 3 years' computed as Kshs 193,846.
  - c An order directing the Respondent to pay the claimants unpaid rest days computed at Kshs 442,944.
  - d The Respondent to pay interest of all the claims.
  - e The claimant be awarded Costs of this case.
  - f The court may grant any other relief it may deem necessary to grant.
2. The summary of facts in this case is that the claimant was employed by the Respondent in July, 2016 to the position of Food and Beverage manager earning a monthly salary of Kshs 80,000.



3. That He worked well for the Respondent and received the stated salary but from June, 2019 he was not paid and upon asking for his pay, he was informed that the Respondent did not have money to pay. He nevertheless continued working for the Respondent till March, 2020 without any pay, when he was forced to resign because he was no longer able to meet his financial needs.
4. He contends that he left the Respondent's employment because of non-payment of his monthly salaries as such the resignation was forced by the non-payment of salaries and amount to constructive dismissal.
5. He states that during the period he was employed by the Respondent he had not taken his leave. Further that for the said three years, he worked on rest days without any pay, which he now claims.
6. The claimant states that he followed up for the payment of his salary while in employment and after employment but the Respondent failed to pay his dues forcing him to institute this Suit.
7. The Claimant therefore urged this Court to allow the claim as prayed as the Respondent has become adamant in paying him despite several demands.
8. The Respondent was served with the pleadings and Summons on February 17, 2023 and an advance copy via email as indicated by Owino Oenga, an advocate of the High Court of Kenya and the advocate in conduct of the claim for the claimant, in his affidavit of service sworn on February 20, 2023. Despite service of Summons to Enter Appearance and Pleadings in this case, the Respondent did not enter Appearance and or defend this Suit, therefore the claim herein proceeded as undefended Claim.
9. During hearing that was conducted on April 19, 2023, the claimant adopted his witness statement of January 12, 2023 and added that the Respondent used to pay him through M-pesa as evidence in the M-pesa statement produced. He then adopted the documents filed with the claim as his exhibits and urged the court to allow his claim for salary arrears.
10. The claimant closed his case and opted not to file any submissions.
11. I have examined all evidence submitted by the claimant herein the respondent having been served and having failed to enter appearance or file their defence.
12. It is my finding that the claimant proved his case on a balance of convenience. I find for the claimant accordingly and award him as follows;-
  1. Unpaid salaries from June to December 2019 and January, February and March 2020 =  $80 \times 10 = 800,000/=$ .
  2. Unpaid leave for 3 years computed at kshs 193,846/=.
  3. Unpaid rest days computed at kshs 442,944/=Total = 1,436,790/=
4. The respondent will pay costs of this suit plus interest at court rates.

**DATED, SIGNED AND DELIVERED IN OPEN COURT THIS 25TH DAY OF MAY, 2023.**

**HON LADY JUSTICE HELLEN WASILWA**

**JUDGE**

**In the presence of:**



**No appearance for parties - absent**

**Court Assistant – Fred**

