



**Anyona v Transline Classic Limited (Cause 459 of 2017)  
[2023] KEELRC 1573 (KLR) (22 June 2023) (Judgment)**

Neutral citation: [2023] KEELRC 1573 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE 459 OF 2017  
BOM MANANI, J  
JUNE 22, 2023**

**BETWEEN**

**GILBERT OMWANZA ANYONA ..... CLAIMANT**

**AND**

**TRANSLINE CLASSIC LIMITED ..... RESPONDENT**

**JUDGMENT**

**Introduction**

1. This is a claim based on alleged unfair termination of the Claimant's contract of service. The Claimant alleges that the Respondent's management forced him to resign from employment. As a consequence, he prays for the various reliefs as more specifically set out in the Statement of Claim.
2. The Respondent denies liability for the claim. According to the Respondent, the Claimant absconded from duty after he was asked to provide employment and tax records relating to the Respondent and its employees. Besides denying liability, the Respondent has lodged a counterclaim against the Claimant for financial losses it incurred following alleged failure by the Claimant to diligently discharge his duties.

**Claimant's Case**

3. The Claimant's case, as can be discerned from the pleadings and evidence tendered in court, is that he was employed by the Respondent in the year 2011 as an accountant. It is his case that he was issued with a letter of appointment which fixed his starting salary at Ksh. 27,000.00 per month. In addition, the Claimant states that he was entitled to annual leave of 21 days.
4. The Claimant states that shortly after he assumed his responsibilities with the Respondent, he was asked by the Respondent's management to take up additional tasks for ENA Investment Ltd and Classic Parcel Handlers Limited. The Claimant further avers that he was advised that he will be paid



an additional sum of Ksh. 27,000.00 to cover the added responsibilities. According to the Claimant, this request was made orally and the arrangement was never reduced into writing.

5. Notwithstanding the promise to remunerate him for the services that he was to render to ENA Investment Limited and Classic Parcel Handlers Limited, the Claimant states that he was never paid for these services. It is the Claimant's case that his efforts to get the Respondent's management to resolve the issue failed to bear fruit.
6. The Claimant states that on 25<sup>th</sup> July 2016, he was temporarily suspended from work before he was asked to resume on 9<sup>th</sup> August 2016. Shortly thereafter on 7<sup>th</sup> September 2016, the Claimant asserts that he was summoned to a meeting with the Respondent's management during which he was told to resign from employment.
7. It is the Claimant's case that he did not act on the aforesaid demand. This allegedly prompted the Respondent's management to summon him once again on 23<sup>rd</sup> September 2016 when the Claimant was allegedly threatened with summary dismissal if he did not tender his resignation from employment.
8. The Claimant avers that following the meeting of 23<sup>rd</sup> September 2016, he wrote to the Respondent on 3<sup>rd</sup> October 2016 asking that he be paid his terminal dues to enable him resign. It is unclear whether the Claimant considered the said letter as evidence of his resignation from employment. Nevertheless, it is his case that the Respondent's resolve to have him resign eventually led into the decision to resign from employment.
9. The Claimant asserts that the alleged resignation was not voluntary. In his view, the resignation was forced on him. As a result, he takes the position that he was unfairly terminated from employment.
10. The Claimant has thus brought these proceedings to ask that he be compensated for the job loss. In addition, he prays for an order to compel the Respondent to settle his unpaid dues from the two other companies that he claims he was asked to work for.

### **Respondent's Case**

11. The Respondent denies forcing the Claimant to resign from his position as its accountant. Similarly, the Respondent denies holding the meetings that the Claimant alleges were convened to communicate the Respondent's decision to have him resign.
12. It is the Respondent's case that contrary to the Claimant's assertions, he was asked by the Respondent's management to submit records relating to employee statutory deductions and other tax records which were required by various government agencies. This request was allegedly communicated to the Claimant during a session around 20<sup>th</sup> September 2016.
13. It is the Respondent's case that instead of submitting these records, the Claimant insisted that he will file them directly with the relevant government agencies. It is indicated that the Claimant refused to submit the records to the Respondent's chairperson and abruptly left his work station.
14. The Respondent states that the Claimant left with all the records in question making it difficult for the Respondent to respond to the request by the various agencies to have the records submitted. Faced with this challenge, the Respondent indicates that it lodged a complaint with the police in a bid to seek assistance to retrieve the records since the Claimant could not be reached through telephone or otherwise.
15. The Respondent denies that the Claimant was forced to resign. It is the Respondent's case that the Claimant abandoned duty and all efforts to reach him were rendered fruitless.



16. The Respondent denies asking the Claimant to work for ENA Investment Limited and Classic Parcel Handlers Limited. It is the Respondent's case that since the three entities were closely interlinked, the Claimant offered to assist the accountants of the two other companies to streamline their books. Nevertheless, the three entities were distinct and the Respondent never hired the Claimant to provide services to ENA Investment Limited and Classic Parcel Handlers Limited.
17. The Respondent states that as an accountant, it was the Claimant's responsibility to ensure that the Respondent's tax returns and employee statutory deductions were properly managed. However, he failed to diligently manage these tasks thereby exposing the Respondent to penalties which occasioned the Respondent financial loss. As a result, the Respondent has counterclaimed for Ksh. 2,421,606.00 being reimbursement for statutory penalties incurred by it. In addition, the Respondent has counterclaimed for pay in lieu of notice against the Claimant for failure to issue notice before he absconded from duty.

### **Issues for determination**

18. From the record, it is not in dispute that the parties had an employment relation up to the time it came to a close. However, it is contested how the relation came to a close. Whilst the Claimant asserts that he was forced to resign from employment, the Respondent's case is that the Claimant absconded from duty.
19. Consequently, a central issue for resolution is whether the Claimant resigned or absconded from duty? Outside this, the court will also have to interrogate other corollary issues including whether: the contract of service between the parties was lawfully terminated; the Respondent is liable to settle the Claimant's claim arising from his purported service with ENA Investment Limited and Classic Parcel Handlers Limited; the Claimant was negligent on duty thereby occasioning financial loss to the Respondent; the Claimant is entitled to the reliefs sought in the Statement of Claim; the Respondent is entitled to the reliefs sought in the counterclaim.

### **Analysis**

20. Although the Claimant asserts that he resigned from employment, there is no evidence to ascertain this fact. The Claimant refers to his letter of 3<sup>rd</sup> October 2016 to fortify his contention that he resigned from employment. It is the Claimant's contention that this letter communicated to the Respondent his decision to resign from employment.
21. However, a critical evaluation of the letter does not support the Claimant's contention that it communicated his decision to resign from employment. At best, the letter only expressed the Claimant's intention to resign once he was paid the dues set out in the letter. Therefore, it did not qualify as a letter of resignation.
22. In law, a resignation must be unequivocal and unconditional (see *Lonah Alumera Anyera v Eldoret Wagon Hotel* [2014] eKLR). Where the resignation is conditional and the condition is not fulfilled, the resignation does not crystallize (see *Heaven v Whitbread Group plc* [2010] UKEAT/0084/10).
23. In the *Heaven v Whitbread Group plc* case, the employee wrote to the employer on 29<sup>th</sup> August 2019 expressing his decision to resign from employment subject to the employer guaranteeing him some payments. The employer rejected the condition prompting the employee to write an email on 3<sup>rd</sup> September 2019 dropping the conditions. It was held that the resignation took effect on 3<sup>rd</sup> September 2019 and not 29<sup>th</sup> August 2019. The Employment Appeal Tribunal observed as follows:-



- “A contract of employment cannot be brought to an end by an equivocal and conditional letter. You either resign or you negotiate the terms on which you will resign, but there is a fundamental distinction between those two propositions. Thus, the letter of conditional resignation did not bring the contract to an end.”
24. In the case before me, it is clear that the Claimant asked to be paid some benefits prior to resigning. Specifically, the Claimant’s concluding sentence in the letter stated thus, “I will be glad to resign upon payment of the above amounts.”
  25. There is no evidence that the Respondent acted on the Claimant’s demand for payment. Despite the failure by the Respondent to fulfill the condition in the letter, it appears that the Claimant opted to stay away from work under the misguided belief that he had resigned.
  26. The legal consequence of the foregoing is that the Claimant’s letter of 3<sup>rd</sup> October 2016 did not terminate his contract of service with the Respondent. Therefore, his failure to report to work constituted an act of desertion or abandonment of duty.
  27. The Claimant having deserted duty, this conduct brought him within the purview of section 44 of the *Employment Act*. The Claimant had without leave or other lawful cause, absented himself from the place appointed for the performance of his work with no intention of resuming his duties. This conduct constituted gross misconduct for which an employee may be summarily dismissed from employment.
  28. However, before handing the employee a dismissal, the employer has an obligation to ensure due process. Section 41(2) of the *Employment Act* provides as follows in this respect:-  
“Notwithstanding any other provision of this Part, an employer shall, before terminating the employment of an employee or summarily dismissing an employee under section 44(3) or (4) hear and consider any representations which the employee may on the grounds of misconduct or poor performance, and the person, if any, chosen by the employee within subsection (1), make.”
  29. Therefore, despite the Claimant’s desertion of duty, the Respondent was obligated to process his release from employment in terms of section 41(2) of the *Employment Act* by hearing the employee on the charge of desertion. The Respondent was obligated to take reasonable steps to trace the whereabouts of the Claimant and subject him to a disciplinary process. It is only if the Claimant could not be traced despite all reasonable efforts that the Respondent would have closed the matter without hearing the Claimant.
  30. There is a plethora of decisions restating the position that an employee who has absconded duty does not terminate his contract through the act of abandonment. The employer has the obligation to close the contract by subjecting the employee to the usual disciplinary process.
  31. In *Gibson Namasake v Linksoft Group Ltd* [2018] eKLR, the court expressed itself on the matter as follows:-  
“In this sense, the employee who deserts employment does not dismiss himself, so to speak. The decision to formally end the employment relationship should come from the innocent party.”
  32. In *Vincent Makori Momanyi v Techpak Industries Limited* [2022] eKLR the court expressed this position as follows:-  
“Desertion of duty is a grave administrative offence, which if proved would render an employee liable to summary dismissal. It is however not enough for an employer to simply state that an employee has deserted duty. The law is that an employer must show efforts



made towards reaching out to the employee and putting them on notice that termination on this ground is under consideration.”

33. Although the Respondent asserts that it tried to trace the Claimant to no avail, there was no cogent evidence to support this assertion. The alleged report to the police about the Claimant’s disappearance was not proved. The entry in the alleged Occurrence Book report was not presented to court. There was no evidence of call logs by the Respondent to the Claimant’s last known telephone contacts. There was no evidence of the Respondent having addressed a letter to show cause to the Claimant through his last known address.
34. In effect, I find that although the Claimant deserted duty, the Respondent did not take steps to close the contract between the parties in terms of section 41(2) of the *Employment Act (William Gituma Gateere v RAA Limited* [2020] eKLR). This failure rendered the closure of the Claimant’s contract irregular and therefore unlawful. It constitutes unlawful termination of the Claimant’s employment.
35. The next issue for determination is whether the Respondent is liable to settle the Claimant’s claim arising from his purported service with ENA Investment Limited and Classic Parcel Handlers Limited. As a legal personality, a company enjoys separate and distinct corporate personality. As such, any two companies are at all times deemed as separate and distinct entities. Neither of them can be burdened with the liabilities of the other except under an agency arrangement between the two companies. The mere fact that the directors and shareholders of the companies are the same is no reason to suggest that either of the companies is liable to settle the obligations of the other.
36. In the case before me, the Respondent is a distinct legal person from ENA Investment Limited and Classic Parcel Handlers Limited. As a result, absent an agency arrangement between the three companies, the Respondent cannot be obligated to settle the liabilities of ENA Investment Limited and Classic Parcel Handlers Limited. There was no evidence that the Claimant’s engagement with ENA Investment Limited and Classic Parcel Handlers Limited was prompted by a request from the Respondent. No board resolution by the Respondent’s board of directors was produced to support the Claimant’s assertion that the Respondent asked him to work for the other two companies.
37. If the Claimant wished to pursue a claim for unpaid salaries from the two companies accruing from his services to them, he ought to have joined the said companies to this action. He did not. As such, the Claimant’s claim arising from his activities at ENA Investment Limited and Classic Parcel Handlers Limited directed at the Respondent must fail.
38. The next issue for determination is whether the Claimant was negligent on duty thereby occasioning financial loss to the Respondent. The evidence that was tendered in court demonstrates that the Respondent hired the Claimant to undertake the duties of an accountant. However, no job description was included in the Claimant’s letter of appointment or separately issued to him to indicate exactly what his tasks were. This fact was conceded by the second defense witness.
39. According to the Claimant, the duties assigned to him when he took up the appointment were limited to collection and tabulation of daily vehicle collections, working out the Respondent’s daily expenses, filing VAT returns, preparing the monthly payroll, handling employees’ Pay as You Earn (PAYE) tax issues and registering staff with Kenya Revenue Authority, National Hospital Insurance Fund (NHIF) and National Social Security Fund (NSSF). He denied that it was part of his role to file withholding income and corporate tax returns.
40. The Respondent has accused the Claimant of failing to discharge his duties as an accountant diligently thereby subjecting the Respondent to financial loss accruing from tax penalties for non compliance. To support this claim, the Respondent produced a series of documents to wit: the Kenya Revenue



Authority audit report (KRA Audit) dated 13<sup>th</sup> May 2016; a letter permitting installment payment of accrued taxes dated 31<sup>st</sup> May 2016; and a letter from NHIF dated 24<sup>th</sup> January 2017.

41. The KRA Audit demonstrates, inter alia, that the Respondent did not correctly compute and remit PAYE for the months of September, October, November and December 2015. As a result, there was an underpayment of Ksh. 220,178.00. In addition to these arrears, the Respondent was required to pay penalties and interest on the PAYE tax of Ksh. 70,162.00 bringing the total outstanding PAYE dues to Ksh. 290,340.00.
42. At the time of the above occurrence, the Claimant was already serving as the Respondent's accountant having been hired in May 2011. Whilst conceding that the PAYE docket fell under his mandate, the Claimant offers no plausible explanation why there was a lapse in payment of the tax in September, October, November and December 2015 that resulted in the penalties and interest of Ksh. 70,162.00.
43. In respect of withholding income tax and corporate tax, the Claimant's position was that this was not his exclusive mandate. It was his evidence that he would only collect data and forward it to the Respondent's accountants in Nairobi to process the taxes. Although the Respondent's witnesses tried to argue that the mandate of ensuring compliance regarding payment of withholding income tax and corporate tax fell on the Claimant, they conceded that the Respondent had not issued the Claimant with a job description to detail his exact responsibilities. In the premises, it is not possible to hold the Claimant responsible for the losses that accrued from the mishandling of the Respondent's withholding income tax and corporate tax dockets.
44. In respect of the outstanding NHIF dues of Ksh. 561,900.00 demanded for *vide* NHIF's letter dated 24<sup>th</sup> January 2017, it is noteworthy that the letter does not indicate which period these arrears related to. The letter was issued to the Respondent several months after the Claimant had abandoned employment in early October 2016.
45. In its letter of 15<sup>th</sup> February 2017, the Respondent attributes the fact of the Claimant having absconded with its staff records as the reason for the delay in remitting the NHIF dues. According to the Respondent, the Claimant's action made it difficult for the Respondent to log into various staff accounts to process payments.
46. This explanation demonstrates failure by the Respondent to react to the loss of its records in a diligent manner. Once the Respondent realized that the Claimant had taken off with its records, it was obligated to visit the various statutory bodies including NHIF to ensure a mechanism is put in place to continue remitting statutory dues as the search for the missing documents continued. It was not for the Respondent to just sit back and await the recovery of the said records without continuing to meet its statutory obligations. Therefore, it is not possible to attribute the NHIF arrears of Ksh. 561,900.00 to the Claimant.
47. The totality of the foregoing is that only the loss accruing from the mishandling of the PAYE tax reflected in tax penalties and interest of Ksh. 70,162.00 can be attributed to the Claimant's negligence. The other losses cannot.
48. The next issue for determination is whether the Claimant is entitled to the reliefs sought in the Statement of Claim. In his Statement of Claim, the Claimant has prayed for the following reliefs:-
  - a) Special damages of Ksh. 2,220,300.00.
  - b) General damages.
  - c) Costs of the case.



- d) Interest at court rates.
49. The special damages are comprised of the Claimant's claims against ENA Investment Ltd (Ksh. 660,000.00), Classic Parcel Handlers Limited (Ksh. 1,122,000.00) and the Respondent (Ksh. 276,000.00). As indicated earlier in this decision, the Claimant cannot claim amounts that are allegedly due from ENA Investment Ltd and Classic Parcel Handlers Limited from the Respondent. Accordingly, the claim in this respect totaling Ksh. 1,782,000.00 is dismissed.
50. As relates to the claim for Ksh. 276,000.00 against the Respondent, the same comprises of the following:-
- a) Outstanding salary for September 2016 and six (6) days in October 2016 totaling Ksh. 33,300.00.
  - b) Leave for five years totaling Ksh. 94,500.00.
  - c) Three months salary in lieu of notice totaling Ksh. 81,000.00.
  - d) Service pay on redundancy totaling Ksh. 67,000.00.
51. In his testimony, the Claimant relied on his witness statement filed in court on 8<sup>th</sup> March 2017. In the witness statement, the Claimant asked to be paid the above dues covering his accrued leave for five years, outstanding salary and service pay. The Claimant set out the particulars of this demand in his letter to the Respondent dated 3<sup>rd</sup> October 2016 which was also tendered in evidence.
52. In its statement of defense, the Respondent denied owing these amounts. However, besides the bare denial in the Reply to Statement of Claim, the Respondent offered no evidence to controvert the Claimant's evidence on the amounts in paragraph 50 (a) and (b) above.
53. Under section 74 of the *Employment Act*, the employer has the responsibility of securing records of employment of its employees. These include records touching on matters under section 10 of the *Employment Act* to wit details of the employee's annual leave and remuneration entitlements among others. On the other hand, sections 17 and 21 of the *Employment Act* obligate the employer to pay employees their earned salary and issue them with an itemized pay slip evidencing such payments.
54. Under section 10(6) of the *Employment Act*, the employer is to keep records of particulars of inter alia, employees' leave entitlements and remuneration for a period of at least five (5) years after closure of the employment relation. Whenever the fulfillment of a term of employment is contested, the employer has the statutory obligation under section 10 (7) of the *Employment Act* to produce and show to the court the contract of service or particulars of the disputed term (*Jackson Muiruri Wathigo t/a Murtown Supermarket v Lilian Mutune* [2021] eKLR).
55. Under section 112 of the *Evidence Act*, the burden of proof lies with a party who has special knowledge of a disputed fact. In matters employment, evidence on whether certain terms of the contract have been satisfied would ordinarily be in the control of the employer. Thus, the employer has special knowledge regarding satisfaction of these terms. For instance, the employer is required to keep records of the employee's leave and remuneration. Therefore, whether an employee has been remunerated or taken his leave would ordinarily be within the special knowledge of the employer. That said, it is imperative for the employee to establish a prima facie case before the burden shifts onto the employer to establish satisfaction of a disputed term.
56. In the case before me, the Claimant testified on oath that he had not utilized his leave for the five years that he had served the Respondent. He also contended that his September and part October 2016



salary was not paid. Before testifying on the matter, the Claimant had issued a demand for payment of his leave dues and outstanding salary. Therefore, the Respondent was on notice what the Claimant's claim was about.

57. In my view, the above evidence demonstrates that the Claimant presented a *prima facie* case on the aspects of his outstanding leave and salary. Despite this preliminary evidence, the Respondent offered no evidence on the matter. The Respondent provided no records in terms of section 10(7) of the [Employment Act](#) to controvert the Claimant's claim in this respect. In the premises and based on the preliminary and uncontroverted evidence by the Claimant on the matter, I find that the Claimant has established the fact that his accrued leave for five years is outstanding. I similarly find that the Claimant has established that his salary for September 2016 and part of October 2016 before he absconded from duty was not paid. I therefore enter judgment for the Claimant for Ksh. 33,300.00 to cover salary arrears for September and part of October 2016 and Ksh. 94,500.00 to cover accrued leave dues from May 2011 when the Claimant was hired to October 2016 when he abandoned employment.
58. Since the Claimant abandoned employment under the erroneous belief that he had resigned under compulsion, I am disinclined to award him pay *in lieu* of notice. Accordingly, I dismiss the claim for pay in lieu of notice.
59. The Claimant has claimed for service pay. Under section 35(5) of the [Employment Act](#), an employee who has been on a long term contract of service that is terminable by giving notice of at least 28 days is entitled to service pay for every year worked once the contract is terminated. The employee will only lose this entitlement if it is shown that he was a member of a provident fund or gratuity or pension scheme specified under section 35(6) of the Act.
60. The pay slip produced in evidence by the Claimant for June 2016 indicates that he was enrolled as a contributor to the National Social Security Fund. The parties also gave evidence that the Respondent used to remit staff contributions to the National Social Security Fund. In fact, it was the Claimant's evidence that it was his duty to register the Respondent's staff to this and other statutory Funds. It is implausible that the Claimant, who was charged with the task of registering employees on the platform of the National Social Security Fund, would himself not be registered with the Fund. Having regards to the totality of the evidence on record, I am inclined to believe that the Claimant was registered as a contributor to the National Social Security Fund. Therefore, he is not eligible to receive service pay under section 35 of the [Employment Act](#) (see [Alexander Mutinda Ngila v Paul Iluvya Mutunga & another](#) [2022] eKLR).
61. In addition to the foregoing reliefs, the Claimant has prayed for general damages. The general position in employment law is that the court cannot grant parties the relief of general damages (see [Kenya Broadcasting Corporation v Geoffrey Wakio](#) [2019] eKLR). This may only be granted where the action is premised on other grievances such as violation of a constitutional right in the context of an employment dispute. The reliefs that the court may grant in an ordinary employment dispute are as stipulated in section 49 of the [Employment Act](#) as read with section 12 of the [Employment and Labour Relations Court Act](#). In the premises, the Claimant's prayer for general damages is declined.
62. It is perhaps important to point out that despite having reached the conclusion that the Claimant's contract of service was irregularly closed, I have not awarded him compensation for unfair termination as contemplated under section 49 of the [Employment Act](#). This is because the Claimant did not pray for this relief in his Statement of Claim. It is trite law that parties are bound by their pleadings and a court cannot grant a relief that was not specifically pleaded (see [Karin Anne Challis v The Hon. Attorney General and 6 Others](#) [2002]eKLR).



63. As the Claimant has succeeded in some respects, I award him interest on the sum awarded to him at court rates from the date of this decision. I also award him costs of the main claim.
64. The upshot is that the Claimant is awarded monetary relief as follows:-
- a) Ksh. 33,300.00 to cover salary arrears for September and part of October 2016.
  - b) Ksh. 94,500.00 to cover accrued leave dues from May 2011 when the Claimant was hired to October 2016.
  - c) Interest on the amounts awarded at court rates from the date of this judgment.
  - d) Costs of the primary claim
65. On the counterclaim, I have already indicated that save for the sum of Ksh. 70,162.00 which arose from the Claimant's negligence in managing the Respondent's PAYE account, the Respondent did not convince me that the other financial losses it incurred are attributable to the Claimant's conduct. Consequently, I decline to enter judgment for the Respondent against the Claimant save for Ksh. 70,162.00 being the penalties and interest that the Respondent incurred following the mishandling of the PAYE account by the Claimant. This amount shall attract interest at court rates from the date of this decision.
66. Since the Respondent has succeeded partially on the counterclaim, I award costs of the said counterclaim to the Respondent.
67. The parties are at liberty to enter into set offs for the amounts they are entitled to recover from each other under this judgment.

### **Summary of the Award**

- a) On the Primary Claim
  - i) The court finds that the Claimant's employment contract was irregularly and therefore unlawfully closed.
  - ii) The court awards the Claimant Ksh. 33,300.00 being the amount due on account of outstanding salary for the months of September and part October 2016.
  - iii) The court awards the Claimant the sum of Ksh.94,500.00 on account of accrued leave dues.
  - iv) The court declines to enter judgment for the Claimant for service pay.
  - v) The court declines to award the Claimant salary in lieu of notice to terminate his contract of service.
  - vi) The court declines to order the Respondent to settle the Claimant's claims arising from his activities with ENA Investment Limited and Classic Parcel Handlers Ltd.
  - vii) The court declines to award the Claimant general damages.
  - viii) The Claimant is awarded interest on the sums awarded at court rates from the date of this decision.
  - ix) The Claimant is awarded costs of the primary claim.
- b) On the Counterclaim



- i) The court awards the Respondent the sum of Ksh. 70,162.00 being the loss incurred by the Respondent as a result of negligent handling by the Claimant of Respondent's PAYE account.
  - ii) The court awards the Respondent interest on the above sum at court rates from the date of this decision.
  - iii) The other claims by the Respondent against the Claimant are declined.
  - iv) The court awards the Respondent costs of the counterclaim.
- c) Mode of Settlement
- i) The parties are at liberty to enter into set offs for the amounts they are entitled to recover from each other under this judgment.

**DATED, SIGNED AND DELIVERED ON THE 22ND DAY OF JUNE, 2023**

**B. O. M. MANANI**

**JUDGE**

**In the presence of:**

..... for the Claimant

.....for the Respondent

**ORDER**

**In light of the directions issued on 12<sup>th</sup> July 2022 by her Ladyship, the Chief Justice with respect to online court proceedings, this decision has been delivered to the parties online with their consent, the parties having waived compliance with Rule 28 (3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.**

**B. O. M MANANI**

