



**Kathure v Ministry of Works Sports Club (Cause E119 of 2023)
[2023] KEELRC 2884 (KLR) (10 November 2023) (Judgment)**

Neutral citation: [2023] KEELRC 2884 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E119 OF 2023
SC RUTTO, J
NOVEMBER 10, 2023**

BETWEEN

JANE KATHURE CLAIMANT

AND

MINISTRY OF WORKS SPORTS CLUB RESPONDENT

JUDGMENT

1. Through a memorandum of claim filed on February 15, 2023, the claimant avers that she was employed by the respondent as a Security Assistant with effect from March 24, 2017. According to the claimant, she devoted herself to her job and she was transferred from security to be a clerk in the office although her salary remained the same.
2. That in March 2020, following the outbreak of the Covid-19 pandemic, she was sent home together with all other employees of the respondent to await new instructions on the way forward. There was no uncertainty as to how long they would be home. That 18 months later, life started returning to normal and life at the respondent Club resumed. It was the claimant's case that sometimes in August 2021, she received a call from her employer and upon arrival at her workplace, she was given a letter declaring her redundant together with other employees.
3. According to the claimant, the respondent had replaced her with someone else long before she was declared redundant. Consequently, the Claimant seeks against the Respondent the sum of Kshs 442,200/= being outstanding salary, leave pay and severance pay. She has further sought punitive damages against the respondent for withholding her PAYE remittances to the Kenya Revenue Authority (KRA) and failure to submit her deductions to the MOW Welfare Group.
4. The respondent did not enter appearance despite being served with the Summons and Statement of Claim. In this regard, the claimant filed an affidavit of Service sworn by James Ngang'a on March 8, 2023, confirming service.



5. Being satisfied with the return of service, the court directed that the matter will proceed as an undefended cause. Subsequently, the matter was set down for formal proof hearing on July 3, 2023, during which the claimant testified in support of her case.

Claimant's case

6. It was the claimant's evidence that the respondent did not pay her salary for 17 months from March 2020 upto August 2021, when she was declared redundant together with her former colleagues. That further, the respondent did not remit appropriate deductions to the KRA since 2016 and her deductions to the MOW Welfare Group.
7. Upon close of her case, the claimant filed written submissions which I have considered.

Analysis and Determination

8. Upon evaluating the statement of claim, the evidence on record and the claimant's submissions, the singular issue that stands out for determination is whether the claimant is entitled to the reliefs sought. This is informed by the fact that the claimant has not sought to declare her redundancy unfair and unlawful. In addition, she has not sought the reliefs attendant to a finding that the redundancy was unfair and unlawful.
9. That said, I now turn to consider whether the claimant is entitled to the reliefs sought in the statement of claim.
10. In the instant case, the claimant was declared redundant on 26th August 2021, on grounds that the Covid-19 pandemic had occasioned a downturn in the Respondent's patronage and business which had lasted for a very long time.
11. The claimant was further advised that she would be paid as follows:
 1. Salary upto and including March 31, 2020 if not already paid;
 2. 17 days salary in lieu of accrued leave/off days/accrued public holidays valued at Kshs 12,296.00.
 3. 2 months salary in lieu of notice valued at Kshs 44,000.00.
 4. 3 years severance pay @ 20 days for every completed year of service valued at Kshs 43,397.00.
12. It is worth pointing out that the claimant did not state whether or not she had received her final dues as aforesated. The court therefore presumes that she was paid as appropriate.
13. As stated herein, the claimant has sought to be paid salary from March 2020 upto September 2021, leave pay for 21 days and severance pay for 18 months. She further seeks punitive damages on the basis that the respondent withheld her PAYE remittances to the KRA and failed to submit her deductions to the MOW Welfare Group.

Salary from March 2020 upto September 2021

14. The claimant has sought to be paid outstanding salary for 18 months from March 2020 upto September 2021. In her statement of claim, the claimant acknowledged that they were sent home following the outbreak of the Covid 19 global pandemic.
15. It is a matter of public notoriety that the outbreak of Covid 19 global pandemic, caused massive disruptions in business operations. It is also common knowledge that in Kenya, the Government



adopted drastic response measures to contain the spread of the pandemic. Such measures included restriction of movement and social distancing.

16. It is not in doubt that the global pandemic and the attendant measures imposed by the Government resulted in decreased business operations. Indeed, the claimant acknowledged this fact in her statement of claim as she avers that the respondent was not spared by the effects of the pandemic.
17. Therefore, it follows that at the onset of the pandemic and in the period that followed, the respondent was not undertaking its normal operations.
18. In light of the foregoing, it would not be conscionable in my view to order the respondent to pay the claimant salary for 18 months from March 2020 upto September 2021.

Unpaid Leave

19. Turning to the claim for leave pay, it is clear from the record that the Claimant was notified through the letter dated August 26, 2021, declaring her redundant, that she would be paid the sum of Kshs 12,296/= being accrued leave days/off days and accrued public holidays.
20. As stated herein, the claimant did not state whether or not she was paid the said sum of Kshs 12,296/= as promised by the respondent. Further, she did not specify the period for which she was claiming the 21 leave days. For the foregoing reason, the claim for leave pay is declined.

Deductions to MOW Welfare Group

21. The claim for deductions to the MOW welfare is similarly declined as the claimant failed to specifically plead and prove the same despite being a specific claim in nature. How is the court to ascertain what should be paid and on which basis?

Punitive Damages

22. The claimant has further sought punitive damages against the respondent on the basis of withholding her PAYE remittances to KRA and her deductions to the MOW Welfare Group. Again, this relief is denied for want of proof. For instance, there was no requisite demand to confirm that the remittances to KRA were not remitted. On the same note, there was no evidence that the claimant's deductions to the Welfare Group were effected from her salary but not remitted as appropriate.

Severance Pay

23. The only claim that succeeds is with regards to severance pay as the claimant was still in the service of the respondent upto and including August 26, 2021, when she was declared redundant. Therefore, the period falling between March 2020 and August 2021 is a relevant period for purposes of computing severance pay in terms of section 40(1) (g) of the [Employment Act](#).

Orders

24. In the final analysis, I allow the claim only to the extent that the claimant is entitled to the sum of Kshs 14,666.60 being severance pay for one completed year of service at the rate of 20 days.
25. The claimant is further entitled to her certificate of service in accordance with section 51(1) of the [Employment Act](#).
26. As the claimant was self-representing, the respondent shall bear the costs of the claim limited to the actual expenses incurred by the claimant in terms of filing.



DATED, SIGNED AND DELIVERED AT NAIROBI THIS 10TH DAY OF NOVEMBER, 2023.

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STELLA RUTTO

JUDGE

Appearance:

For the Claimant In person

For the Respondent No appearance

Court assistant Abdimalik Hussein

ORDER

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court had been guided by Article 159(2)(d) of the Constitution which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of the Constitution and the provisions of Section 1B of the Civil Procedure Act (Chapter 21 of the Laws of Kenya) which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

STELLA RUTTO

JUDGE

