



**Orwa v Environment Liaison Centre International (Cause  
214 of 2019) [2022] KEELRC 48 (KLR) (28 April 2022) (Judgment)**

Neutral citation: [2022] KEELRC 48 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE 214 OF 2019  
NZIOKI WA MAKAU, J  
APRIL 28, 2022**

**BETWEEN**

**KENNEDY ORWA ..... CLAIMANT**

**AND**

**ENVIRONMENT LIAISON CENTRE INTERNATIONAL ..... RESPONDENT**

**JUDGMENT**

1. The Claimant filed this Claim against the Respondent on 3<sup>rd</sup> April 2019 vide a Statement of Claim dated 19<sup>th</sup> March 2019, seeking payment of unpaid benefits following his lawful resignation. He avers that he was initially employed by the Respondent as an Acting Executive Director until 26<sup>th</sup> May 2016 when the Respondent confirmed him as its Executive Director and that his salary was adjusted upwards to Kshs. 387,558/- per month as from November 2017. The Claimant avers that on 12<sup>th</sup> November 2018 he lawfully and procedurally resigned as an employee of the Respondent effective from 13<sup>th</sup> September 2018 since he worked for the full day of 12<sup>th</sup> September 2018. The Claimant avers that he then handed over several items as shown in the hand over records signed by Edward Wageni on behalf of the Respondent, and the Claimant – in the presence of the Claimant’s advocates. The Claimant avers that vide the resignation letter dated 12<sup>th</sup> September 2018 addressed to the Board Chairperson of the Respondent, he requested for payment of his salary which was in arrears, as well as the logistical costs related to the handing over event and preparation of the handing over notes. The Claimant avers that the Respondent has however neither made any payments nor initiated any discussion on the payments and that he thus claims: accrued salaries and dues computed from 1<sup>st</sup> March 2018 to 12<sup>th</sup> September 2018; refund of amounts spent on the Respondent’s activities; payment for two extra days work (at the last daily salary rate) relating to handing over; and logistical costs to town for handing over exercise. The Claimant further seeks remittance of an original, hard copy, duly filled P9 forms indicating payments between 1<sup>st</sup> January 2018 and 12<sup>th</sup> September 2018, or any other authentic original documents that would capture the said information plus evidence of remittance to KIMISITU Sacco during the said period. He also prays against the Respondent for costs of this suit and any other relief that this Court



- deems fit to grant. In his witness statement, the Claimant asserts that he resigned as a result of the Respondent's staff making it difficult for him to discharge his duties. He also confirms that there was nothing owing to the Respondent at the time of handing over.
2. The Respondent did not enter appearance in the suit and the matter proceeded for formal proof where the Claimant reiterated his pleadings.
  3. The matter then proceeded to the stage of written submissions and the Claimant submits that Section 21 of the *Employment Act*, 2007 mandates an employer to issue an employee with a Statement of statutory deductions while Section 74(1)(d) of the Act directs the employer to keep records of the said statement. He relies on the case of *Jason Mogaka Otiso v Shadrack Obuga Mukanda* [2016] eKLR wherein this Court held that it is the duty of an employer to keep all work records of each individual employee pursuant to sections 73 and 74 of the *Employment Act*. It is the Claimant's submission that the Respondent has an undisputed statutory obligation to supply him with the P9 form and evidence of remittance to the SACCO as prayed for in the Claim.
  4. The Claimant refers this Court to the scheduled salary breakdown of the Respondent's employees which confirms that the Respondent employed him as the Executive Director earning a salary of Kshs. 387,558/-. He submits that he is therefore entitled to the benefits and dues claimed pursuant to Section 17(1) of the *Employment Act* which obligates an employer to pay in entirety the amount of wages earned by or payable to an employee in respect of work done. The Claimant submits that Section 17(10) further penalises an employer who fails to pay an employee's salary. That despite making several requests to the Respondent to settle the said arrears, it has never responded to the same. The Claimant cites the case of *Nebert Bernard Muriuki v Multimedia University of Kenya* [2015] eKLR wherein the Court awarded the employee salary for months which the employer did not prove payment was made. He also relies on the decision of the court in *Alice M'mboga Ogolla v Nyayo Tea Zones Development Authority* [2017] eKLR to award the claimant as prayed after the respondent failed to comment or dispute the prayers. He submits that the Respondent was accorded several opportunities to prove that it made the above payments but instead chose not to enter appearance to dispute the same. The Claimant submits that failure to pay his salary and the other claimed dues thus stand as uncontroverted evidence which the Claimant gave under oath and that this Honourable Court should allow the same as prayed. It is the Claimant's submission that he has proved his case on a balance of probability and the same should be allowed in its entirety with costs.
  5. The Claimant resigned from employment so his dispute is not about the manner of termination of employment but rather the issue of payment. The Claimant's claim against the Respondent is for:
    - a. Accrued salaries and dues computed from 1<sup>st</sup> March 2018 to 12<sup>th</sup> September 2018 amounting to Kshs. 2,480,371/-
    - b. Amounts spent on the Respondent's activities yet to be refunded amounting to - Kshs. 74,000/-
    - c. Pay for two days at the last daily salary rate, for the two extra days spent on the Respondent's work relating to handing over, amounting to - Kshs. 12,915/-
    - d. Logistical costs to two for the handing over exercise amounting to - Kshs.1,300/-
  6. The Claimant seeks a total of Kshs. 2,568,586/- as well as the remittance of an original, hand copy, duly filled P9 form indicating payments between 1<sup>st</sup> January 2018 and 12<sup>th</sup> September 2018, or any other authentic original document that would capture this information; and production of evidence of remittance to Kimisitu Sacco Limited, showing the deductions in respect of the Claimant's salary between January and February 2018.



7. The Claimant produced the emails from the Respondent who indicated it would calculate the dues up to the time of resignation as well as the dues for the handover. The email was sent on Tuesday January 8<sup>th</sup> 2019 at 12.51pm from Edward Wageni and copied to other officials of the Respondent. The Claimant is therefore entitled to receive pay for days worked being Kshs. 2,449,286/- as well as the handover costs of Kshs. 1,300/- . The sum of Kshs. 74,000/- expended on behalf of the Respondent is also to be paid. The Respondent is to avail documents showing taxes were paid for the period of employment being a duly authenticated P9 form and the evidence of remittance of dues to KIMISITU Sacco for the same period. The Claimant will also have costs of the suit. He shall also have interest at court rates on the sums claimed. In the final analysis I enter judgment for the Claimant against the Respondent as follows:-

- i. Kshs. 2,449,286/- being salary dues
- ii. Handover costs of Kshs. 1,300/-
- iii. Kshs. 74,000/- expended on behalf of the Respondent
- iv. The Respondent to avail duly authenticated P9 form
- v. The Respondent is to avail evidence of remittance of dues to KIMISITU Sacco
- vi. Costs of the suit
- vii. Interest in the sums in (i), (ii) and (iii) above at Court rates from the date of judgment till payment in full.

It is so ordered.

**Dated and delivered at Nairobi this 28<sup>th</sup> day of April 2022**

**Nzioki wa Makau**

**JUDGE**

