



**Wambua v Corporate Talk Limited (Cause 1143 of 2015)
[2022] KEELRC 1712 (KLR) (25 July 2022) (Judgment)**

Neutral citation: [2022] KEELRC 1712 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 1143 OF 2015
MA ONYANGO, J
JULY 25, 2022**

BETWEEN

MARYANNE MUTHUE WAMBUA CLAIMANT

AND

CORPORATE TALK LIMITED RESPONDENT

JUDGMENT

1. The claim herein was commenced by statement of claim dated 29th June and filed on July 1, 2015. The Claimant avers that she was employed by the respondent by letter dated September 7, 2009 as an Accounts Executive at a monthly salary of Kshs.60,000/=.
2. That due to her exemplary performance she was promoted again to the position of Accounts Director in February 2011 at a salary of Kshs.78,000/=. That in September 2011 she was again promoted to Group Client Service Director where she worked up to 30th September 2013 at a salary of Kshs.207,000/= per month. She was on 1st October 2013 promoted to the position of Group Managing Director at a salary of Kshs.234,500/= per month. She held the position until 28th February 2015.
3. It is the claimant's case that she resigned for the respondent's employment by letter dated January 15, 2014. She prayed for the following from the Respondent –
 - a. Unpaid salary for 2 months Kshs.469,000.00
 - b. Accrued leave days Kshs.233,167.00
 - c. Outstanding out of pocket expenses Kshs.141,303.98Total Kshs.843,470.98
4. She further prayed for costs and interests.



5. In its defence dated August 17, 2015 and filed on August 20, 2015, the Respondent admitted owing the Claimant two months' salary which it stated it was ready to pay. It however denied owing the Claimant leave days and out of pocket expenses.
6. Judgment was subsequently entered for the Claimant against the Respondent for the admitted sum of Kshs.469,000/=. The outstanding claim herein is therefore the sum of Kshs.233,175/= on account of leave days not taken and Kshs.141,303.98 being outstanding out of pocket expenses.
7. The parties disposed of the two items by way of written submissions which I have considered together with the authorities cited by the parties.

Leave

8. Section 28 of the *Employment Act* provides that every employee is entitled to annual leave after working for an initial two months. The claimant's contract provided for 21 days leave per year. The claimant submits that she never took all her annual leave for the entire period she worked with the respondent as would be evident from the records held by the respondent.
9. The respondent does not exactly deny that the claimant was owed some leave days. its argument is that the claimant did not adduce any evidence that she applied for leave and was denied. It submits that equity does not aid the indolent, relying on the decisions in *Mohamed Shally Sese (Shah Sese) v Fulson Company Ltd & another* [2006] eKLR and *John Njue Nyagah v Nicholas Njiru Nyaga & another* [2013] eKLR. In the former authority, the court stated that equity does not aid the indolent. In the latter decision the court stated that he who comes to equity must come with clean hands and equity frowns upon secrecy and under dealings.
10. The respondent has not demonstrated how the claimant was indolent. She could not have been indolent in claiming her leave up to the date she resigned. The claimant made a request for payment for leave days not taken in her letter of resignation. I do not find her guilty of indolence.
11. The claimant seeks payment of Kshs.233,167/=. She does not state how many days leave this amount stands for. She does not state how the figure was calculated. The figure is obviously not representative of all the leave days between October 1, 2009 and 4th February 2014 which would have been 91 days which would work out at Kshs.820,750/=. It means the claimant took some days leave and is only claiming the balance which is unspecified.
12. This being a case of special damages, it was imperative that the claimant states how many leave days she did not take and for which years. It is only after this that the respondent would be called upon to produce evidence to rebut the claimant's averments.
13. I find that the claimant has not proved that she is owed the sum of Kshs.233,167/= on account of leave days not taken. The prayer is dismissed for want of proof.

Outstanding out of pocket expenses

14. The claimant has prayed for Kshs.141,303.98. She produced a statement in respect of the same as document No. 11 in her List and Bundle of Documents at page 14 thereof. She again submitted to court a supplementary bundle and list of documents where she attached proof of the expenses in her statement by way of receipts and requisitions.
15. The respondent submits that this being special damages must be specifically pleaded and proved relying on the decision in *Hahn v Singh* [1985] KLR 716. It further relies on the decision in *Total (Kenya) Limited Formally Caltex Oil (Kenya) Limited v Janevams Limited* [2015] eKLR where the court stated



- a proforma invoice is not proof of acquisition of goods. The respondent also relies on the decision in *Darshan Shah v Roopman (K) Limited & 3 others* [2005] eKLR on compliance with stamp duty act.
16. The respondent further relies on the decision in *Leonard Nyongesa v Derrick Ngula Righa* [2013] eKLR where the court declined to award special damages for receipts that had not been presented for stamp duty payment.
 17. I find the arguments of the respondent together with the cases cited not relevant to the instant prayer as the claimant has produced a statement which shows that the claimant had a running account that the respondent settled periodically. I further find that the receipts by the claimant were consumer receipts that included VAT.
 18. I find that the claimant has proved that she is entitled to refund of out of pocket expenses in the sum of Kshs.141,303.98 which I award her.
 19. In conclusion the claimant is awarded Kshs.141,303.98. She is awarded interest on the said sum from date of filing suit this having been expenditure she made from her own money on the understanding that she would be reimbursed the same.
 20. The respondent shall further pay claimant's costs based on the award in the interim judgment and the sum awarded herein.
 21. The decretal sum shall attract interest from date of interim judgment and final judgment respectively to date of payment.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI ON THIS 25TH DAY OF JULY 2022

MAUREEN ONYANGO

JUDGE

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 has 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.

MAUREEN ONYANGO

JUDGE

