



**Kituku v Garden Hotel Limited (Cause 1637 of 2014)
[2022] KEELRC 1352 (KLR) (14 July 2022) (Ruling)**

Neutral citation: [2022] KEELRC 1352 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 1637 OF 2014
MA ONYANGO, J
JULY 14, 2022**

BETWEEN

JOHN KITUKU CLAIMANT

AND

GARDEN HOTEL LIMITED RESPONDENT

RULING

1. Vide a notice of motion dated 21st November 2021 the Claimant seeks the following orders:
 - i. This Honourable court be pleased to enter judgment on admission as against the defendant for the sum of Kshs.425,985 less the paid Kshs.102,000 leaving a balance of Kshs.323,985 plus interest at court's rates from the date of filing the claim until payment in full and the rest of claimant's case do proceed for trial.
 - ii. The costs of the suit and this application be provided for.
2. The application is supported by the affidavit of Joseph Kituku, the Claimant and the grounds on the face of the application.
3. It is the Claimant's averment that he was employed by the Respondent as a Chef de Cuisine from 1st January 1993 to 24th November 2021 a period of 21 years. His last salary was Kshs.50,000/=.
4. The Claimant avers that upon resignation he was entitled to terminal benefits being unpaid salaries, gratuity, sacco dues and target sale incentives all amounting to Kshs.540,000/= which the Respondent declined to pay.
5. The Claimant sent a demand letter to the Respondent dated 7th May 2013 through his advocates demanding the terminal dues but the Respondent replied to the demand letter in which it admitted owing the Claimant only Kshs.425,985/=.



6. Upon filing of the Memorandum of Claim the Respondent had a Memorandum of Reply in which it again admitted the sum of Kshs.425,985/=.
7. That by letter dated 17th November 2014, the Respondent expressed willingness to settle the admitted sum in six (6) instalments of Kshs.61,000/= with a 7th instalment of Kshs.59,985/=. It enclosed a cheque no. 000468 for Kshs.61,000/=.
8. On 8th July, 2015 the Respondent again paid Kshs.41,000/=. Since then, the Respondent has not made any further payments.
9. The Respondent was served with the instant application but filed no response. On 16th June 2022 when parties appeared before the court Mr Nagwere holding brief for Mr. Mutia for the Respondent prayed for more time to file a response and was granted seven (7) days.
10. On 7th July 2022 the Respondent did not attend court for hearing of the application. It has also not filed any response to the application.
11. In view of the Respondent's failure to attend court on 7th July 2022 which was fixed by consent of parties on 16th June 2022, the Claimant's application is unopposed.
12. I have perused both the claim and defence and confirm that the Respondent indeed admitted owing the Claimant the sum of Kshs.425,985/= in the witness statement of Elkanah Ombairedated 29th October 2014 and offered to settle the same by letter dated 17th November 2014 through its advocates.
13. I have further confirmed that the Respondent paid kshs.61,000/= by cheque no. 000468 dated 14th February 2013 and a further Kshs.41,000/= by cheque no. 000542 dated 8th July 2015.
14. In the letter dated 8th July 2015 from Mulwa Isika and Mutua Advocates, Mr. Justus Mutia, Esq, counsel for the Respondent states at the last paragraph thereof-

“ Kindly acknowledge safe receipt and confirm that we have so far forwarded to you a total of Kshs.102,000/=.”
15. The letter is addressed to Mulyungi and Mulyungi Associates, Advocates for the Claimant.
16. From the foregoing it is clear that the Respondent admitted owing the Claimant the sum of Kshs.425,985/= and made part payment of Kshs.102,000/=:, leaving a balance of Kshs.323,985/= that has been claimed in the instant application in respect of the admitted sum.
17. I accordingly enter judgment for the Claimant against the Respondent in the sum of Kshs.323,985/= with interest from date of filing suit and direct that the Respondent pays the same within 30 days failing which the Claimant is free to execute for the same.
18. The balance of the decretal sum claimed in the memorandum of claim shall be subjected to hearing.
19. In view of the fact that the said balance of the sum claimed in the memorandum of claim relates to only tabulation of terminal dues and that the facts of the claim are not contested, parties will proceed by way of written submissions.
20. Directions will be taken in respect thereof at the time of delivering of this ruling.

DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 14TH 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, the 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 the 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

