



REPUBLIC OF KENYA



**Manjothi v Seven Seas Technologies Limited (Petition  
E980 of 2021) [2022] KEELRC 1281 (KLR) (14 July 2022) (Ruling)**

Neutral citation: [2022] KEELRC 1281 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
PETITION E980 OF 2021  
MN NDUMA, J  
JULY 14, 2022**

**BETWEEN**

**NAHEED MANJOTHI ..... CLAIMANT**

**AND**

**SEVEN SEAS TECHNOLOGIES LIMITED ..... RESPONDENT**

**RULING**

1. The applicant by Notice of Motion dated 8<sup>th</sup> July, 2021 seeks the following orders: -
  1. The Court be pleased to enter judgment on admission in favour of the claimant as against the respondent in the sum of Four Million One Hundred and Five Thousand, Three Hundred and Ninety- Eight and Ten Cents (Kshs 4,105,398.10.)
  2. Costs of the application.
  3. Interest on (1) and (2) at Court rates until payment in full.
3. The application is premised on grounds set out on the face of the Notice of Motion and in the supporting affidavit of the claimant Naheed Manjothi sworn to on 8<sup>th</sup> July, 2021 the nub of which is that the claimant instituted inter alia for compensation for unfair and/or unlawful dismissal from employment, his unpaid salary, two months, wages in lieu of notice, unpaid leave and severance pay.
4. The respondent in its letter dated 19<sup>th</sup> March, 2019 unequivocally admitted owing the claimant the sum of Kshs 4,399,838.10 as his terminal benefits, less all statutory deductions.
5. The respondent promised that in the event that the present funding for National Government automation is concluded, any outstanding amounts as at the time shall be paid to the claimant.
6. The contract of employment between the claimant and the respondent on 1<sup>st</sup> March, 2018 as a National Hospital implementation and Adoption Manager for Health Care Information Technology,



(HCIT) at a gross monthly salary of Kshs 757, 250 is attached. Notice of termination on grounds of redundancy dated 30<sup>th</sup> November, 2018 is also attached.

7. The letter promising settlement of final dues dated 19<sup>th</sup> March, 2019 is also attached
8. The letter is written by the founder and Group Chief Executive Officer of the respondent Mr. Michael Macharia and is written to the claimant inter alia:-

“RE: Final Dues Computation Settlement

We refer to our letter dated 30<sup>th</sup> November, 2018 declaring your position in the company redundant. In consideration of the current cash flows, the National Government automation project which has delayed, we will be proceeding with what is possible to settle any outstanding amounts. We believe you will appreciate that there is considerable effort being made towards resolving the same.

The following is the proposed payment plan that will be made based on the following gross salary brackets,

- A. KES O<150,000 payment spread over a 6 months period.
- B. KES. 150,001<200,000 - Payment spread over a 12-month period.
- C. Over KES 250,001 or total outstanding above KES 1 million payment spread over an 18 months period.

According to your monthly salary, you fall under bracket C. Your final net dues, less statutory deductions as at the date of termination amount to KES 4,399,833.10 and the company undertakes to settle the amounts as per the payment plan indicated below: -”

9. It is submitted by the applicant that the above constitutes an equivocal admission of liability and the Court be pleased to enter judgment in favour of the claimant, the respondent having failed to pay the terminal benefits to-date.
10. In the replying affidavit of Michael Kingori Macharia, the Chief Executive Officer of the respondent, he deposes that the claimant was declared redundant on 30<sup>th</sup> November, 2018 following the stalling of the project by National Government of Kenya under the Ministry of Health for the provision of a Health Care Information Technology (HCIT) Platform.
11. That *vide* a letter dated 19<sup>th</sup> March, 2019, the Respondent issued a settlement letter in good faith to the claimant proposing to settle his outstanding dues in eighteen (18) monthly instalments of Kshs 244,435.00 each.
12. That the letter pointed out the cashflow challenges that the respondent was undergoing and the claimant was aware of. That the payment was conditional on resumption of cashflow. That the respondent has not received any payment from Government and would not be in a position to settle the amounts due as undertaken and therefore requests the Court to be allowed to settle the payments by instalments of Kshs 50,000 per month until determination of the Court case in favour of the claimant or when the Respondent is engaged in additional revenue generating projects. The respondent opposes the application and prays it be dismissed with costs.
13. The applicant filed a further affidavit and reiterated the contents of the application with which it joins issue. The parties filed written submissions which the Court has carefully considered together with the deposition and annexures filed by the parties.



14. The issue for determination is whether the application satisfies the requirements for grant of judgment on admission.
15. In *Cassam -vs- Sachania* [1982] KLR 19, Potter J. stated-

“The judge’s discretion to grant judgment on admission of fact under the Order is to be exercised only in plain cases where the admissions of fact are so clear and unequivocal that they amount to an admission of liability entitling the plaintiff to judgment. It is far from being a plain case where one has to resort to the interpretation of documents. Once a case raises points of law it falls outside the ambit of the Order.”
16. In *Choitram V. Nazari* [1984] KLR 327, Madan J. A. stated: -

“Admissions have to be plain and obvious, as plain as a pike staff and clearly reasonable because they may result in judgment being entered. They must be obvious on the face of them without requiring a magnifying glass to ascertain their meaning. Much depends upon the language used. The admissions must leave no room for doubt.....”
17. A plain reading of the letter by the Chief Executive Officer of the respondent together with the contents of the replying affidavit by the Chief Executive Officer leaves the Court with absolutely no doubt that the respondent has admitted liability in respect of Kshs 4,399,833.10 the respondent owes the claimant in respect of terminal dues mandatorily payable by dint of Section 40 of the *Employment Act*, 2007 once an employer declares an employee redundant.
18. Section 40 of the *Employment Act*, 2007 reads: -
  - (i) An employer shall not terminate a contract of service on account of redundancy unless the employer complies with the following conditions: -
    - (a) .....
    - (b) .....
    - (c) .....
    - (d) .....
    - (e) the employer has where leave is due to an employee who is declared redundant paid off the leave in cash;
    - (f) the employer has paid an employee declared redundant not less than one month’s notice or one month’s wage in lieu of notice; and
    - (g) the employer has paid an employee declared redundant severance pay at the rate of not less than fifteen days pay for each completed year of service.” (Emphasis is added).
19. It follows from the reading of this provision therefore that an employer upon declaring an employee redundant must pay the mandatory statutory terminal benefits immediately or else must not declare the employee redundant at all.
20. The conditionalities placed on the admitted redundancy dues owed to the claimant by the respondent are unlawful and do not constitute any defence at all to the admitted claim.
21. Accordingly, the Court enters judgment on admission in favour of the claimant as against the respondent in the sum of Kshs 4,399,833.10. The sum is payable with interest at Court rates from the



date the claimant was declared redundant till payment in full, being 30<sup>th</sup> February, 2019, the effective date.

**DATED AND DELIVERED AT NAIROBI (VIRTUALLY) THIS 14<sup>TH</sup> DAY OF JULY, 2022.**

**MATHEWS N. NDUMA**

**JUDGE**

Appearances

M/s Mwangi for the claimant

M/s J. Muthoka for Respondent

Ekale – Court Assistant

