



**Nakachi v Centric Air Ambulance Limited (Cause E614 of 2021)
[2022] KEELRC 4071 (KLR) (22 September 2022) (Judgment)**

Neutral citation: [2022] KEELRC 4071 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E614 OF 2021
M MBARŪ, J
SEPTEMBER 22, 2022**

BETWEEN

PRAXEDES NAKACHI CLAIMANT

AND

CENTRIC AIR AMBULANCE LIMITED RESPONDENT

JUDGMENT

1. The claimant was employed by the respondent in a letter dated 15th February, 2019 as a Clinical manager at a monthly salary of ksh.210, 000. The claimant commenced her duties but was not paid her salary from the month of November, 2019 and at the time of filing suit on 30th July, 2021 had arrears of 19 months.
2. In March, 2020 the respondent directed the claimant to work from home since the respondent had disconnected all its official phone lines and email addresses had been deactivated. The physical offices of the respondent at Phoenix Aviation House, Wilson Airport were taken over by a third party.
3. The claim is that the respondent is in breach of contract and the law by failing to pay the due salary to the claimant as agreed, failure to issue the claimant with an itemised payment statement and to remit statutory dues when due.
4. The claimant is seeking for a declaration that the actions of the respondent are arbitrary and unjustified and should be ordered to pay the due salaries due from December, 2019 to date and costs of the suit.
5. In response, the respondent's case is that the allegations made by the claimant are without any basis and should be dismissed.
6. The respondent has not withheld the claimant's salary since the company has been completely unable to pay all its employees including the claimant since operations came to a halt since February, 2020 and the claims made are without justification and should be dismissed. The respondent has not been



trading since November, 2019 and has had zero revenues and has not managed to pick up again since and has only accumulated liabilities and all efforts by the promoters behind the respondent to inject capital required to return back to business have proved futile.

7. Apart from salary arrears the company has liabilities amounting to Ksh.19, 928,153.57. The company is unable to pay the clamant and it closed operations in February, 2020.
8. Both parties agreed and addressed the claim through written submissions.
9. The claimant submitted and reiterated her claims and that from November, 2019 the respondent has not paid her salary or remitted statutory dues as by law required. This position subsists to date.
10. Employment has not been denied or terminated and the accumulated and unpaid salaries amount to Ksh.610, 014.80.
11. The financial constraints being faced by the respondent do not exempt the company from its legal obligations to its employees. under Section 67 of the Employment Act insolvency is defined which the respondent has failed to invoke or the option of applying the provisions of Section 40 of the Employment Act on redundancy as held in Migotiyo Plantation Limited v Kenya Plantation & Agricultural Workers Union [2016] eKLR; C. Avude v Kenya Forest Service [2015] eKLR.

The claims made should be allowed as prayed.

12. The respondent submitted that the claimant was employed on 15th February, 2019 but due to the nature of the respondent business of providing ambulance service through air support, it did not pick up as estimated and operations grounded to a halt in the year 2020 due to COVID-19 pandemic. By February, 2020 its offices closed and investors committed to fund the respondent withdrew support.
13. There is no deliberate withholding of the claimant's salary since other employees were affected and the respondent has huge liabilities of up to Ksh.19 million and all efforts to return to business have been futile and the respondent is unable to pay.

Determination

The employment relationship between the parties is not denied.

14. It is also not contested that from February, 2020 the respondent advised the claimant to work from home since COVID – 19 pandemic had affected the business. The physical office of the respondent and work place for the claimant has since closed and taken over by a third party.
15. The respondent has not terminated employment either verbally or in writing to date. This is despite taking the above into account.
16. In the ruling herein delivered on 24th March, 2022 part of the findings of the court were to the effect that the respondent had been experiencing financial constraints since November, 2019 which were escalated by thhe COVID-19 pandemic. But the respondent, well aware of its financial challenges has not done anything to secure its legal protections under the Employment Act, 2007 despite the advantage of legal advice and representation in these proceedings. Financial constraints do not exempt the respondent from meeting its obligations to its employees particularly to the claimant. Her salary and remittance of statutory dues is payable and due in accordance with the Employment Act, 2007.
17. Where an employer is unable to pay a salary to its employee due to financial constraints, the law allow the employer to issue notice and take advantage of Section 40 of the Employment Act, 2007 protections. Further, where an employer is faced with insolvency, Section 67 of the Employment Act, 2007 insulate the employer.



18. The respondent, despite averments of financial constraints has opted to step back and do nothing. Such only entrench a culture of unfair labour practices contrary to Article 41 of *the Constitution*, 2010 and which compounds unfairness in employment of the claimant for failure to pay her due salaries and non-remittance of statutory dues.
19. The claimant is entitled to all her due salaries to the date of filing suit together with remittance of statutory dues. This suit would have been unnecessary had the respondent met its employment relationship obligations.
20. Accordingly, judgement is hereby entered for thhe claimant against the respondent in the following terms;
 - a) The respondent shall pay the claimant her due salaries at Ksh.210,000 per month from March, 2020 to the date of filing suit;
 - b) The respondent shall remit all due statutory dues with regard to the claimant's employment at own expense from March, 2020 to the date of filing suit and pay for any sanction(s) due therefrom;
 - c) The claimant is awarded interests on dues arising from (a) above as due until such is fully paid; and
 - d. The claimant is awarded costs of the suit.

DELIVERED IN OPEN COURT AT NAIROBI THIS 22ND DAY OF SEPTEMBER, 2022.

M. MBARŪ

JUDGE

