



REPUBLIC OF KENYA



**KENYA LAW**  
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**Nyamori v Athi River Marble & Granite Limited & another (Cause 1015 of 2018) [2022] KEELRC 13251 (KLR) (31 October 2022) (Judgment)**

Neutral citation: [2022] KEELRC 13251 (KLR)

**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI**  
**CAUSE 1015 OF 2018**  
**K OCHARO, J**  
**OCTOBER 31, 2022**

**BETWEEN**

**GEOFFREY NYAMORI ..... CLAIMANT**

**AND**

**ATHI RIVER MARBLE & GRANITE LIMITED ..... 1<sup>ST</sup> RESPONDENT**

**JAYANT JAYANT PAUNRANA ..... 2<sup>ND</sup> RESPONDENT**

**JUDGMENT**

1. Through a statement of claim dated the May 29, 2018, the claimant instituted a claim against the respondents seeking the following relief;
  - a. The sum of Kshs 722,250 as particularized in paragraph 6 of the claim.
  - b. The cost of the suit.
  - c. Interest in (a) and (b) above.
  - d. Any other relief as the court may deem just to grant.
2. The statement of the claim was filed contemporaneously with the claimant's witness statement and the list of documents dated the May 29, 2018 that the claimant intended to place reliance as his documentary evidence.
3. The claimant served the respondents with summons to enter appearance together with the statement of claim, witness statement and list of documents dated the July 3, 2018 at their advocate's office, court process which they duly received.
4. The respondents entered appearance on the August 15, 2018 but failed to file a response to the statement of the claim, consequently, on the February 28, 2019 the court directed the matter to proceed as an undefended claim.



5. When the matter came up for hearing the claimant sought, and the court allowed that reliance be placed on his pleadings, witness statement as his evidence in chief and the filed documents as his documentary evidence for the determination of this matter.

### **The Claimant's Case**

6. The claimant stated that he came into the employment of the respondent on or about December 1, 2011 as a Senior Draftsman at a monthly salary of Kshs 67,500.
7. The claimant avers that he commenced the employment as aforesaid senior draftsman and served the respondent with loyalty and diligence until March 1, 2016 when the respondent declared him redundant and failed to pay him his terminal dues as tabulated herein below:
  - i. Salary arrears (May 2015-February 2016) 67500 x 10.....Kshs 675,000.
  - ii. Annual leave pay (67500/30x 2 x1) Ksh47, 250Total .....Ksh 722,250.
8. The claimant at the hearing told the court that at some point in time, the company started going down because of the competition from other companies. With this the company did not pay them their salaries.
9. The claimant worked for couple of months without pay. He told the employer that it was unsustainable and asked the company to pay him his salary arrears. The claimant was told by the employer that they would organize the payment which they did not pay and he eventually decided to quit.

### **The Claimant's Submissions.**

10. The claimant's counsel filed his submissions on the November 23, 2021 and distilled only one issue for determination thus;

Whether the claimant is entitled to the reliefs sought in the Memorandum of claim.
11. On the issue raised, the counsel relied on section 17 of the *Employment Act, 2007* which entitles an employee to the entire amount of the wages earned by or payable to an employee in respect to the work done in pursuant of a contract of service.
12. The claimant's counsel submitted further that in the absence of any objection or denial of the said existing wages owed to the claimant by the employer the court should award the claimant his dues as prayed for in the statement of the claim. In fortification of his submission he placed reliance on the case of *Angelica Mutinda v Athi River Marble & Granite Ltd* [2019] eKLR where the claimant with similar issues as the one herein was granted the reliefs sought.

### **Analysis and Determination.**

13. From the pleadings and the evidence on record, the following issues for determination emerge;
  - (a) Whether the respondent unlawfully withheld the claimant's terminal dues.
  - (b) Whether the claimant is entitled to the reliefs sought.
  - (c) Who should bear the cost of the suit.



**(a) Whether the Claimant Unlawfully Withheld the Claimant's Terminal dues.**

14. It is clear and evident as on record that the respondent had not paid the claimant his salary which had fell into arrears. By an agreement reached between the respondent and the Kenya Quarry & Mine Workers Union dated the April 13, 2015 the respondent agreed to clear all salary arrears as soon as possible the position they did not honor up despite continuous requests from the claimant and the workers union.
15. Payment of remuneration to an employee who has rendered services under a contract is a statutory duty on the part of the employer and the right of an employee. Any delays concerning payments of remuneration or default in the payment of the same amounts to a breach to remunerate, both under the law and the contract of employment.
16. The respondent did not file any response to the claimant's statement of claim, consequently, the averments therein remain unchallenged, the liquidated claim inclusive.
17. In conclusion the non-payment of the claimant's terminal dues for the period between May 2015-February, 2016 was unlawful and contravened the provision of the law.

**(b) Whether the Claimant is Entitled to the Reliefs Sought.**

18. Having found out that the claimant's salary arrears remained unpaid by the respondent and that the non-payment was unlawful, the court awards the claimant the pleaded amount of Ksh 722,250.

**(c) Who Should bear the Costs of the Suit?**

19. The claimant is awarded the cost of the suit. The court orders that salary arrears shall attract interest from the dates when they fell due till full payment.
20. In view of the above, judgment is hereby entered in favour of the claimant in the following terms;
  - (a) Salary arrears (May 2015-February 2016) 67,500 x 10.....Kshs 675,000
  - (b) Annual leave pay (67,500/30x 21x1) Ksh 47,250.
  - (c) The cost of the suit.
  - (d) Interest at the court rate on the unpaid salary from the various dates when it fell due till payment in full.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 31<sup>ST</sup> DAY OF OCTOBER, 2022.**

**OCHARO KEBIRA**

**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 15<sup>th</sup> March 2020 and subsequent directions of April 21, 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.

A signed copy will be availed to each party upon payment of court fees.

**OCHARO KEBIRA**

**JUDGE**

