



REPUBLIC OF KENYA



**KENYA LAW**  
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**Kirimi v Commissioner General Kenya Revenue Authority (Cause  
237 of 2016) [2022] KEELRC 12770 (KLR) (4 October 2022) (Ruling)**

Neutral citation: [2022] KEELRC 12770 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE 237 OF 2016  
AN MWAURE, J  
OCTOBER 4, 2022**

**BETWEEN**

**ASHFORD MWITI KIRIMI ..... CLAIMANT**

**AND**

**COMMISSIONER GENERAL KENYA REVENUE  
AUTHORITY ..... RESPONDENT**

**RULING**

1. The respondent has filed a notice of motion dated March 17, 2022 seeking the following orders:-
  - i. That this application be certified as urgent and that service of the same be dispensed with at first instance- spent.
  - ii. That the respondent be granted leave to adduce the following additional evidence.
    - a. Letter of appointment
    - b. Certificate of acceptance
    - c. Resignation letter dated and served on February 6, 2017
    - d. Letter forwarding the resignation letter
    - e. Pay slip for October 2016
  - iii. That upon grant of prayer 2 above, the claimant's claim be marked as spent upon the claimant being ordered to pay the respondent 3 months' salary in lieu of notice in line with his contract of employment.
  - iv. That the claimant provide the costs of this application and those of the entire suit to the respondent.



- v. Any other orders the honourable court may deem fit.

### **applicants facts**

2. The respondent states that a claim was lodged on February 22, 2016 when claimant sought and was granted orders to maintain status quo and so stopping disciplinary proceedings.
3. He says before the matter could be heard the claimant tendered his resignation from the respondent's employment.
4. The applicant avers that in the meanwhile he paid all withheld salaries, leave and transport allowance to the claimant for the period under interdiction.
5. He says that this situation changed the substratum of the matter and the claimant was paid all is dues. In deed the applicant claims the claimant owned three months' salary in lieu of notice to the respondent/ applicant as provided in his contract.
6. The applicant says that in the interest of justice this application be allowed. The applicant was supported by an affidavit of one Frankline Kiogora.
7. Franklin Kiogora in his affidavit says he is a manager in the respondent's Human Resource Department. He says the claimant was employed by the respondent by a letter of offer dated December 3, 2004. The claimant was interdicted on October 5, 2010 and was placed on half salary and house allowance.
8. He deponed further that the claimant was due for disciplinary hearing on October 9, 2015 but before the applicant could proceed with the same, the claimant got a court order to lift his interdiction and so the disciplinary proceedings did not proceed. The respondent says he filed a response on March 15, 2016 and meanwhile on February 6, 2017 the claimant tendered his resignation from respondent's employment
9. He says he then paid all withheld salary of the claimant. That indeed claimant owes respondents three months' salary in lieu of notice. He says he swears the affidavit in support of his application herein seeking to introduce supplementary evidence and to mark the claim as spent.

### **Applicant's submissions**

10. The applicant says that the claimant/respondent was invited for disciplinary proceedings but approached court and the court gave orders for maintaining the status quo and so the disciplinary hearing was halted.
11. The applicant avers that the claimant/respondent tendered a resignation on February 6, 2017 and thanked the applicant for having given him an opportunity to serve the organization for ten year since December 7, 2006. The applicant says he paid the claimant/respondent his withheld salary and dues.
12. The applicant is relying on the case of [\*Katana Mwangandi v Board of Governor's Takaye Primary School \[2017\] eKLR\*](#) where the learned judge held that the claimant has admitted that he voluntarily resigned from employment. He is therefore not entitled to salary in lieu of notice and compensation under section 49 of the act. The applicant is therefore persuading the court that the claimant's case be marked as spent.



### **Claimants / Respondents Submissions.**

13. The claimants/respondent's submissions are to the effect that the resignation the claimant tendered had nothing to do with the hearing of this claim. He said the developments for his resignation and payment of his salaries accrued after he had filed his claim. He says his claim was for his dismissal in 2010 and so payment of his dues in 2016 does not compensate his dismissal in 2010.
14. The claimant says there were historical wrongs committed against him and should be addressed.

### **Decision**

15. The applicant prays to be allowed to adduce the listed documents and after allowing the said additional evidence to mark the claimant's claim as spent and to pay the respondents 3 months' salary in lieu of notice. There was a lot going on in this case whereby the claimant was wanted for disciplinary hearing on June 15, 2010 and on October 5, 2010 he was interdicted.
16. The claimant approached court by way of a notice of motion and was given court order for his interdiction to be lifted and he was reinstated to his position. This was on March 22, 2016.
17. On February 26, 2016 claimant was retired on authority's interest and on February 6, 2017 he resigned. His letter of resignation does not indicate he was forced to resign or that there was duress. On the face of it he voluntarily resigned and applicant says he paid his dues according to the pay slip annexed hereto of October 2016. It's not clear if he was paid all his dues after he resigned as the pay slip is dated October 2016 and he resigned in February 2017.
18. The court finds no prejudice will be occasioned in accepting the further evidence as per the documents listed in the application to wit:
  - a. Letter of appointment
  - b. Certificate of acceptance
  - c. Resignation letter dated February 6, 2017
  - d. Letter forwarding resignation letter
  - e. Pay slip dated October 2016

### **The listed documents are therefore admitted.**

19. As for the prayer that the claimant's claim be marked as spent the court finds there is a conflict there. The claimant's prayer as per the statement of claim dated February 22, 2016 prays for:
  - (1) Half basic salary from October 2010 to January 2016
  - (2) Transport allowance for same period totaling Kshs 3,104,000/-.
20. The pay slip of October 2016 does not clarify what the applicant paid the claimant for. The court orders the applicant to present a clear statement of account of what he paid the claimant. This should be presented to the court one month from today's date so that the court can make conclusive orders to finalise this entire suit.
21. The prayer D to restrain applicant from terminating claimant's employment is already overtaken by events due to the claimant's resignation on February 6, 2017.



22. The court finds no justification to grant general damages to the claimant since he voluntarily retired from his employment.
23. The applicant has also prayed to be paid 3 months' salary in lieu of notice. However when the applicant accepted the claimant resignation letter of February 6, 2017 by its letter of February 28, 2017 it did not ask him for the three months' salary in lieu of notice. Indeed that seems to have been an afterthought. The court declines to award the same to the applicant. In any event the applicant owed the claimant dues which are more than the 3 months' salary.
24. Claimant is awarded costs of the suit. Mention on November 7, 2022 to give further directions on the entire suit.

Orders accordingly.

**DELIVERED, DATED AND SIGNED IN NAIROBI THIS 4<sup>TH</sup> OCTOBER, 2022.**

**ANNA NGIBUINI MWAURE**

**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 March 15, 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 had 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.

**ANNA NGIBUINI MWAURE**

**JUDGE**

