



REPUBLIC OF KENYA



KENYA LAW
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**Onzere v Jebrok Farmers Co-operative Society Ltd & 3 others (Cause
322 of 2016) [2022] KEELRC 13267 (KLR) (23 November 2022) (Judgment)**

Neutral citation: [2022] KEELRC 13267 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
CAUSE 322 OF 2016
S RADIDO, J
NOVEMBER 23, 2022**

BETWEEN

LIVINGSTONE KISALI ONZERE CLAIMANT

AND

JEBROK FARMERS CO-OPERATIVE SOCIETY LTD 1ST RESPONDENT

**DANIEL AGONYA ONZERE, CHAIRMAN JEBROK FARMERS CO-
OPERATIVE SOCIETY LTD 2ND RESPONDENT**

**LEVY CHORE LUNDU, SECRETARY FARMERS CO-OPERATIVE SOCIETY
LTD 3RD RESPONDENT**

**BUFFALO KINYAGA, TREASURER FARMERS CO-OPERATIVE SOCIETY
LTD 4TH RESPONDENT**

JUDGMENT

1. Livingstone Kisali Onzere (the claimant) sued the respondents on October 3, 2016, alleging breach of contract (failure to pay salaries and statutory dues)
2. The respondents filed a notice of preliminary objection on October 19, 2018.
3. Despite entering an appearance on October 19, 2018, the respondents did not file a response, and on March 18, 2019, the court directed that the cause proceeds to formal proof.
4. The claimant's testimony was taken on October 15, 2019, after which the court granted the claimant leave to file an amended memorandum of claim.
5. The claimant filed an amended memorandum of claim on December 9, 2019, introducing heads of claims for underpayment of wages and leave allowance. The amended claim was served, and the respondents did not file a response again.



6. The hearing commenced afresh, and the claimant's testimony was taken on September 27, 2022.
7. The claimant filed submissions on October 25, 2022.
8. The court has considered the pleadings, evidence, and submissions.

Salary Arrears

9. The action presented by the claimant arose out of a contract of service. The claims for Kshs 381,120/- relate to salary arrears stated to have accrued from the date of employment in 1999 and run for 10 years. The 10 years must have lapsed on or around 2009.
10. The claimant moved the court on December 14, 2016, and by dint of section 90 of the [Employment Act, 2007](#), the claims had become stale.
11. The same is caught by a plea of time-bar.

Underpayments

12. The claimant also pitched for underpayment of wages from 1999 to the date of filing/hearing but did not set out in the amended memorandum of claim the relevant periods or the amount of underpayments.
13. The claimant did not also disclose the prescribed minimum wages during the period under contention.
14. Relief is declined.

Leave allowance

15. The claimant prayed for unpaid leave allowance from 1999 to the date of trial. The general law of employment, the [Employment Act, 2007](#), does not provide for any entitlement to leave allowance.
16. The claimant did not reveal the source or any other lawful foundation to this head of the claim.
17. Relief is declined.

National Social Security Fund Contributions

18. The claimant did not provide the court with any evidence that he was registered with the National Social Security Fund, and therefore the court declines the request for payment of dues owing to the fund.
19. The claimant was represented by an advocate. The pleadings were casually prepared. The cause was also not prosecuted with diligence.

Conclusion and Orders

20. Despite being undefended, the court dismisses the cause for lack of proof to the required standard.

DELIVERED THROUGH MICROSOFT TEAMS, DATED AND SIGNED IN KISUMU ON THIS 23RD DAY OF NOVEMBER 2022.

Radido Stephen, MCI Arb

Judge

Appearances



For Claimant Ben Aduol Nyanga & Co. Advocates
For Respondents Amena Amendi J & Co. Advocates
Court assistant Chrispo Aura

