



REPUBLIC OF KENYA



**Nyandiko v Director, Samba Mat Limited (Cause 1082 of 2018)
[2021] KEELRC 1618 (KLR) (10 June 2021) (Judgment)**

Washington Onyango Nyandiko v Director, Samba Mat Limited [2021] eKLR

Neutral citation: [2021] KEELRC 1618 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI**

CAUSE 1082 OF 2018

MN NDUMA, J

JUNE 10, 2021

BETWEEN

WASHINGTON ONYANGO NYANDIKO CLAIMANT

AND

THE DIRECTOR, SAMBA MAT LIMITED RESPONDENT

JUDGMENT

1. This suit is undefended. The claim was filed on 27/6/2018 in which the claimant prays for the following reliefs: -
 - i. Arrear salary for 15 days – Kshs 9,500
 - ii. Arrear Salary since June, 2013 – Kshs 154,280
 - iii. Underpayment for 3 years for Kshs 576,000.
 - iv. Gratuity at the rate of 15 days’ salary for each completed year of service – Kshs 66,497.
 - v. Unpaid leave days not taken for 7 days – Kshs 141,859.
 - vi. Unpaid public holidays – Kshs 97,528Total claim Kshs 1,045,664.
2. The respondent was served with summons and the statement of claim but did not enter appearance nor file a statement of defence.
3. The pleadings by the claimant are therefore uncontroverted and so is the testimony by the claimant that he is the claimant herein and he adopted the witness statement dated 27/6/2018 and filed together with a list of documents as his evidence in chief.



4. That he worked for the respondent as the head chef in the year 2011 earning a monthly salary of Kshs 19,000. That he served the respondent diligently for a period of 7 years. That he had a clean record without any disciplinary action taken against him at all.
5. That on 15/3/2018, the respondent coerced the claimant to tender a letter of resignation to pave way for a new chef to be employed. That this was done by the Managing Director.
6. That the claimant tendered the letter of resignation under duress. That the respondent did not pay him terminal benefits or compensation upon termination of his employment.
7. That the claimant demanded to be paid the claims set out in the statement of claim. That the respondent instead brought hired goons to eject the claimant from the restaurant without paying him his terminal benefits on 15/2/2018.
8. That the conduct by the respondent amounted to unlawful and unfair dismissal.
9. That the claimant has suffered immensely due to the dismissal without payment of his dues.
10. That the claimant worked overtime and was not paid and was underpaid as a head chef for the seven years period he worked.
11. That the court to award the claimant as set out in the suit.

Determination

12. The claimant has by the uncontroverted evidence before court discharged the onus placed on him in terms of section 107 and 108 of the Evidence Act, cap 80 Laws of Kenya and has proved his case on a balance of probability that he worked for the respondent for a period of 7 years during which time he served with diligence and was underpaid and not paid various terminal benefits upon being forced to resign from his employment.
13. The court finds that the claimant has proved that he is owed by the respondent as set out in the statement of claim. The court however notes that any claim that goes beyond a period of 3 years before the date of filing suit is time barred. The reliefs set out in the statement of claim are therefore restricted to a period of 3 years before the date of filing suit.
14. The court therefore enters judgment in favour of the claimant against the respondent as follows: -
 - i. Kshs 9,500 being arrear salary before the date of termination.
 - ii. Arrear salary for the 3 year period before the date of dismissal on 15/3/2018 – Kshs 619,120.
 - iii. Underpayments for 3 years – Kshs 576,000.
 - iv. Unpaid gratuity calculated at 15 days' salary for each completed year of service – Kshs 66,497.
 - v. Payment *in lieu* of 3 years untaken leave – Kshs 57,000
 - vi. Public holiday worked for 3 years – 41,796.
15. The claim of overtime was not quantified by the claimant and so the court lacks the basis of awarding the same.

Total award – Kshs 775,117.

 - (g) Interest at court rates from date of judgment till payment in full.



(h) Costs of the suit.

DATED AND DELIVERED AT NAIROBI THIS 10TH DAY OF JUNE 2021.

MATHEWS N. NDUMA

JUDGE

ORDER

In view of the declaration of measures restricting court of operations due to the COVID-19 pandemic and in light of the directions issued by his Lordship, the Chief Justice on 15th March 2020, this Judgment has been delivered to the parties online with their consent. 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 18 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.

MATHEWS N. NDUMA

JUDGE

Appearances

Mr. Okenosi for the claimant

Ekale – Court Assistant

