



**Moses v Kansai Plascon Kenya Limited (Cause E171 of 2024)  
[2025] KEELRC 2605 (KLR) (29 September 2025) (Judgment)**

Neutral citation: [2025] KEELRC 2605 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E171 OF 2024  
CN BAARI, J  
SEPTEMBER 29, 2025**

**BETWEEN**

**RUTH WANGARI MOSES ..... CLAIMANT**

**AND**

**KANSAI PLASCON KENYA LIMITED ..... RESPONDENT**

**JUDGMENT**

**Introduction**

1. Before Court is the Claimant's Statement of Claim dated 4<sup>th</sup> March, 2024, wherein, the Claimant seeks the following remedies as against the Respondent:-
  - a. A declaration and finding that the resignation of the Claimant was involuntary and consequently she was constructively dismissed by the Respondent.
  - b. A declaration that the Claimant was bullied and harassed by the management of the Respondent.
  - c. Aggravated damages and general damages for suffering, mental anguish, anxiety and humiliation.
  - d. An award of general damages for unlawful termination equivalent to 12 months' pay for wrongful and unfair termination amounting to KES 1,321,836.00/=
  - e. An order for the reimbursement of deductions made by the Respondent of KES.14,084.00/= from July 2021 to January 2023 amounting to the total sum of KES. 267,596.00/= and the interests that accrue.
  - f. Interest on d and e above at the court rates from the date of filing of suit until payment in full.
  - g. Two (2) months' salary in lieu of notice and any pending leave days not utilized



- h. Costs of the suit.
2. The Respondent filed a Statement of Response dated 8<sup>th</sup> April, 2024 wholly denying the Claimant's claim.
  3. The case was heard on 20<sup>th</sup> March, 2025 when the Claimant (CW1), testified in support of her case. She adopted her witness statement dated 4<sup>th</sup> March, 2024 and produced her list and bundle of documents of even date as exhibits in the matter.
  4. The Respondent's case was heard on the same date, with Mr. Bernard Oganyo (RW1) testifying in support of the Respondent's case. He adopted his witness statement dated 21<sup>st</sup> May, 2024, and produced his list and bundle of documents evenly dated as exhibits in the case.
  5. Directions on filing of submissions issued on 20<sup>th</sup> March, 2025. None of the parties filed submissions.

### **The Claimant's case**

6. The Claimant's case is that at all material times to this suit, she was employed by the Respondent as a cashier from the year 2016 to around February 2023. She states that on the 5<sup>th</sup> February, 2021 while in the course of her daily duties, she made a discovery of missing funds to the tune of KES 338,000/= from the cash box.
7. It is her case that on the fateful evening at around 5pm, she visited her supervisor's office to collect the daily cash reconciliation book for purposes of working on her balances, but later realized that the subject sum of money was missing from the petty cash box.
8. She states that she promptly reported the matter to her immediate supervisor and that the Respondent later reported the matter at the Industrial Area police station, and she was arrested and released without any charges.
9. It is the Claimant's case that she was never given an opportunity for fair hearing as inscribed in the *Employment Act* and *the Constitution*. She states further that on 10<sup>th</sup> June 2021, she was issued with a stern final warning letter from the Respondent. It is her further case that she had never been served by the Respondent any verbal or written warning letter(s) prior to the letter dated 10<sup>th</sup> June 2021 having served the Respondent for over 20 years.
10. The Claimant states that her monthly salary since July 2021 was being deducted an amount of KES. 14,084.00/= monthly and indicated in her pay slip as an employee loan.
11. It is her case that she never applied for any staff loan from the Respondent, and that she never signed or agreed to any staff loan whatsoever, and has never been issued a staff loan by the Respondent.
12. The Claimant avers that the deductions to her monthly salary were illegal and that she tried on several occasions to engage the Respondent in regards to the deductions, but that the Respondent did not provide any conclusive information regarding the deductions.
13. It is her case that the Respondent proceeded to continuously deduct the sum despite her persistent protests. She states that she was never interdicted for any gross misconduct and that due to the conduct of the Respondent, she was forced to resign from the company around February 2023.
14. The Claimant states that the Respondent insured the entire business and any such loss should have been followed with the insurance company under the fidelity guarantee policy.



15. On cross-examination, the Claimant told court that she signed the letter dated 16<sup>th</sup> June, 2021 under pressure from the Respondent, but confirmed that she did not write a protest letter to the management on the issue.
16. The Claimant confirmed that she was not forced to resign but that she was issued with a last warning letter and subsequently issued her resignation letter.
17. The Claimant prays that her claim be allowed.

### **The Respondent's Case**

18. The Respondent states that on 5<sup>th</sup> February, 2021 the Claimant left the cash office door unlocked and consequently the Respondent lost Kshs.338,000.00 (in cash) which was in the cash box. It further states that the Claimant was negligent since she left the cash office door unlocked, while she was fully aware that as per her Job description she was supposed to ensure safe custody of all company monies.
19. The Respondent states that in the Claimant's letter dated 6<sup>th</sup> April, 2021 addressed to the Respondent, she did admit that the lost cash was in her custody.
20. It states that on 30<sup>th</sup> March, 2021 it issued the Claimant with a Show Cause letter and that on 6<sup>th</sup> April, 2021 she was invited for a disciplinary hearing which was held on 5<sup>th</sup> May, 2021.
21. The Respondent states that the Claimant attended the disciplinary hearing and she was given a chance to defend herself. It further states that the Claimant's action of negligence allowed for Summary dismissal from employment, but instead, it decided to give her a final warning letter dated 10<sup>th</sup> June, 2021.
22. The Respondent avers that the said letter is very clear that the lost cash would be recovered from her over a period of two years and which letter was also signed by the Claimant. The Respondent further states that the Claimant did not raise any objection to the lost cash being recovered from her salary and neither did she reply to the said letter.
23. The Respondent states that in July, 2021 it started deducting the lost cash from the Claimant's salary and which is confirmed by her pay slip attached to the Respondent's List of Documents. It is the Respondent's case that that the amount deducted per month was Kshs.14,084.00 and the same is shown as "staff loan" in the pay slip.
24. It avers further that the term staff loan is for identification purposes only since the Claimant had not been advanced any loan by the Respondent.
25. It states that the Claimant was negligent while performing her duties and therefore, the deductions which were made from her salary were justified and therefore the Claimant is not entitled to a refund of Kshs.267,596.00 or any sum at all as alleged in the Statement of Claim.
26. The Respondent states that their insurers refused to settle the claim for the lost cash since there was no break in to the cash office during the said incident.
27. It avers further that the Claimant was not forced to resign as alleged, but that the Claimant voluntarily resigned from employment on 3<sup>rd</sup> January, 2023 as confirmed by her resignation letter.
28. It is the Respondent's case that upon resignation, the Claimant's final dues were calculated, but that she refused to collect the cheque. The Respondent states that the Claimant is not entitled to 12 months' salary for wrongful and unfair termination since she voluntarily resigned from employment.



29. It further state that the Claimant is not entitled to 2 months' salary in lieu of notice since she voluntarily resigned from employment and further that the claim for pending leave days is covered in the Statement of final dues which the Claimant refused to sign.
30. The Respondent states that the Claimant's claim is baseless, unfounded and lacks merit and urge the court to dismiss the same with costs.

### **Analysis and Determination**

31. Upon careful consideration of the pleadings, the evidence adduced, and the witnesses' testimonies, the following issues crystallize for determination: -
  - i. Whether the Claimant was constructively dismissed.
  - ii. Whether the Claimant deserves the reliefs sought.

### **Whether the Claimant was constructively dismissed**

32. The Claimant resigned from the service of the Respondent vide her letter dated 3<sup>rd</sup> January, 2023. The Respondent had in 2021 taken her through a disciplinary process for loss of cash that was in her custody and vide the Respondent's letter of 10<sup>th</sup> June, 2021, the Claimant was given a final warning as the verdict from the disciplinary action, and further informed vide the same letter that the lost amount of Kshs.338,000/- would be deducted from her salary monthly for a period of two years until the full amount is recovered.
33. The Claimant contends that the Respondent continuously deducted Kshs.14,084/- from her salary despite her persistent protests and that owing to the fact that she was never interdicted for any gross misconduct, this conduct of the Respondent forced her to resign from the company, hence the claim of constructively dismissal.
34. The Black's Law Dictionary (Tenth Edition) defines constructive dismissal as:-

“An employer's creation of working conditions that leave a particular employee or group of employees little or no choice but to resign, as by fundamentally changing the working conditions or terms of employment; an employer's course of action that, being detrimental to an employee, leaves the employee almost no option but to quit.”
35. In Milton M Isanya Versus Aga Khan Hospital Kisumu (2017) eKLR, the Court had this to say on constructive dismissal:-

“In constructive dismissal, the desire to resign is from the employee as a result of a hostile working environment or treatment by the employer. A constructive dismissal occurs where the employer does not express the threat or desire to terminate employment but frustrates the employee to the extent that the employee tender's resignation.”
36. The question is whether the monthly deductions from the Claimant's salary as a sir-charge for money lost in her custody constitutes a constructive dismissal.
37. It is not disputed that the Claimant was taken through a disciplinary process on account of money lost by the Respondent and which was in the custody of the Claimant. It is also evident from the record that the disciplinary process culminated in the Claimant being issued with a final warning letter dated 10<sup>th</sup> June, 2021, and vide the same letter, the Claimant was notified that the amount lost will be deducted from her salary monthly for a period of two years.



38. It is significant that the Claimant appended her signature on the said letter, only indicating on the face of the letter that she was acknowledging receipt. The Claimant did not indicate that she was receiving the letter under protest for whatever reason or that she was not agreeable to the terms of the warning.
39. Further, the pay slips placed before this Court show that the deductions were made from the Claimant's salary from July, 2021 until 10<sup>th</sup> February, 2023 when she was paid her final dues upon her resignation in January, 2023.
40. The Claimant contends that she was coerced by her co-workers named Esther Kabiro and Duncan Njaramba to sign the letter acknowledging that the amount would be deducted from her salary, but did not provide prove of the said coercion as she admitted that she did not write any protest letter (s) in the 17 months when the deductions were made.
41. In my considered view, the Claimant acquiesced to the deductions being made and cannot belatedly turn around and claim constructive dismissal on the basis solely of the said deductions.
42. Further, Section 19(1)(d) of the *Employment Act*, 2007 provides thus on deductions from employee wages:-
- “(1) Notwithstanding section 17(1), an employer may deduct from the wages of his employee—
- (d) an amount equal to the amount of any shortage of money arising through the negligence or dishonesty of the employee whose contract of service provides specifically or his being entrusted with the receipt, custody and payment of money;...”
43. In the case of *Liech v Sameer Agricultural & Livestock (K) Ltd (now) Devyan Food Industries (K) Limited*, the court while addressing a similar issue of funds lost through the negligence of the employee opined thus:-
- “In view of the foregoing finding that the Claimant caused the loss of Kshs.690,000 through negligence, I allow the Respondent's counterclaim for Kshs.310,075 being the balance of the lost money.”
44. In the case of *Enid Nkirote Mukire vs Kenya Yearbook Editorial Board [2022] eKLR* the Court held:-
- “Constructive dismissal occurs where an employee terminates his/her employment because of frustration by the employer, either by the employer breaching fundamental terms of employment contract or making the environment at work unbearable to the employee, thus forcing the employee to terminate the contract. The circumstances of this case do not lend themselves to any interpretation of constructive dismissal.”
45. In the final analysis, I find and hold that the deductions made by the Respondent from the Claimant's wages was made within the law, and the Claimant has not at all proved a case of constructively dismissal.

### **Whether the Claimant deserves the remedies sought**

46. The Claimant's prayers to this Court are for a declaration and finding that her resignation was involuntary and consequently she was constructively dismissed, a declaration that she was bullied and harassed by the management of the Respondent, aggravated damages and general damages for suffering, mental anguish, anxiety and humiliation, an award of general damages for unlawful



termination equivalent to 12 months' pay for wrongful and unfair termination amounting to KES 1,321,836.00/=, an order for the reimbursement of deductions made by the Respondent of Kshs.267,596.00/= and interests thereon, two (2) months' salary in lieu of notice and any pending leave days not utilized and the costs of the suit.

47. With the finding that the Claimant was not constructively dismissed, but that she voluntarily resigned from the service of the Respondent, the only claim that this Court would consider is the one on pending leave days. The final pay statement produced in evidence, indicates that the Claimant was paid for 26 accumulated leave days in the sum of Kshs.154,637.85/-.
48. The Claimant did not lead any evidence to show that she had accumulated more leave days than those that she was compensated for.
49. In the upshot, I find the Claimant's claim is devoid of merit and is hereby dismissed in its entirety with costs to the Respondent.
50. Judgment accordingly.

**SIGNED, DATED AND DELIVERED AT NAIROBI THIS 29<sup>TH</sup> DAY OF SEPTEMBER, 2025**

**C. N. BAARI**

**JUDGE**

Appearance:

N/A for the Claimant

Mr. C. K. Chege present for the Respondent

Ms. Esther S - Court Assistant

