



**Mwangi v Luma Stores and Supplies Enterprises Ltd (Cause 167 of 2019)
[2025] KEELRC 2548 (KLR) (26 September 2025) (Judgment)**

Neutral citation: [2025] KEELRC 2548 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 167 OF 2019
JW KELI, J
SEPTEMBER 26, 2025**

BETWEEN

NEPHAT HINGA MWANGI CLAIMANT

AND

LUMA STORES AND SUPPLIES ENTERPRISES LTD RESPONDENT

JUDGMENT

1. Vide a Statement of claim dated the 13th of March 2019, the claimant sued the respondent seeking for the following Orders:-
 - a) The sum of Kshs. 507,230/-.
 - b) Costs of this suit.
 - c) Interest on (a) & (b) above at Court rates from the date of filing suit until payment in full.
 - d) Any other and or further relief that this Honourable Court may deem fit to grant.
2. The claimant in support of the claim filed his list of documents with the bundle of documents attached, his witness statement dated 19th August 2019, his list of witnesses and witness statement, all dated the 13th of March 2019.
3. The Respondent entered an appearance through the law firm of Jaleny & Company Advocates and filed a reply to the memorandum of claim dated 6th May 2019. In support of the said reply, the respondent filed a list of witnesses, a witness statement of Paul Maina Mutheca, and a list of documents, all dated the 6th of May 2019.



Hearing and evidence

4. The claimant's case was heard on the 14th May 2025 before me where he testified on oath, adopted his witness statement and produced filed documents and was cross-examined by counsel for the respondent, Jaleny. The respondent's case was heard on even date with Paul Maina Muthega as RW1 testifying on oath and adopting his filed witness statement. He produced the documents filed by the respondent as their evidence and was cross-examined by counsel for the claimant, Kuria.

The Claimant's case in summary

5. The Claimant's case is that he was employed by the Respondent in November 2017 as a sales manager at a gross monthly salary of Kshs. 85,000/- which translated into a net salary of Kshs. 70,000/- after the applicable statutory deductions. The terms of employment were captured in an employment contract whose copies were retained by the Respondent. The claimant stated that he worked for the Respondent for a period of one year and three months after which he tendered his resignation owing to poor working conditions, including, delays in salary payments, unlawful deductions to salary without reasonable cause, and failure to remit statutory deductions, that is, NHIF, NSSF and PAYE to the relevant bodies. In particular, on failure to remit statutory deductions, the claimant averred that the Respondent did not remit any NSSF contributions or PAYE for the entire duration of his employment, and only remitted NHIF payments from July to December 2018. He also complained that he was never paid a house allowance.
6. Upon resigning from employment and giving notice that he intended to work up to the end of January 2019, the Respondent denied the Claimant access to his work station and refused to pay his salary arrears, to date. The Claimant's claim is for salary arrears for December 2018 and January 2019 (Kshs. 170,000/-); unlawful salary deductions which were made from April to November 2018 (Kshs. 62,330/-); unpaid house allowance (Kshs. 198,900/-); and unpaid annual leave (Kshs. 85,000/-).

Respondent's case in brief

7. The Respondent's case is that it indeed employed by the Claimant. However, it did so on humanitarian grounds to assist the Claimant who was facing financial difficulties after vying for the Kiambu MCA seat and losing. The Respondent company bailed out the Claimant whose house in Donholm was on the verge of being auctioned by the Housing Finance Company by paying Kshs. 300,000/- to the said Housing Finance Company, on the understanding that the said loan would be deducted from his wages upon being employed by the Respondent. The terms of the Claimant's employment contract were that he would be engaged for a period of 3 months as a monthly salary of Kshs. 70,000/- payable without statutory deductions. There was no provision for house allowance.
8. The Respondent's case is that it was indeed employed by the Claimant. However, it did so on humanitarian grounds to assist the Claimant who was facing financial difficulties after vying for the Kiambu MCA seat and losing. The Respondent company bailed out the Claimant, whose house in Donholm was on the verge of being auctioned by the Housing Finance Company, by paying Kshs. 300,000/- to the said Housing Finance Company, on the understanding that the said loan would be deducted from his wages upon being employed by the Respondent. The terms of the Claimant's employment contract were that he would be engaged for a period of 3 months as a monthly salary of Kshs. 70,000/- payable without statutory deductions. There was no provision for house allowance.
9. The Respondent states that the circumstances leading up to the Claimant's resignation were that the Claimant was found to have converted Kshs. 896,515/- belonging to the Respondent from sale/supply of sizeable quantities of wheat flour and other forms of flour to various customers of the Respondent.



When he confronted, the Claimant issued the Respondent with the statutorily defective resignation notice giving only two (2) weeks' notice as a ploy to escape from accounting for the misappropriated funds. For the above reasons, the Respondent denies owing the Claimant any salary arrears or house allowance.

10. The Respondent states that the circumstances leading up to the Claimant's resignation were that the Claimant was found to have converted Kshs. 896,515/- belonging to the Respondent from sale/supply of sizeable quantities of wheat flour and other forms of flour to various customers of the Respondent. When he confronted, the Claimant issued the Respondent with the statutorily defective resignation notice, giving only two (2) weeks' notice as a ploy to escape from accounting for the misappropriated funds. For the above reasons, the Respondent denies owing the Claimant any salary arrears or house allowance.

Determination

Issues for determination

11. The claimant identified the following issues for determination in the suit –
 1. Whether there was an employer-employee relationship between Claimant and the Respondent and for what duration?
 2. Whether the Claimant owed the Respondent any monies?
 3. Whether this Court has jurisdiction to issue orders over a civil debt?
 4. Whether the Respondent was bound to remit Statutory deductions for the Claimant?
 5. Whether the Conduct of the Respondent amount to Constructive Dismissal?
 6. Whether the Claimant is entitled to relief sought?
 7. Who is entitled to costs?
12. The respondent outlined the following issues for determination in the suit –
 - i. Whether resignation by the claimant on 14TH January 2019 can be construed or be interpreted to be constructive dismissal or termination as contended to by the claimant.
 - ii. Whether the claimant is entitled to any salary arrears?
 - iii. Whether the claimant is entitled to any one-month salary in lieu of notice.
 - iv. Whether there were any unlawful deductions from the claimant's salary.
 - v. Whether the claimant was entitled to payment of House allowance over and above the all inclusive remuneration agreed at Kshs 70,000/= per month.
 - vi. Whether the claimant is entitled to leave day claim.
13. The Court found the parties to be in agreement that the issues for determination were –
 - a. Whether the resignation by the claimant from employment of the respondent amounted to constructive dismissal
 - b. Whether the claimant was entitled to the relief sought.



Whether the resignation by the claimant from employment of the respondent amounted to constructive dismissal

The claimant's submissions

14. The *Employment Act* of 2007 does not explicitly mention or define Constructive dismissal, it has been shaped by court decisions. Section 45 of the Act also provides the foundation by protecting employees from unfair termination resulting from breaches of fundamental employment terms by employer. To interpret constructive dismissal, the claimant relied on the case of Nathan Ogada Atiagaga versus David Engineering Limited (2015) eKLR, where the Judge in the case defined constructive dismissal as "Constructive dismissal occurs when an employee resigns because their employer's behaviour has become so intolerable or made life so difficult that the employee has no choice but to resign. Since the resignation was not voluntary, it is a termination in effect. For example, when an employer makes life extremely difficult for an employee to force the employee to resign rather than outright firing the employee, the employer is trying to affect a constructive discharge. The Court awarded him Compensation awarded at Kshs. 1,057,800.00;" It was further interpreted in the case of Godfrey Allan Tolo v Tobias O. Otieno & another [2022] E KLR where it was stated that "For constructive dismissal to be inferred, the employee must have resigned within a reasonable time from his employment, with or without notice as a result of the employer's hostile treatment or hostile working conditions at his workplace. The employer must also not have expressed the desire to terminate the employee." The claimant relied on the locus classicus rendition of the principle of constructive dismissal which are the celebrated words of Lord Denning MR in *Western Excavating (ECC) Ltd V Sharp* (1978) QB 761 as follows; "If the employer is guilty of conduct which is a significant breach going to the root of the contract of employment, or which shows that the employer no longer intends to be bound by one or more of the essential terms of the contract, then the employee is entitled to treat himself as discharged from any further performance. If he does so, then he terminates the contract by reason of the employer's conduct. He is constructively dismissed. The employee is entitled in those circumstances to leave at the instant without giving any notice at all or, alternatively, he may give notice and say he is leaving at the end of the notice. But the conduct must in either case be sufficiently serious to entitle him to leave at once. Moreover, he must make up his mind soon after the conduct of which he complains: for if he continues for any length of time without leaving, he will lose his right to treat himself as discharged. He will be regarded as having elected to affirm the contract". The principle of constructive dismissal was also domesticated in Kenya by the Court of Appeal in *Coca cola East and Central Africa Ltd v Maria Kagai Ligaga* (2015) eKLR where the Court adopted the contractual approach test of constructive dismissal and formulated the guiding principles applicable in determining constructive dismissal which include; the fundamental or essential terms of the contract of employment, whether there is repudiatory breach, whether the conduct of the employer is fundamental and goes to the root of the contract, causal link between the employers conduct and termination of contract, employers conduct was effective cause whether or not the notice is given, employee must not have accepted or waived or acquiesced or conducted himself as to be estopped from asserting the repudiatory breach and burden of proof is borne by the employee. The court is guided by the above principles in determining whether the Claimant was constructively dismissed.
15. The claimant analyzed the said issue based on the following elements, as was discussed in the authority case of Coca-cola:-
16. 1. Intolerable Working Conditions- The employer must have created or allowed intolerable working conditions that make it impossible for the employee to continue working. It is very difficult to work without pay and it is even more difficult to work in a toxic environment. During cross examination,



the claimant very well stated that there was too much pressure at the work place which was beyond his control, lack of payment of salaries and even when he was paid it was delayed and not actually the full amount. Those reasons by themselves speak to the kind of working conditions in Luna Stores and Supplies limited.

17. Breach of Contract- The employer must have fundamentally breached a term of the employment contract, making it considerably difficult for the employee to continue working lack of payment of salary, too much unreasonable pressure at work, unlawful deductions to salaries without reasonable cause are more than enough reasons to resign since that is against the terms agreed upon while entering into to the contract of employment. The Employment and Labour Relations Court sitting in Kisumu in Kenya Union of Sugarcane Plantation and Allied Workers v Othira (Appeal E005 of 2023) [2024] KEELRC 843 reaffirmed that the breach must go to the root of the employment contract.
18. Causal Link Between Breach and Resignation -There must be a clear connection between the employer's conduct and the employee's decision to resign. The resignation must be a direct consequence of the employer's actions, as highlighted in CocaCola East & Central Africa Limited v Maria Kagai Ligaga [2015] eKLR. The employee must resign in response to the breach and not for unrelated reasons. The lack of payment of salary, too much unreasonable pressure at work, unlawful deductions to salaries without reasonable cause were actually the reason for resignation which was indeed justified.
19. Resignation as a Last Resort- As the Claimant had testified during cross examination that intolerable working condition, delay in salary and salary arrears were some of the reasons for tendering resignation. If the respondent had not breached his terms of the contract, then that could not have been the case. In a nutshell, the plea of constructive dismissal exclusively hinges on the employer's conduct which must be sufficiently frustrating to justify the employee's resignation.

Respondent's submissions

20. The respondent in submission relied on similar jurisprudence on constructive dismissal and applied the legal principles set out in Coca Cola East & Central Africa Limited -VS- Maria Kagai Ligaga (2015) eKLR namely –
 - (a) What are the Fundamental or essential terms of the contract of employment?
 - (b) Is there a repudiatory breach of the fundamental terms of the contract through conduct of the employer.
 - (c) The conduct of the employer MUST be a fundamental or significant breach going to the root of the contract of employment or which shows that the employer no longer intends to be bound by one or more of the essential terms of the contract.
 - (d) An objective test to be applied in evaluating the employer's conduct.
 - (e) There must be a casual link between the employer's conduct and the reason for employee terminating the contract i.e. causation must be proved.
 - (f) An employee with or without notice so long as the employer's conduct is the effective reason for termination.
 - (g) The employee must not have accepted, waived, acquiesced or conducted himself to be estopped from asserting the repudiatory breach, the employee must within a reasonable time terminate the employment relationship pursuant to the breach.



- (h) The burden to prove repudiatory breach or constructive dismissal is on the employee.
- (i) Facts giving rise to repudiatory breach or constructive dismissal are varied. ' to submit that in the instant matter there was no evidence adduced before the court by the claimant that the employer/Respondent created an intolerable work environment, through sheer professional incompetence or any deliberate acts of coercion, threats or duress. It is very clear from the evidence adduced before court and the pleadings filed in court by the claimant that no letter of complaint or any other from of complaint had been registered by the claimant citing the Respondent for breaching any fundamental right to constitute constructive dismissal and/ or termination. It is clear from the evidence adduced before court that the claimant opted to hastily resign when he was called upon to account for the Kshs 889,515/= and it is also evident that the said resignation letter did not comply with the requirements of statutory notices of giving at least one month notice. That the claimant's contention that his resignation amounted to constructive dismissal falls flat on it's face as his allegation has not met the threshold of the nine (9) principles as set in the CocaCola case. The respondent urged this Honourable court to dismiss the claim.

Decision

21. The court from the outset wishes to state that the issue of constructive dismissal was not pleaded or reflected in the relief sought with respect to salary claims and leave. The issue of constructive dismissal is settled in Coca Cola East & Central Africa Limited -VS- Maria Kagai Ligaga (2015) eKLR where it was held that the burden of constructive dismissal lies with the employee. Despite the claimant not specifically seeking damages for constructive dismissal the court considered the issue on merit. The claimant in support of his case produced a resignation letter dated 14th January 2019 of which he alluded he had on 10th January 2019 issued a resignation letter to work till end month January 2019 but following some discussion on WhatsApp group one madam Maxime communicated he should not just go back to office. He stated he had no problem with that. He took issue with that the communication as being rude and stated it gave signs that the employer was not to pay his salary. He then asked to be paid his salary and dues like NHIF, NSSF and annual leave for the 1 year and 2 months worked.
22. The claimant produced the resignation letter (NMH3) which was as follows;- 'To Luma family, and mostly directors and sales team.

Kindly allow me to thank you all for your cooperation and respect you have shown to me since I join luma, this has helped us to succeed in achieving our goals.

God our Mighty has open another golden door and I wish to say bye bye and thanks a lot, May God Blessing and Mercy be with you and bless your heart and your hardworking. I will be around till end month to clear few account, and till then am still willing to participate and help any part if needed,

I salute you all." I salute you all. The court finds no evidence of an unsatisfied employee in the resignation letter. The court wishes to reiterate that the burden of proving constructive dismissal lies with the employee and that the mode of exit, as indicated by the resignation letter, is crucial in determining whether the employer's conduct led to the termination. The letter gave the impression of a very grateful employee. The dispute brought before the court via the claim was all about terminal dues, which was the only evidence presented. The court finds no proof of balance of probabilities of constructive dismissal in these circumstances.



Whether the claimant was entitled to reliefs sought

23. The relief sought before the court was itemised under paragraph 10 of the statement of claim as follows:- The Claimant therefore contends that the acts by the respondent herein are unfair, contrary to the Employment Act and without any justification as a result of which he claims for the following:-
- a) Salary arrears for December and January (85,000 x 2) Kshs . 170,000/
 - b) Unlawful salary deduction:
 - April and May 2018- Kshs. 25130
 - June 2018- Kshs. 11,200
 - August 2018-Kshs. 16,000
 - November 2018-10,000
 - Subtotal....Kshs. 53,330/-
 - c. Unpaid House allowance $15/100 \times 85,000/-12) \times 1.3$...Kshs. 198,900/-
 - d) Unpaid annual leave- Kshs. 85,000
- Total for (a), (b), (c), and (d) above... Kshs 507,230/-
24. The claimant stated his salary was Kshs. 85000 with net salary of Kshs. 70,000 of which he says was subject to deduction of PAYE, NHIF and NSSF. In support of his case the claimant filed bank statements and his handwritten calculations of the arrears.
25. In response, the Respondent's case is that it indeed employed the Claimant. However, it did so on humanitarian grounds to assist the Claimant, who was facing financial difficulties after vying for the Kiambu MCA seat and losing. The Respondent company bailed out the Claimant, whose house in Donholm was on the verge of being auctioned by the Housing Finance Company, by paying Kshs. 300,000/- to the said Housing Finance Company, with the understanding that the said loan would be deducted from his salary once he was employed by the Respondent. The terms of the Claimant's employment contract were that he would be engaged for a period of 3 months with a monthly salary of Kshs. 70,000/- payable without statutory deductions. There was no provision for a house allowance.
26. The Respondent states that the circumstances leading up to the Claimant's resignation were that the Claimant was found to have converted Kshs. 896,515/- belonging to the Respondent from sale/ supply of sizeable quantities of wheat flour and other forms of flour to various customers of the Respondent. When he was confronted, the Claimant issued the Respondent with the statutorily defective resignation notice giving only two (2) weeks' notice as a ploy to escape from accounting for the misappropriated funds. For the above reasons, the Respondent denies owing the Claimant any salary arrears or house allowance.
27. During cross-examination, the claimant relied on his Equity Bank statement as proof of alleged employment in November 2017. He denied that the job card he had produced, dated January 2018, was evidence of the employment relationship. He admitted that he had contested the 2017 elections unsuccessfully. He denied having sought a loan from the respondent. he admitted that documents dated 23rd December 2017 was a loan to him paid to Housing Finance of Kshs. 150,000 by the employer and another similar payment dated 13th February 2018, which he said was a salary advance for the months of February and March 2018. He admitted he was a friend of the Respondent's CEO. He denied having had issues with the respondent in October to December 2018. He denied having made



sales as a marketing manager. The claimant told the court he was paid Kshs. 67,667 on 16th December 2017 as salary for November 2017. The payment of 23rd December 2017 was for the salaries of December 2017 and January 2018, and he asked that it be paid to his loan account with Housing Finance Bank. That the cheque dated 13th February 2018 was his salary for February and March 2018 paid to his loan account. That he had no claim for salary for December 2017 to March 2018 as the said payments covered the period. He stated that he amounts of Kshs. 889,115 was not owed to his personal customers and the matter was subject of proceedings at Kangundo law courts. That he had raised issue of salary payment in company meetings.

28. Conversely, RW1, Paul Muthoga, told the court that the cheques issued for Kshs. 150,000 in December 2017 were a salary advance at the claimant's request to help him sort out his loan issues as a friend. He stated that he did not owe the claimant any money before that date. RW1 also said the agreed salary was KShs. 75000 and that the money was not subject to statutory deductions. He explained that the claimant resigned due to pressure to recover monies owed by his customers. During cross-examination, RW1 mentioned that he had not produced invoices to the customers regarding the Kshs. 889115 amount and that he did not have the inventory of the sold goods. Regarding salary payments, RW1 stated that payments were made through the bank. He testified that in July 2018, they deposited Kshs. 56,800 after a deduction of Kshs. 11200; in August 2018, they paid Kshs. 55,004; in September, they paid Kshs. 55,004; and in December 2018, they paid Kshs. 60,000. He denied that the salary paid in December 2018 was for November 2018.
29. The court on perusal of the bank statement produced by the claimant found unexplained monies paid by the respondent to the bank account of the claimant in June 2018. There was payment of Kshs. 94870, in September 2018 there was an entry of Kshs. 30,000 which was indicated as refund of deducted salary. The court then finds that the only proved deduction of salary on a balance of probabilities was the salary paid on 19th December 2018 which the court found it was more probable than not that it was salary for November 2018.
30. On salary arrears the court did not find difficult in finding salary for December 2018 had not been paid as the last salary was paid on 19th December 2018 way before the end month. The salary for December 2018 is awarded in lieu. The claim by respondent of uncollected sales was not a basis to deny the claimant his salary as the goods had been delivered to the merchants and in any event one of the customers had even been charged before Kangundo law courts making the issue sub-judice. On salary for January 2019, the court noted from the calculations filed in court(C-exhibit 7) the claim was for 14 days and is so awarded.
31. Regarding the housing allowance, the court established that the salary was verbally agreed upon at a total of Kshs. 70000, and there were no statutory deductions shown in the bank statement provided. The salary was above the minimum wage, so a 15% deduction was not applicable. The salary of Kshs. 70000 was consolidated, so the housing claim cannot stand.
32. On the claim for annual leave, it was not in dispute the claimant worked for a period of more than a year and was thus entitled to statutory annual leave. The respondent did not produce any evidence to controvert the claim of leave as the custodian of employee records. The court grants unpaid leave equivalent of 1 month salary of Kshs. 70000 as sought.

Conclusion

33. In conclusion the claim is allowed as follows:-

There was no case of constructive dismissal. Judgment is entered for the claimant against the respondent as follows:-



- a. Salary arrears for December 2018 Kshs. 70,000
- b. Salary arrears for 14 days worked in January 2019 Kshs. 32,667/-
- c. Untaken leave days in lieu Kshs. 70000

Total sum awarded Kshs. 172667/- with interest at court rates from date of filing suit.

- d. Costs of the suit.

34. A stay of 30 days is granted

35. It is so ordered.

DATED, SIGNED, AND DELIVERED IN OPEN COURT AT NAIROBI THIS 26TH DAY OF SEPTEMBER, 2025.

J.W. KELI,

JUDGE.

In the presence of:

Court Assistant: Otieno

Claimant: Kuria

Respondent- Jaleny

