



**Munguti v Ardhi Sacco Society (Cause E529 of 2024)
[2025] KEELRC 2630 (KLR) (29 September 2025) (Judgment)**

Neutral citation: [2025] KEELRC 2630 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E529 OF 2024
CN BAARI, J
SEPTEMBER 29, 2025**

BETWEEN

CATHERINE MUNGUTI CLAIMANT

AND

ARDHI SACCO SOCIETY RESPONDENT

JUDGMENT

1. This claim was initially lodged before the Magistrates Court under Certificate of Urgency and dated 8th February, 2019. The suit was later transferred to this Court vide an order issued on 24th January, 2024 on account of jurisdiction. The Claim herein was amended twice, with the final amendment being the Further Amended Statement of Claim, which is the subject of this judgment.
2. Under the further amended statement of claim, the Claimant seeks the following reliefs: -
 - i. A declaration that the Respondent's act of falling to give her an opportunity to be heard before suspending her from duty was unlawful.
 - ii. A declaration that the Respondent's failure to pay the Claimant her salary or part thereof while on suspension was unlawful.
 - iii. An order restraining the Respondent, its agents, employees or any other person acting under its directions from dealing or in any other manner interfering with the Claimant's account number 20011660700235 at FOSA
 - iv. An order directing the Respondent to issue the Claimant with a certificate of service unconditionally in terms of the provisions of Section 51 of the *Employment Act*;
 - v. A declaration that the manner in which the Claimant's services were terminated amounted to constructive dismissal.



- vi. Damages for unlawful and unfair termination, the equivalent of 12 month's salary @ Kshs.92.000/- per month totalling Kshs.1,104,000/=
 - vii. One month's salary in lieu of notice of in the sum of Kshs 92.001/=.
 - viii. Salaries for the months of February, March and May 2019 @ 92,000 per month totalling to Kshs 368.000/=
 - ix. Service pay for the 22 years of service @ 15 days for each completed year calculated as below $(15/30 \times 92.000) \times 12 \text{ months} \times 22 \text{ years} = 12,144.000$.
 - x. Costs and interests of this suit.
3. The Respondent filed a defence to the claim dated 25th March, 2019, and later a witness statement dated 17th June, 2025.
 4. The case was certified ready for hearing and the hearing proceeded on 18th June, 2025, when the Claimant testified in support of her case. The Respondent's case was heard on even date with Mr. Bernard Murithii's testimony, culminating in the close of the case. Directions were issued on filing of submissions and a judgment date fixed.
 5. Submissions were filed for both parties.

The Claimant's Case

6. The Claimant's case is that the Respondent employed her as a casual labourer in the year 1997 and was later in 2001 confirmed as a clerk. She avers that the contract of service between herself and the Respondent was never reduced into writing.
7. It is the Claimant's case that over the years, she was promoted and her salary reviewed, and that as at December 2018, her remuneration comprised of a basic salary of Kshs. 57,120.00, a commuter allowance of Kshs.4,500.00, a house allowance of Kshs. 20,000.00, a Medical allowance Kshs. 5,000.00 and a leave allowance of Kshs. 20,000.00.
8. The Claimant states that she served the Respondent diligently and dutifully until 5th February 2019 when the Respondent, through a letter of even date, indefinitely suspended her from work on allegation that she had manipulated member's personal accounts for the members to acquire loans fraudulently. She avers that the suspension took effect immediately and that she was required to report to the Chief executive officer twice every week on Tuesdays and Fridays, until the alleged investigations were completed.
9. The Claimant states that the Respondent through its then Chief Executive Officer, made it extremely difficult for her to report as indicated in the suspension letter by always inciting her colleagues to heckle her whenever she reported. It is her further case that she constantly reported the hostility to the Chief Executive Officer who intentionally ignored her and failed to provide harmonious environment for her reporting and took no action whatsoever against the members of staff who heckled and shouted at her outside his office.
10. It is the Claimant's case that during the period of suspension, the Respondent neither paid her salary nor any allowances for her sustenance, which she contends made it extremely difficult for her to continue reporting to the Respondent as she could not foot any of her bills during the period. She avers that failure by the Respondent to pay her salary and allowances or part thereof during her suspension, caused her emotional suffering and distress.



11. It is her case that as a consequence, she served the Respondent with her involuntary resignation letter on 14th May 2019, triggered by the intolerable conditions of employment created by the Respondent. She avers that before she served her involuntary resignation letter, she had been suspended from duty without pay for more than three (3) calendar months.
12. It is the Claimant's position that her resignation from employment was involuntary, and was initiated by the Respondent's heinous and intolerable actions of actual breach of fundamental conditions of her contract of employment.
13. She states that she has suffered undeserved emotional distress and difficult financial situation from the manner in which she was dismissed from employment and believes that she is entitled to all the remedies of unlawful and unfair termination of employment as provided in the law.
14. It is her contention that the actions of the Respondent amounted to constructive dismissal, and appeal to this Honourable court to enter judgment in her favour as against the Respondent, and award her the remedies of unlawful and unfair termination as stated in her Further Amended Memorandum of Claim.
15. It is her further prayer that this Honourable Court finds that due process and procedure was not followed in terminating her services, and that judgment be entered against the Respondent for constructive dismissal and an order issued against the Respondent to pay the terminal dues and compensation as set out herein above.
16. On cross-exam, the Claimant told Court that her resignation was rejected on the basis of an investigation that was then on-going, and that criminal charges were later levelled against her in criminal case No. E4667 of 2024 on charges of conspiracy to defraud and stealing by servant. She avers that the criminal case is still on-going.
17. The Claimant further confirmed on cross-exam, that the letter rejecting her resignation indicated that she remained on suspension and should await further communication from the Respondent, which communication has never come.
18. She states further that under the Respondent's Human Resources Rules, she is entitled to half pay during the suspension period, which the Respondent has never paid.
19. The Claimant prays that her claim be allowed.

The Respondent's Case

20. The Respondent's case is that it did not suspend the Claimant unlawfully, illegally or without valid reason since, as indicated in the suspension letter, the suspension was to allow investigations to be conducted after discovery that members' personal accounts were being manipulated by the Claimant in order for the members to acquire loans fraudulently.
21. It states further that the terms of the suspension were in line with the company's Human Resource Policies and Procedure (Revised 2016). The Respondent avers further that the Claimant being in Scale ARD 10 in the department of Credit Control/MPA, she was in the position of manager in charge of ensuring the members accounts were in order and accurate and to prevent fraud, but she instead, went against the very tenets of her job description and duties that she was supposed to act on and was found to have been manipulating the accounts.



22. It is the Respondent's case that the actions taken were within the confines of the Human Resource Policies and Procedure (Revised 2016) and did not in any way act unlawfully or illegally when suspending the Claimant.
23. The Respondent avers that the Claimant has not been dismissed from employment as investigations were underway, and it was imperative that she be suspended so that she does not interfere with investigation.
24. It is the Respondent's position that the Claimant proceeded to tender her resignation to the Sacco vide her letter dated 14th May, 2019, citing inability to work, and that she gave one month notice of her resignation and proceeded to leave the Sacco and cannot therefore claim any terminal benefits for unlawful suspension of duty when she voluntarily left employment on her own volition.
25. The Respondent refutes the particulars of special damages enumerated by the Claimant in the Further Amended Memorandum of Claim and prays that the Court disallows her claim and dismiss the same with costs to the Respondent.
26. On cross-examination, the Respondent's witness denied that the Claimant was suspended for referring some member of the Sacco to CRB who included his brother and sister in-law, and maintained that the suspension was for reason of manipulating members records. He admitted that some members were actually referred to the CRB by the Claimant for defaulting on their loan repayment.
27. RW1 confirmed on cross-examination that the Claimant did not handle any cash belonging to the Respondent and that her role was recovery of loans. The witness further told court that the investigation report on the subject of the Claimant's suspension was prepared but was not placed before Court.
28. RW1 confirmed on cross examination that the Claimant held an account with the Respondent's Sacco and that the account was blocked/frozen on her suspension. He told Court that the Claimant's resignation was rejected and that she remains an employee of the Respondent to date. It is his case that the Respondent has not paid the Claimant any money since her suspension save for salary for the month of February, 2019.
29. The Respondent avers that the Claimant's case discloses no reasonable cause of action and should be dismissed with costs.

The Claimant's Submissions

30. The Claimant submits that she unequivocally stated her frustrations with the Respondent, having been suspended without pay despite the HR Policies and Procedures providing otherwise, and that her resignation was involuntary, but was as a result of the Respondent's actions, which amounted to repudiatory breach, thus amounting to constructive dismissal.
31. It is her submission that the Respondent's conduct amounted to a repudiatory breach of the employment contract, justifying her resignation and establishing that she was constructively dismissed.
32. The Claimant further submits that she resigned following an indefinite suspension imposed by the Respondent on unproven allegations of fraud. That the suspension was without pay, her salary account frozen, and she was subjected to public humiliation and a hostile reporting environment, hence her involuntary resignation must be treated as a termination by the Respondent and constitutes constructive dismissal in law as was held in Nathan Ogada Atiagaga v David Engineering Ltd.



33. The Claimant placed reliance in the case of *Leona Apparels (EPZ) Limited v Nyevu Juma Ndokolani* [2018] KLR where the Court of Appeal re-affirmed the key issue in an allegation of constructive dismissal was the employer's conduct. The Court observed thus;

“However. It is worth remembering that in constructive dismissal, the issue is primarily the conduct of the employer and not the conduct of employee - unless waiver, estoppel or acquiescence is in issue. In other words, an employer is required not to behave in a way that amounts to a repudiatory breach of contract.”

34. The Claimant submits that the Respondent's reliance on the ongoing criminal case as justification does not satisfy the statutory obligation to conduct an internal disciplinary process and prove substantive grounds for termination. She asserts further that the purported criminal proceedings are an afterthought, coming six years after her suspension.

The Respondent's Submissions

35. The Respondent submitted that Section 12(3)(viii) of the *Employment and Labour Relations Court Act*, 2011 empowers this Honourable Court to enforce discipline fairly, but does not take away an employer's prerogative to suspend an employee. It submits further, that their actions were within the confines of the Human Resource Policies and Procedure (Revised 2016) and did not in any way act unlawfully or illegally when suspending the Claimant.

36. It is the Respondent's submission that the Claim was filed before conclusion of investigations and before the criminal case is determined. It sought to rely in the case of *Co-operative Bank of Kenya Ltd v. Banking Insurance & Finance Union (CA 293 of 2015)* [2017] KECA 136, where the Court of Appeal held that an employer has discretion to investigate allegations and the courts should not interfere prematurely with internal processes.

37. The Respondent finally submitted that it exercised restraint by suspending the Claimant and not dismissing her, pending investigations into manipulation of members' accounts involving Kshs.9,302,761/=.

38. The Respondent prays that the Claimant's claim be dismissed.

Analysis and Determination

39. Having considered the pleadings, the witnesses' oral testimonies and the submissions by both parties, the issues that arise for determination are:-

- i. Whether the Claimant is still an employee of the Respondent or Whether she was constructively dismissed
- ii. Whether the Claimant is entitled to the remedies sought
- iii. Who bears the costs of the suit?

Whether the Claimant is still an employee of the Respondent or Whether she was constructively dismissed

40. The Claimant was suspended from the service of the Respondent on 5th February, 2019, ostensibly, to allow for investigations on allegations of manipulating the Respondent's members accounts in order for members to acquire loans fraudulently.



41. The Claimant's position is that she resigned from the service of the Respondent on 14th May, 2019 since she was struggling to report to work every two days in a week during the suspension period, since her account was frozen and she could not afford the transport costs. She further told Court that every time she reported to work, people at the Respondent's offices heckled her and her complaints to the Chief Executive Officer were not addressed.
42. The Respondent's witness RW1 on his part, told this Court that the Respondent rejected the Claimant's resignation and that she to date, remains an employee of the Respondent.
43. It is RW1's position that the Claimant's case is premature since the criminal case against her is still pending and that she remains on suspension until the said case is heard and determined.
44. The question then is whether the Claimant is still an employee of the Respondent as RW1 contends. The Respondent's assertion is that it suspended the Claimant on 5th February, 2019, and that for reason that the criminal case against her is still pending, she remains on suspension to date.
45. The Black's Law Dictionary, 7th Edition defines suspension as to temporarily keep a person from performing a function, occupying an office, holding a job, or exercising a right or Privilege.
46. It is settled that suspension must be guided by terms and conditions of employment and must not whimsical.
47. In the case of Prof. Ezekiel Kiprop & 8 Others v. University of Eldoret, (2015) eKLR, the Court held that there must exist a statutory or contractual authority which empowers an employer to suspend an employee and absence of such authority, unilateral suspension amounts to an unfair labour practice.
48. Clause E4 of the Respondent's Human Resources Policy and Procedure manual provides for suspension of an employee for various reasons and lays out the conditions of such suspension. Clause E5 of the same policy, proceeds to state that where an employee is suspended to allow for investigation by the employer, the suspension shall not exceed 60 days and further that where investigations are by the police, the suspension period shall be until the investigation and are and the verdict known.
49. Although RW1 told Court that the Respondent completed investigations on the Claimant's case, the investigation report was not placed before this court. The Court was also not told when exactly the Respondent completed its investigations noting that the Claimant was only charged in September, 2024 more than five years after her suspension.
50. It is also not disputed that the Claimant tendered her resignation on account of the conditions of her suspension, but which resignation was rejected by the Respondent.
51. In my considered view, a suspension lasting more than 5 years and without pay is not a suspension but a clear abandonment of the employment contract. Further, the Respondent did not give any explanation as to why the investigations took inordinately too long giving credence to the Claimant's allegations that the criminal charges were only used as a bait for her to withdraw this instant case.
52. Considering the duration of the suspension, and the time it took for criminal charges to be levied against the Claimant, I find her suspension inordinately long, unreasonable and constitutes an unfair labour practice.
53. I further reach the conclusion that by the Respondent's own actions and omissions, there is no practical or legal justification for the Respondent to maintain that the employment contract between itself and the Claimant still exists. It does not.



54. On whether or not the Claimant was constructively dismissed, the principle of constructive dismissal is a presumptive concept developed by common law and the courts to address instances when an employer, in all circumstances of the case, conducts himself in a manner to infer termination. (George Ogembo, *Employment Law Guide for Employers, Second Edition (2022)-Law Africa*).
55. In Kenya today, there is no law defining with clarity when a constructive dismissal should be deemed to have occurred. It has however been largely applied by courts tied to the law of contract under the doctrine of discharge by breach.
56. Lord Denning in *Western Excavating ECC Ltd v Sharp (1978) 2 WLR 344*, opined thus on constructive dismissal:-
- “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.”
57. To rehash the Claimant’s case, the Respondent suspended the Claimant for over 5 years, froze her account and stopped her salary. Further, no evidence was led to show that the Claimant was updated at any stage on the progress of the purported investigation and all that was presented was a charge sheet that came more than five years later.
58. 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.....”
59. The circumstances of this case are no doubt a clear demonstration that the Respondent created conditions that made the Claimant’s continued service untenable and which leads me to the conclusion that the Claimant was constructively dismissed, and so I hold.
- Whether the Claimant is entitled to the remedies sought
60. On the Claimant’s assertion that she was not given an opportunity to be heard prior to suspension, there is no requirement that an employer hears an employee before a suspension. Suspension is purely administrative and not an end in itself in as far as subjecting an employee to fair procedure is concerned.
61. In the case of *Kwale County Assembly Service Board & 6 others v Dzila (Civil Appeal E102 of 2022) [2024] KECA 945 (KLR) (26 July 2024)*, the Court of Appeal held that hearing an employee before suspension for investigations is not a mandatory requirement under the *Employment Act*. The Claimant’s assertion on this account therefore, does not hold.



62. On the prayer for the unfreezing of the Claimant's account, the Respondent has not provided sufficient reasons for the continued suspension of the Claimant's account nor justified its suspension in the very first place. The prayer is thus allowed as prayed.
63. On the prayer for issuance of a certificate of service, the Court having found that the Claimant is no longer an employee of the Respondent, allows the prayer as prayed.
64. On the claim for damages for unlawful and unfair termination, the finding that the Claimant was constructively dismissed entitles her to an award of compensation. In awarding compensation, this court is guided by the provisions of Section 49(4) of the Employment.
65. Considering the circumstances under which the Claimant was suspended, the duration of the suspension and the suspension of her accounts which denied her access to her salary, I reach the conclusion that the Claimant has proved a case for maximum compensation, and is hereby awarded 12 months salary as compensation for the constructive dismissal.
66. The Respondent did not expressly dismiss the Claimant and hence the claim for one month salary in lieu of notice is unfounded.
67. On the claim for unpaid salary for the months of February, March April and May, 2019, the Respondent did not lead any evidence to prove payment of February, 2019, salary while that for March, April and May, 2019 was admitted. The claim is thus allowed as prayed.
68. On the claim for service pay, the pay slips produced in evidence, indicates that the Respondent made deductions in respect of NSSF and a Provident fund. To allow the claim for service pay will thus amount to unjustly enriching the Claimant. The claim therefore fails.
69. In the final analysis, I grant the following reliefs:-
 - a. A declaration that the Claimant was constructively dismissed.
 - b. An order restraining the Respondent, its agents, employees or any other person acting under its directions from dealing or in any other manner interfering with the Claimant's account number 20011660700235 at FOSA.
 - c. An order that the Claimant's account number 20011660700235 at FOSA be forthwith unblocked and she be allowed to operate the same from the date of this judgment.
 - d. An order that the Claimant be issued with a certificate of service within 14 days of this judgment.
 - e. 12 months' salary as compensation for constructive dismissal at Kshs. Kshs.1,104,000/=
 - f. An order for payment of withheld Salaries for the months of February, March, April and May, 2019 at Kshs.368.000/=
 - g. The Respondent shall bear the costs of the suit and interests on orders (e) and (f) above from the date of this judgment until payment in full.
70. Judgment accordingly.

DATED, SIGNED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS 29TH DAY OF SEPTEMBER, 2025.

C. N. BAARI



JUDGE

Appearance:

Ms. Sila h/b for Mr. Kotonya for the Claimant

Mrs. Waiganjo present for the Respondent

Ms. Esther S - C/A

