



**Nyambunga v Catholic University of Eastern Africa (Cause E916 of 2023)  
[2025] KEELRC 2716 (KLR) (3 October 2025) (Judgment)**

Neutral citation: [2025] KEELRC 2716 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E916 OF 2023  
SC RUTTO, J  
OCTOBER 3, 2025**

**BETWEEN**

**VINCE ARASA NYAMBUNGA ..... CLAIMANT**

**AND**

**THE CATHOLIC UNIVERSITY OF EASTERN AFRICA ..... RESPONDENT**

**JUDGMENT**

1. The Claimant avers that he was employed by the Respondent University as a lecturer in 2009. According to the Claimant, he worked diligently and was promoted in ranks out of his hard work and performance. He further avers that from 2017, he served as a coordinator in the Kiswahili Department until he was unlawfully terminated from employment in 2021.
2. It is the Claimant's case that on 17<sup>th</sup> December 2020, he was forced by the Respondent to draft a letter of resignation. It is on this basis that he has cited the Respondent for constructive dismissal. To this end, he seeks the following reliefs against the Respondent:
  - a. Three months' salary in lieu of notice;
  - b. Compensation for 10 months for the 12 years worked;
  - c. Severance pay for one month for the 12 years worked;
  - d. Certificate of service; and
  - e. Costs of the suit with interest at court rates.
3. In response to the Statement of Claim, the Respondent denies that the Claimant was coerced into writing the resignation letter. It is the Respondent's position that the Claimant voluntarily resigned from his employment and was not unlawfully terminated. The Respondent further contends that no



terminal dues are owed to the Claimant and, in the circumstances, prays that the suit be dismissed with costs.

4. The matter came up for hearing on 27<sup>th</sup> February 2025 and 3<sup>rd</sup> June 2025, during which both parties adduced oral evidence in support of their respective cases.

### **Claimant's Case**

5. The Claimant testified in support of his case as CW1 and, at the outset, he sought to have his witness statement, together with the list and bundle of documents filed on his behalf, adopted as his evidence in chief.
6. The Claimant testified that, as Head of the Kiswahili Department, he diligently performed his duties and was never subjected to any disciplinary action or warning letters.
7. He stated that in 2018, the Respondent engaged a part-time lecturer to teach Kiswahili (KIM 405), who was also tasked with setting examinations, marking them, and submitting results to the department.
8. According to the Claimant, during the end-of-year examinations in 2018, the said part-time lecturer only marked the CATs but failed to submit the final examination results for compilation, thereby stalling the declaration of final results.
9. The Claimant told the Court that, as Coordinator, he made numerous attempts to contact the part-time lecturer, including repeated phone calls, but these went unanswered for nearly two years.
10. He explained that, eventually, the Registrar's office received partial marks which were compiled from the CATs, enabling students to graduate in 2020.
11. The Claimant was categorical that the decision to rely on the CAT marks for final results was not his personal decision but that of the Department, taken after all efforts to obtain the final examination results had failed.
12. He added that the students graduated in 2020 based on those results, and no objection was raised by the Respondent at the time.
13. It was his testimony that after the graduation, the Respondent summoned him and raised queries regarding the Kiswahili paper, KIM 405, under which the students had graduated.
14. The Claimant further averred that on 17<sup>th</sup> December 2020, he was summoned by the Respondent's DVC (Academics), the Human Resource Manager, and the Special Advisor to the Vice Chancellor, who, upon his arrival, demanded that he resign over the Department's decision on the KIM 405 examination.
15. The Claimant stated that although he attempted to explain himself and sought an opportunity to defend his position, he was denied audience.
16. He further averred that he was threatened with arrest and informed that police officers from Hardy Police Station had already been called. As such, he was presented with only one option-immediate resignation.
17. According to the Claimant, the Respondent's officers compelled him to write a resignation letter on plain paper, which they accepted. He added that once the Human Resources office received and stamped the resignation letter, the threatened police action was halted, and he was released.



18. On 18<sup>th</sup> December 2020, he was summoned again by the Vice Chancellor's office, where he was subjected to psychological pressure and compelled to amend the resignation letter to suit the Respondent's objective of unlawfully terminating his employment.
19. He averred that he was further intimidated and forced to write an apology alongside the resignation letter.
20. The Claimant referred to a letter dated 28<sup>th</sup> December 2020, in which the Respondent directed him to submit an apology and assured him that his reinstatement would be considered. He contended that this was part of a scheme to disguise his unlawful dismissal.
21. The Claimant maintained that he was maliciously coerced into resigning, apologizing, and appealing in one letter, which, in his view, was clear evidence of malice.
22. He further testified that although he lodged an appeal as directed, the same was never considered, thereby prompting him to institute these proceedings.
23. In closing, the Claimant urged the Court to find that he was subjected to constructive dismissal, which he maintains was unlawful.

### **Respondent's Case**

24. The Respondent's case was presented through its Human Resource Manager, Mr. Eric Njiri, who testified as RW1. Equally, RW1 adopted his witness statement together with the list and bundle of documents filed on behalf of the Respondent as his evidence in chief.
25. RW1 testified that the Respondent received a resignation letter from the Claimant dated 17<sup>th</sup> December 2020. The following day, 18<sup>th</sup> December 2020, the Claimant submitted a second resignation letter together with an apology.
26. According to RW1, in all three letters, the Claimant expressly stated that he was resigning and gave reasons acknowledging that he had erred in decision-making.
27. RW1 explained that the background to these letters was that, in 2019, while serving as Coordinator of the Kiswahili Department, the Claimant altered students' marks after a part-time lecturer failed to submit final marks, allegedly due to delayed payment by the Respondent.
28. RW1 stated that the Claimant unilaterally altered the marks, enabling students to graduate on the basis of false results, without engaging the requisite university offices. Once this malpractice came to light, the Claimant opted to resign.
29. RW1 contended that the Claimant's conduct amounted to a serious breach of the Respondent's Human Resource Policies and Procedures Manual.
30. He added that the Claimant, as a member of staff, was under a duty to perform his duties honestly, efficiently, and with integrity, which he failed to uphold.
31. RW1 further testified that the Claimant's resignation did not comply with the grievance and appeal procedures outlined in the Respondent's Human Resource Manual.
32. RW1 added that the Claimant failed to submit his appeal within the stipulated timelines. Despite the lateness, the University Council heard the Claimant's appeal virtually on 3<sup>rd</sup> December 2021 and communicated its decision in writing.



33. The Council concluded that since the Claimant had already resigned and cleared with the University, there was no basis to reverse the decision.
34. RW1 further averred that the Respondent went on to pay the Claimant his terminal dues, which he duly received.
35. In further testimony, RW1 denied the Claimant's allegation of coercion, insisting that the Respondent was guided by the HR Manual which prescribes procedures for dealing with staff misconduct.
36. He further pointed out that the Respondent had accommodated the Claimant during his employment by granting him a waiver of tuition fees for his wife and two children who studied at the University.
37. RW1 concluded that the Claimant's claim of unfair termination lacked merit, and that he had chosen to resign after engaging in conduct amounting to fraud, which he himself admitted had brought the Respondent into disrepute.

### **Submissions**

38. At the close of the hearing, the parties were directed to file written submissions. Only the Respondent complied, as the Claimant's submissions were missing from both the Court's physical record and the online portal at the time of writing this Judgment.
39. The Respondent submitted that the Claimant's resignation was voluntary and was not induced by any form of intolerable conduct on its part. According to the Respondent, the resignation was preceded by an apology letter from the Claimant, in which he attributed the need for apology to his own errors in decision-making as Head of Department.
40. The Respondent further submitted that the Claimant was approbating and reprobating, on one hand acknowledging that he resigned, yet on the other hand pursuing claims on unclear and inconsistent grounds.
41. It was the Respondent's contention that the Claimant failed to prove any repudiatory breaches by the Respondent and did not satisfy the "unreasonableness test" as articulated in *Coca Cola East and Central Africa Limited v Maria Kagai Ligaga* [2015] eKLR.
42. It was further submitted that the Claimant did not discharge the burden of proving that the Respondent's conduct was hostile or intolerable, or that it led to his involuntary resignation. That further, the Claimant failed to satisfy the established principles for a claim of constructive dismissal.

### **Analysis and Determination**

43. Flowing from the record, the Court has singled out the following issues for determination;
  - a. Whether the Claimant was constructively dismissed from employment;
  - b. Whether the Claimant is entitled to the reliefs sought.

### **Constructive dismissal?**

44. The Claimant's case is that he was coerced into writing a resignation letter by the Respondent's Deputy Vice Chancellor (Academics), the Human Resource Manager, and the Advisor to the Vice Chancellor. He asserts that the contents of the resignation letter were dictated to him.
45. He further avers that he was threatened with arrest, and that police officers had already been summoned, leaving him with no option but to resign immediately.



46. The Claimant also contends that he was compelled to amend the resignation letter and to draft a letter of apology tailored to suit the Respondent's intention of unlawfully terminating his employment.
47. This account is contested by the Respondent, who maintains that the Claimant resigned of his own volition and, in so doing, expressly acknowledged that he had made a mistake in judgment.
48. According to the Respondent, the Claimant, while serving as coordinator of the Kiswahili Department, altered the marks of graduating students after a part-time lecturer failed to submit results due to alleged delayed payment.
49. The Respondent avers that this alteration resulted in students graduating on the basis of falsified marks, without the Claimant involving the relevant offices as required, and that upon discovery of this malpractice, the Claimant voluntarily chose to resign.
50. Both parties exhibited the resignation letters in dispute. The first letter dated 17<sup>th</sup> December 2020, is handwritten and indicates that the Claimant was resigning to pursue personal matters and expresses gratitude to the Respondent for the opportunity to serve.
51. In the second resignation letter dated 18<sup>th</sup> December 2020, the Claimant, while tendering three months' notice, expressed both his intention to resign and an apology in the following terms:
- “At the same time, I would like to take this chance to apologize for what happened concerning the marks for a Kiswahili unit KIM 405.....I apology(sic) because my action has brought the university into disrepute and touches on issues of integrity. Further, I wish to appeal against the decision reached yesterday, 17/12/2020 that I tender my resignation. Kindly consider giving me another chance to continue serving the university.”
52. Through a letter dated 5<sup>th</sup> January 2021, the Respondent replied to the Claimant's letter and informed him that the University had waived the notice period, and that his last day of service would be 31<sup>st</sup> January 2021.
53. Subsequently, in another letter dated 2<sup>nd</sup> February 2021, referenced “Appeal,” the Claimant addressed the Respondent as follows:
- “This is in response to the decision made by the top university management committee on 17<sup>th</sup> December 2020, in which I was asked to resign within an hour. Therefore, note that I was aggrieved on the following grounds....That the resignation was under undue influence and duress. Note that I had no intention of resigning from the university...that from the conduct of the top management of the university had a fixed mind and prejudice against me by summoning me on phone to pass the verdict without allowing me an opportunity to defend or fully explain myself...that the said management board on the material day warned and threatened me that they will have taken me to police or crime action and then I reached a decision which was not properly informed.”
54. The Respondent, in a letter dated 26<sup>th</sup> January 2022, conveyed its decision to uphold the Claimant's separation from the University. Notably, the Respondent's response did not address the Claimant's assertions that his resignation was procured through undue influence and duress from the university's top management.
55. The central issue for determination is whether the Claimant's resignation was the result of coercion, as he alleges, or a voluntary decision, as maintained by the Respondent.



56. While the *Employment Act*, 2007, does not expressly define the concept of constructive dismissal, the jurisprudence emanating from this Court and the Court of Appeal has sufficiently crystallized the doctrine. In *Coca-Cola East & Central Africa Limited v Maria Kagai Ligaga* [2015] eKLR, the Court of Appeal held as follows:

“What is the key element and test to determine if constructive dismissal has taken place? The factual circumstances giving rise to constructive dismissal are varied. The key element in the definition of constructive dismissal is that the employee must have been entitled or have the right to leave without notice because of the employer’s conduct. Entitled to leave has two interpretations which gives rise to the test to be applied. The first interpretation is that the employee could leave when the employer’s behavior towards him was so unreasonable that he could not be expected to stay — this is the unreasonable test. The second interpretation is that the employer’s conduct is so grave that it constituted a repudiatory breach of the contract of employment — this is the contractual test.”

57. Likewise, Black’s Law Dictionary (10<sup>th</sup> Edition, p. 561) defines constructive dismissal as follows:

“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.”

58. What can be drawn from the foregoing is that the evidentiary threshold for proving constructive dismissal is considerably high. In this regard, the Claimant bears the burden of proving the following three essential elements:

- a. A fundamental breach of contract by the employer;
- b. That the breach created intolerable working conditions; and
- c. That the breach directly caused the resignation.

59. In the present case, the Claimant asserts that his resignation was not of his own volition but was procured under duress, threats of arrest, and intimidation by the Respondent’s senior management.

60. As stated herein, the Claimant authored two resignation letters. The first, being handwritten, suggests that it was prepared in haste. The second expressly referred to the directive by the Respondent’s top management that he resign from employment.

61. However, upon consideration and in applying the principles laid down in *Coca-Cola East & Central Africa Limited v Maria Kagai Ligaga* [supra] the Court is not persuaded that the Respondent’s actions amounted to the creation of an intolerable working environment or a fundamental breach of the contract of employment within the meaning of constructive dismissal.

62. While it is evident that the Claimant’s resignation was not entirely voluntary, he nonetheless retained the option to decline to resign and to subject himself to the due process of the Respondent’s disciplinary mechanisms.



63. It should also be appreciated that not every involuntary resignation amounts to constructive dismissal. For instance, in the case of *Stella W. Muraguri v Edward Kamau Muriu & 4 Others* [2022] eKLR, the learned Judge reckoned as follows:

“To my mind, not every involuntary resignation amounts to constructive dismissal. The threshold for constructive dismissal is achieved where the involuntary resignation has a direct causal link with the employer’s conduct, which may reasonably be described as intolerable. It cannot be said to be constructive dismissal when an employee resigns to get out of a tight spot.” (Emphasis added).

64. Guided by the foregoing precedent, the Court finds that the Claimant has not proved that his resignation met the threshold of constructive dismissal. Consequently, his claims for compensation and pay in lieu of notice fail and are hereby dismissed.

65. Further, the Court dismisses the Claimant’s claim for severance pay, noting that such entitlement arises solely where employment is terminated on the grounds of redundancy, which is not the case in the present matter.

### **Orders**

66. The upshot of the foregoing is that the Claimant’s suit is dismissed in its entirety with an order that each party bears its own costs.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 3<sup>RD</sup> DAY OF OCTOBER 2025.**

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**STELLA RUTTO**

**JUDGE**

In the presence of:

For the Claimant Ms. Kemunto

For the Respondent Ms. Mwanzia instructed by Mr. Wasike

Court Assistant Millicent

order

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15<sup>th</sup> March 2020 and subsequent directions of 21<sup>st</sup> April 2020 that judgments and rulings shall be delivered through video conferencing or via email. 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 had 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 1B 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.

**STELLA RUTTO**

**JUDGE**

