



**Kiprotich v Agile Business Solutions Limited (Cause E989 of 2024)  
[2025] KEELRC 2874 (KLR) (21 October 2025) (Judgment)**

Neutral citation: [2025] KEELRC 2874 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E989 OF 2024  
SC RUTTO, J  
OCTOBER 21, 2025**

**BETWEEN**

**EDMOND KIPROTICH ..... CLAIMANT**

**AND**

**AGILE BUSINESS SOLUTIONS LIMITED ..... RESPONDENT**

**JUDGMENT**

1. The Claimant avers that he was employed by the Respondent as Chief Officer, Technology Department – Proprietary Software, with effect from 18<sup>th</sup> November 2018. He asserts that during the course of his employment, he diligently, faithfully, and dutifully executed his responsibilities in accordance with the terms of his employment.
2. The Claimant further states that although he commenced work on 1<sup>st</sup> October 2018, the Respondent did not issue him with a written contract of service.
3. He contends that his employment remained cordial and productive until late 2024, when the Respondent’s directors allegedly began levelling false accusations against him, including claims of business sabotage, toxicity in the workplace, holding the company hostage, and collusion with third parties to tarnish the company’s reputation. Despite these allegations, no disciplinary or legal action was taken against him. Instead, the Respondent allegedly persisted with the accusations in a bid to frustrate his continued employment.
4. The Claimant contends that the said accusations created a hostile and intolerable work environment, rendering the employment relationship untenable. He avers that this situation caused him mental anguish, emotional distress, and hindered his ability to effectively perform his duties.
5. The Claimant further states that as a result of the persistent frustrations, he was compelled to resign on 28<sup>th</sup> August 2024. He adds that he was not required to serve any notice period, and the said date, therefore marked his final day of service.



6. In view of the foregoing, the Claimant holds that he was constructively dismissed and accordingly seeks the following reliefs:
  - a. A declaration that he was constructively dismissed due to the actions of the Respondent.
  - b. A declaration that the Claimant was unfairly treated by the Respondent
  - c. One Month notice pay...Kshs.489,800.00/=
  - d. Gratuity pay as tabulated in the acceptance letter Kshs...3,427,200/=
  - e. Dividends Pay as per the acceptance letter...Kshs. 322,241.02/=
  - f. Damages for constructive dismissal (12 months pay)...Ksh.5,877,600/=
  - g. Costs of and/or incidental to the Claim together with interest thereon from the date of filing suit until payment in full.
  - h. Interest at court rate on (c) (d) (e) above effective date of termination of his employment.
  - i. Any other relief as the Court may deem fair and just in the circumstances.
7. The Respondent opposed the Claim through an Amended Response dated 24<sup>th</sup> March 2025, asserting that the Claimant's resignation was entirely voluntary. Regarding the alleged absence of a written contract, the Respondent maintains that the employment handbook adequately supplemented and governed the terms of employment.
8. The Respondent further contends that prior to the resignation, the employment relationship had remained cordial, and the Claimant's abrupt decision to resign with immediate effect on 28<sup>th</sup> August 2024 came as a shock.
9. The Respondent maintains that it did not in any way frustrate the Claimant's continued employment and asserts that the present Claim is a fabricated attempt to create a cause of action where none exists. Accordingly, the Respondent prays that the Memorandum of Claim be dismissed with costs.
10. The matter proceeded for hearing on 11<sup>th</sup> June 2025, during which both parties called oral evidence in support of their respective cases.

### **Claimant's Case**

11. The Claimant testified as CW1 in support of his case. At the outset, he adopted his witness statement to constitute his evidence in chief. The Claimant further produced the list and bundle of documents filed on his behalf, as exhibits before the Court.
12. The Claimant testified that upon his resignation, the Respondent issued him with a letter dated 31<sup>st</sup> August 2024 accepting his resignation and requiring him to clear and effect a proper handover.
13. The Claimant further averred that his final dues were agreed at Kshs. 822,241.02, being dividend/ commission payable in two instalments. He confirmed receiving the first instalment of Kshs. 500,000.00 but contended that the balance of Kshs. 322,241.02 remains outstanding.
14. The Claimant further testified that it was the understanding of both parties that he would transfer his stake/shares in the related companies in exchange for a motor vehicle, Subaru Forester registration number KCW 249W, which he confirmed was subsequently transferred to his name.



15. In addition, the Claimant stated that he was entitled to gratuity amounting to Kshs. 3,427,200.00, which was to be paid in five instalments beginning 5<sup>th</sup> October 2024. However, he has not received any payment to date.
16. According to the Claimant, the Respondent's conduct gravely undermined and distorted the employment relationship, amounting to constructive dismissal.
17. He further stated that despite issuing a demand and notice of intention to sue, the Respondent failed, refused, and/or neglected to admit liability, thereby necessitating the filing of this suit.
18. Consequently, the Claimant urged the Court to allow his Claim as prayed.

### **Respondent's Case**

19. The Respondent's case was presented through the testimony of Anthony Komen, who appeared as RW1. Mr. Komen identified himself as the Respondent's Managing Director and equally, he adopted his witness statement to constitute his evidence in chief. He further produced the list and bundle of documents filed on behalf of the Respondent, as exhibits before the Court.
20. RW1 testified that the Claimant's resignation was entirely voluntary and that at no point did the Claimant indicate that the work environment had become intolerable or that he was being forced to leave the company.
21. He added that he was therefore shocked upon learning of the Claimant's allegations that he had been compelled to resign due to alleged mistreatment at the workplace.
22. RW1 further testified that the Claimant never lodged any complaint or grievance with the Respondent's Human Resources Department, which is mandated to handle such matters as expressly provided in the Employee Handbook.
23. Regarding the alleged unpaid dividends, RW1 asserted that dividends are only payable in accordance with the Company's constitution and upon a formal resolution of the directors. He maintained that since no such resolution was made, the purported promise to pay dividends was improper. It was his evidence that, upon review, the Respondent decided not to proceed with any such payment.
24. RW1 concluded that the Claimant's suit was brought in bad faith with the intent to tarnish the Respondent's reputation as a reputable employer and to obtain monetary gain. To this end, he urged the Court to dismiss the Claim as frivolous and an abuse of the court process.

### **Submissions**

25. Upon conclusion of the hearing, both parties filed written submissions, which the Court has duly considered. On his part, the Claimant submitted that he was coerced into resigning under circumstances that amounted to constructive dismissal, asserting that the working environment had become so intolerable and hostile that he had no reasonable alternative but to resign. In support of this position, the Claimant relied on the decisions in *Micah Kangogo Chelang'a v Kenya Farmers Association Limited* [2022] and *Coca Cola East and Central Africa Limited v Maria Kagai Ligaga* [2015].
26. Citing the cases of *Kenya Ports Authority v Munyao & 4 Others* [2023] KESC 112 (KLR) and *Elizabeth Washeke & 62 Others v Airtel Networks (K) Ltd & Another* [2013] eKLR, the Claimant argued that he had been employed for over seven years without being issued with a written contract of



service. He contended that this was not a mere procedural lapse but a fundamental breach of statutory and contractual obligations.

27. The Claimant further submitted that a letter of acceptance of resignation is not a mere formality but constitutes a confirmation that the employer acknowledges and consents to the termination of the employment relationship, thereby creating a binding agreement regarding the computation and payment of terminal dues. In support of this argument, he cited the decision in *KUDHEIHA v Aga Khan Hospital* [2020] eKLR.
28. On the other hand, the Respondent submitted that the employment relationship between the parties ended on 28<sup>th</sup> August 2024, upon which the Claimant ceased to be its employee.
29. The Respondent maintained that the Claimant was not constructively dismissed but voluntarily resigned. The Respondent asserted that the resignation was initiated by the Claimant and that it merely accepted the same. In support of this position, reliance was placed on the decisions in *Milton M. Isanya v Aga Khan Hospital Kisumu* [2017] eKLR and *Edwin Beiti Kipchumba v National Bank of Kenya Limited* (Cause No. 824 of 2016).
30. The Respondent further argued that the Claimant had not demonstrated that the payments referenced in the letter of acceptance of resignation were conditional upon his resignation or otherwise tied to the termination of his employment.
31. It was further submitted that the failure to issue a written contract of service was not a fatal omission, as the terms governing the Claimant's employment were already well established and known to him.
32. The Respondent further contended that the Claimant had served for nearly seven years without a written contract and had, by his conduct, acquiesced to the terms of employment as they stood. Consequently, he could not later claim that the absence of a written contract rendered his employment unfair. To support this argument, the Respondent cited the case of *Muikamba v Radio Africa Group Limited* [2023] KEELRC 1251 (KLR).
33. In addition, the Respondent argued that the letter of acceptance of resignation dated 31<sup>st</sup> August 2024 had no binding legal effect between the parties. Relying on the case of *Wakasiaka v Textbook Centre Limited* (Cause No. 882 of 2019), the Respondent submitted that such a letter does not constitute an enforceable contract and therefore cannot form the basis for computing the Claimant's terminal dues.

### **Analysis and Determination**

34. Having considered the pleadings by both parties, the evidence on record, and the rival submissions, the Court has singled out the following issues for determination:
  - a. Whether the Claimant was constructively dismissed by the Respondent; and
  - b. Whether the Claimant is entitled to the reliefs sought.

### **Constructive dismissal?**

35. The crux of the Claimant's case is that he was constructively dismissed. On this score, he contends that the Respondent subjected him to a hostile working environment that made his continued employment untenable, causing him mental anguish and emotional distress, ultimately forcing him to resign. Specifically, the Claimant has alleged that the Respondent's directors falsely accused him of business sabotage, being toxic, holding the business hostage, and colluding with third parties to tarnish the company's reputation.



36. The Respondent has refuted the Claimant's assertions, maintaining that his resignation was entirely voluntary. To this end, the Respondent has contended that the Claimant never indicated that the working conditions had become intolerable so as to justify his resignation. According to the Respondent, the Claimant's resignation came as a surprise.
37. In view of the rival positions taken by the parties, the central issue for determination is whether the Claimant was constructively dismissed.
38. Although the *Employment Act* does not expressly define the concept of constructive dismissal, the jurisprudence developed by this Court and the Court of Appeal has sufficiently crystallized the doctrine. In the leading case of *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.” Underlined for emphasis

39. And further, the 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.”

40. In essence, constructive dismissal arises where an employee resigns as a result of intolerable working conditions deliberately created or permitted by the employer, rendering the resignation effectively involuntary. Despite the formal act of resignation, the employee is entitled to bring a case against the employer for wrongful termination of employment.
41. Accordingly, when an employee resigns as a result of a hostile or intolerable work environment, such separation amounts to constructive dismissal.
42. Whether a work environment is hostile is a factual question, determined by the circumstances of each case. Indicators of such an environment may include, among others, reduction in salary or benefits, demotion, harassment or discrimination, unreasonable transfers or changes in work location, failure to address workplace grievances, or excessive alterations to shifts and working hours.
43. Against this backdrop, the question that now arises is whether, in the present case, the Claimant was indeed constructively dismissed.
44. Revisiting the record, it is evident that the Claimant resigned from his employment through a letter dated 28<sup>th</sup> August 2024, the contents of which are reproduced below for context:

“Dear Anthony,

RE: RESIGNATION



Please accept this letter as a formal notice of resignation from the position of Chief Officer, Proprietary Software. My last working day will be 28<sup>th</sup> August 2024. I intend to facilitate the handover process as required.

I would like to take this opportunity to thank you for the leadership and mentorship over the years.

Regards

Edmond Kiprotich.”

45. In addressing the issue of constructive dismissal, the Court of Appeal in Coca-Cola East & Central Africa Limited v Maria Kagai Ligaga (supra) set out guiding principles applicable to such claims, key among them being that there must be a causal link between the employer’s conduct and the reason for the employee terminating the employment contract. In other words, causation must be proved.
46. It therefore follows that the Claimant herein bears the burden of proving causation by demonstrating that his resignation was directly prompted by the Respondent’s conduct.
47. A perusal of the Claimant’s resignation letter reveals that he did not specify any reason for leaving the Respondent’s employment.
48. In particular, he made no mention of the alleged hostile work environment that he now cites as the basis for his claim for constructive dismissal.
49. Consequently, there is no indication that the Claimant’s resignation was prompted by the working environment or by the specific incidents he alleges in his Claim. On the contrary, the tone of his resignation letter was positive, as he expressed gratitude to the Respondent for the opportunity to serve and for the leadership and mentorship he had received.
50. It therefore follows that the Claimant failed to establish any causal connection between his resignation and the alleged hostile work environment at the Respondent company.
51. In light of the foregoing, the Court finds that the Claimant has not proved, to the required standard, that his resignation amounted to constructive dismissal.

## **Reliefs**

52. Having found that the Claimant’s resignation did not amount to constructive dismissal, the claims for notice pay and compensatory damages are unsustainable.
53. The Claimant also seeks the sum of Kshs. 3,427,200.00 as gratuity and Kshs. 322,241.02 as dividends payment. In support of these claims, the Claimant exhibited a copy of the acceptance of his resignation dated 31<sup>st</sup> August 2024, through which RW1, on behalf of the Respondent, expressly committed that the Claimant would be paid gratuity of Kshs. 3,427,200.00 in recognition of his service. The gratuity was to be paid in five equal monthly instalments, commencing on 5<sup>th</sup> October 2024.
54. In the same letter, RW1 also informed the Claimant that he was entitled to dividend payments amounting to Kshs. 822,241.02, out of which Kshs. 500,000.00 had already been paid. As such, RW1 committed that the balance will be settled accordingly.
55. It is noteworthy that the Claimant signed the said letter on 31<sup>st</sup> August 2024, signifying his acceptance of its terms.



56. During cross-examination, RW1 admitted that he authored the letter of 31<sup>st</sup> August 2024 on behalf of the Respondent and confirmed that the Respondent had indeed undertaken to pay the Claimant gratuity. He further conceded that no instalment of the agreed gratuity has ever been paid.
57. In its submission, the Respondent sought to minimise the legal effect of the letter dated 31<sup>st</sup> August 2024, contending that it was issued after the employment relationship had already ended.
58. However, upon careful examination of the letter, it is apparent that there was a mutual understanding between the parties, reached either immediately before or shortly after the resignation. This understanding encompassed agreed payments to the Claimant, the transfer of motor vehicle registration number KCW 249W to him, and a waiver of the notice period.
59. The doctrine of estoppel, as articulated in *Serah Njeri Warobi v John Kimani Njoroge* [2013] eKLR, precludes a party from denying or acting contrary to a position it has previously taken, whether by words, actions, or omissions, upon which another has relied.
60. This principle is codified under Section 120 of the *Evidence Act*, which provides that:
- “When one person has, by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his representative shall be allowed, in any suit or proceeding between himself and such person or his representative, to deny the truth of that thing.”
61. In view of the Respondent’s clear and express commitment to pay the Claimant gratuity and dividends, coupled with its partial payment of Kshs. 500,000.00 towards the dividends, the Respondent is estopped from denying its obligation to pay the outstanding amounts of Kshs. 322,241.02 as dividends and Kshs. 3,427,200.00 as gratuity.
62. In sum, the Court finds that the Respondent is liable to pay the Claimant the sums of Kshs. 322,241.02 as unpaid dividends and Kshs. 3,427,200.00 as gratuity, as set out in the letter of acceptance dated 31<sup>st</sup> August 2024, which the Claimant duly accepted.

### Orders

63. In conclusion, the Court finds that the claim for constructive dismissal fails. However, judgment is entered in favour of the Claimant for the following reliefs:
- a. Kshs. 322,241.02 being unpaid dividends;
  - b. Kshs. 3,427,200.00 being gratuity; and
  - c. Interest on (a) and (b) at court rates from the date of judgment until payment in full.
64. The Respondent shall bear the costs of the Claim.

**DATED, SIGNED and DELIVERED at NAIROBI this 21<sup>st</sup> day of October 2025.**

.....

**STELLA RUTTO**

**JUDGE**

In the presence of:

For the Claimant Mr. Wafula



For the Respondent Ms. Abiero

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.

