



REPUBLIC OF KENYA



**KENYA LAW**  
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**Tuluba v GA Insurance Limited (Cause E735 of 2023)  
[2025] KEELRC 2950 (KLR) (30 October 2025) (Judgment)**

Neutral citation: [2025] KEELRC 2950 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E735 OF 2023  
B ONGAYA, J  
OCTOBER 30, 2025**

**BETWEEN**

**NELLY KATHAMBI TULUBA ..... CLAIMANT**

**AND**

**GA INSURANCE LIMITED ..... RESPONDENT**

**JUDGMENT**

1. The claimant filed the memorandum of claim dated 29.06.2023 through Sarara & Co. Advocates, seeking judgment against the respondent for:
  - i. A declaration that the respondent threatened and violated the claimant's rights and fundamental freedoms as set out by the law.
  - ii. A declaration that the respondent is in breach of the employment contract and liable therefrom.
  - iii. A declaration that the actions of the respondent amount to constructive dismissal of the claimant.
  - iv. An order compelling the respondent to pay the claimant a sum of Kshs. 15,115,000/= being special damages.
  - v. An order compelling the respondent to compensate the claimant for her years of service in terms of service pay and other pay as this Honourable Court may so order.
  - vi. An order compelling the respondent to issue the claimant with a proper certificate of service.
  - vii. General damages.
  - viii. Punitive damages.



- ix. Costs of the suit be borne by the respondent.
- x. Interest on the above all till payment in full.
- xi. Any other relief this Honourable Court may deem fit to make.

2. The claimant's case was as follows:

- a. On or about 19.12.2016, the respondent employed the claimant as an Internal Audit Assistant Officer Grade 3 on such terms and conditions as stipulated in the Letter of Appointment. She was to start service on 03.01.2017 and proceed on a six-months' probationary period. Following her exceptional performance during the probationary period, the respondent confirmed her appointment and assigned her more specialised responsibilities as an internal auditor.
- b. On or about 15.01.2019, the respondent redeployed the claimant to the Marketing and Corporate Affairs Department as a Digital Marketing Officer Grade 4. The redeployment letter indicated that she would be provided a comprehensive job description in due course. Following exemplary performance in the execution of her duties, she was later promoted to Head of the Marketing and Communications Unit from July 2019, a position she accepted and assumed with enthusiasm.
- c. As the Head of Marketing and Communications Unit, the claimant reported directly to both the respondent's CEO and the General Manager, Marketing and Business Development. She was generally responsible for communicating the respondent's position to clients, affiliates, stakeholders and employees. The respondent also adjusted and labelled her email, kathambi@gakenya.com, as "communications" for purposes of internal corporate communications and relaying of its positions to external clientele and stakeholders. She also ensured smooth operations of the respondent's businesses in Kenya, Uganda and Tanzania.
- d. In recognition of the claimant's excellence, the respondent appraised and A-rated her performance at 91%, earning her a nickname at the workplace namely, 'Nexcellent'.
- e. Whereas the respondent promoted and redeployed the claimant to more specialised positions, it failed, refused and/or neglected to adjust her job description, thereby occasioning a mismatch between her job designation and her remuneration. Her job designation remained frozen at Digital Marketing Officer Grade 4, a junior position without direct reporting to the respondent's CEO.
- f. The claimant's troubles with the respondent began when she started urging it to harmonize her job designation for purposes of pay, as had been indicated in the instructions of her redeployment and promotion. She requested her immediate supervisor, Mr. Sundeep Vaghela, to ensure commensurate pay in line with her actual responsibilities and the respondent's Human Resources Manual. The supervisor consequently invited her to attend a meeting with Mr. Ozem Muriuki, the General Manager, Human Resources and Administration, who undertook to act on her petition. However, no action was taken.
- g. The claimant's pursuit of the regularization of her job designation, description and remuneration made her a target and the subject of workplace harassment, verbal and psychological abuse, and an unwarranted witch hunt by the respondent's CEO. As particularised in the memorandum of claim, the CEO's conduct towards her was meant to coerce her to resign voluntarily from employment, hence constructive dismissal.



- h. The claimant reported to the General Manager, Human Resources and Administration that the CEO's abusive conduct was rendering the work environment intolerable. However, her grievances were dismissed and she was informed to learn how to work with the CEO. She further reported the harassment to the respondent's Executive Director, whose promise to intervene and sanction the CEO's conduct was not actualised.
- i. The respondent's CEO continued to harass the claimant until 29.03.2022, when she was served with a letter inviting her to show cause why disciplinary action should not be taken against her for allegedly breaching some company policies. Even before she had been heard, the respondent disconnected her from the company's email system and revoked her administrative rights to the company's website, social media accounts and bulk messaging platforms.
- j. On 04.04.2022, the respondent invited the claimant to attend a disciplinary hearing, which she attended on 06.04.2022. She objected to the improper constitution of the panel, asserting that it ought to have comprised heads of departments as provided in the respondent's HR Policy. Despite her objection, the hearing went on in violation of the principles of natural justice and in breach of her right to a fair hearing.
- k. On 07.04.2022, the claimant wrote to the respondent's HR articulating that she was showing up at the workplace for weeks from 8 am to 5 pm but without any duties to perform. Instead, the respondent demoted her and she was instructed to perform the duties of a social media marketer, which responsibilities she had performed three years before her promotion to Head of the Marketing and Communications Unit.
- l. When the claimant appealed her demotion to the respondent's HR, the respondent maintained that her position had been redesigned, leading to a reduction of her responsibilities. She was left with no recourse, as she could not appeal to the CEO, the architect of her predicament.
- m. The claimant's demotion and subsequent denial of access to the respondent's platforms meant that the respondent had already discharged her from employment. Further, the respondent started soliciting candidates to fill the claimant's position within a week of demoting her. It eventually employed someone to perform the responsibilities the claimant was executing, albeit with a higher job designation than the one she previously held.
- n. The respondent made fundamental and unilateral changes to the claimant's employment contract, which made her apprehensive that it had no intention of sanctioning the pattern of abuse at the workplace. It also mismanaged and derailed her career development as an internal auditor, as it persistently redeployed her to other positions and ultimately left her with no tasks to perform.
- o. The claimant was therefore coerced to voluntarily resign on 04.05.2022 due to the respondent's creation of an intolerable work environment and breach of the employment contract through calculated acts of harassment. She was also forced to pay one month's salary in lieu of notice because she had no time to issue a notice of termination.
- p. By severing the claimant's responsibilities, the respondent demonstrated that it no longer intended to be bound by the essential terms of the employment contract, thus leaving her to treat herself as having been discharged from further performance. On the other hand, she did not accept, waive, acquiesce or otherwise conduct herself in a manner to be estopped from asserting constructive dismissal. She also made it known in her exit interview with the



respondent that her voluntary withdrawal from service was a consequence of the unwarranted harassment and intolerable working environment.

- q. The claimant suffered emotional distress and pain as a result of the workplace harassment that she was forced to seek treatment from a therapist. She went on to suffer loss and damages due to the constructive dismissal, particularising the special damages as follows:
- i. Underpayment being the cumulative difference between the salary for Grade 4 and Grade 6 for Head of Communications Marketing Unit [Middle Management] between July 2019 to June 2022 (section 11.2 HR Manual and claimant's personal knowledge having worked as the respondent's internal auditor) ..... Kshs. 2,400,000
  - ii. House Allowance for Grade 4 from January 2017 to June 2019 calculated at parity with Grade 5 of Kshs. 60,000 per month (section 7.4 HR Manual and the 'overlap principle' enunciated at section 11.2 HR Manual) ..... Kshs. 800,000
  - iii. House Allowance for Grade 6 for Head of Marketing and Communications Unit from July 2019 to June 2022, Kshs. 100,000 (section 7.4 HR Manual) ..... Kshs. 600,000
  - iv. Service pay (January 2017 to June 2022, Employment Act 2007) ..... Kshs. 1,350,000
  - v. Accrued leave ..... Kshs. 75,000
  - vi. Overtime (including late nights and weekends) ..... Kshs. 570,000
  - vii. Accrued cash allowances for Head of Marketing and Communications Unit (section 12.3 HR Manual) ..... Kshs. 1,500,000
  - viii. Accrued Annual Staff Bonus (section 10.7 HR Manual as read with GA Annual Financial Statements filed with IRA) ..... Kshs. 220,000
  - ix. Compensation for workplace harassment by the respondent's CEO Mr. Sandip Bhadury ..... Kshs. 5,000,000
  - x. Constructive dismissal (equivalent to the number of monthly wages not exceeding 12 months based on gross monthly wages as per the Employment Act and prevailing case law) ..... Kshs. 2,400,000
  - xi. One month's pay in lieu of notice ..... Kshs. 200,000
3. The respondent's memorandum of response and counterclaim is dated 14.03.2025 and filed through CM Advocates LLP. The respondent urged as follows:
- i. Whereas the claimant's performance during the probationary period was satisfactory, leading to her confirmation of employment, she was never assigned more specialized responsibilities beyond her Internal Audit Assistant Officer role.
  - ii. The claimant was redeployed to the Marketing and Corporate Affairs Department as a Digital Marketing Officer, but was not promoted to head the Marketing and Communications Unit as alleged. Therefore, her designation remained Digital Marketing Officer, reporting to her



immediate supervisor within the Marketing Department. She was responsible for certain tasks, including communication strategies, event coordination and liaison with service providers.

- iii. The claimant's performance was rated positively, but was not exceptional to the extent alleged to earn her the nickname "Nexcellent". If such an alleged nickname existed, it is not the company's conferment.
- iv. The claimant's promotion to Digital Marketing Officer Grade 4 was consistent with her responsibilities and pay, and she was never added roles as claimed. Further, the labelling of her email as "communications" was not an indication of any change in her job designation or responsibilities.
- v. Therefore, there was no mismatch between the claimant's job designation and her remuneration, and as such, no action was required.
- vi. The claimant was neither subjected to workplace harassment, verbal or psychological abuse by the CEO, nor did she ever report any such incidents as required under the respondent's HR Manual or in any way. Her voluntary resignation was not the result of any constructive dismissal, and she was notably working with the said Mr. Sandip Bhadury when the respondent filed its response.
- vii. The claimant's averments on the actions of the CEO towards her constitute baseless allegations unsupported by evidence and were never formally reported to any officer in the company. Particularly, she did not formally report any harassment as required by company policy. The CEO maintains a professional relationship with all employees, and the claimant was always treated fairly and in accordance with company policies.
- viii. The claimant's access to the company's email system and administrative rights were revoked in good faith pending the outcome of the disciplinary hearing. The approach is normally taken for several reasons related to security, compliance and risk management. In this context, the claimant had access to sensitive data or systems and denying her administrative rights to the systems reduced the risk of altering, deleting or misusing data that could be relevant to the disciplinary process. The restricted administrative access would also help ensure the stability and security of the company's systems during a sensitive period.
- ix. The claimant's disciplinary hearing was conducted fairly and in accordance with the company's HR policies, and she was given an opportunity to present her case.
- x. The claimant's appeal concerning her alleged demotion was considered and addressed according to company policy. In any case, she was never demoted and her responsibilities were redesigned or adjusted in line with her position as a Digital Marketing Officer. There was neither a replacement hired for her position, nor were fundamental changes made to her contract. Contrary to her assertions, she was given opportunities to grow within the company.
- xi. The claimant's voluntary resignation was not a result of any intolerable work environment or any breach of the employment contract. She was neither coerced to resign nor was she constructively dismissed as alleged.
- xii. The claimant was informed that her certificate of service was available as of 11.05.2022.
- xiii. The allegations that the claimant suffered emotional distress, sorrow, misery, or pain as a result of her employment are unfounded, vexatious and frivolous. Her claims for special damages are unsubstantiated for the following reasons:



- a. Since her salary was all-inclusive, there is no proper claim for a house allowance. Under section 12.3 of the HR Policy, she received a consolidated gross pay comprising 70% basic pay and 30% allowance as per her employment contract.
  - b. There is no basis for overtime as she worked within her contractual time. Any such alleged overtime was never communicated to the HR Office or supervisors,
  - c. There was no harassment as alleged.
  - d. No bonus was due to her at the time of her resignation.
  - e. There was no dismissal, hence no basis for one month's pay.
  - f. She always received bonuses that were calculated through a rigorous scientific process.
  - g. She was a member of a pension scheme, to which funds were remitted, meaning she would not be entitled to any service pay.
- xiv. As of the date of her resignation, the claimant was liable for Kshs. 120,250/= being a staff loan graciously given to her by the respondent, and which she committed to clearing through her letter dated 11.05.2022.
4. In the counterclaim, the respondent/claimant sought payment in lieu of notice and the unpaid staff loan, thus praying for judgment against the claimant/respondent for:
    - a. Kshs. 60,000/= in lieu of notice
    - b. Kshs. 120,250/= plus interests at commercial rates from 04.05.2022 until payment in full
    - c. Costs, on a full indemnity basis, and interest at court rates, from the date of judgment until payment in full
    - d. Any other relief the Court may deem fit in the interest of justice.
  5. The claimant then filed a reply to the memorandum of response and defence to counterclaim dated 01.04.2025 through Manwa OH Advocates LLP. She asserted that when the Head of the Marketing and Communications Unit (also E-Marketing and Senior Communications Officer) resigned, she took over his duties and became the E-Marketing and Senior Communications Officer in charge of the Marketing and Communications Unit. She also undertook many projects with both her supervisor and the CEO, with her duties going beyond the job description of a Digital Marketing Officer. According to her, she reported the harassment and abuse to Mr. Sachit and further listed the same as reasons for her resignation in the resignation letter. She denied working with Mr. Bhadury at the time of filing her Reply. The claimant further asserted that the certificate of service issued to her is improper because it does not indicate all the positions she has held at the respondent. She averred that the claims for bonus, allowances and the extra salary are based on the benefits she would be entitled to as the E-Marketing and Senior Communications Officer, a position which she held between July 2019 and June 2022. She is entitled to overtime because she was required to work overtime to hand over cheques and manage staff doing sales for events, among other duties. The claimant prayed that the Defence be dismissed with costs.
  6. Further in defence to the counterclaim, the claimant/respondent averred that the counterclaim should be struck out for not being accompanied by a verifying affidavit as per the Civil Procedure Rules. She denied that the respondent/claimant is entitled to one month's salary in lieu of notice since she resigned involuntarily as a result of its intolerable behaviour. She further denied that the respondent/claimant is



entitled to a loan refund, and prayed for an order allowing the Memorandum of Claim and dismissing the respondent's Counterclaim with costs.

7. The parties tendered their evidence before the Court and filed their respective submissions. The claimant testified to support her case and the respondent's witness was Nancy Situma, Assistant Manager, Human Resource Management and Administration. The Court has considered the parties respective cases and material on record and returns as follows.
8. To answer the 1<sup>st</sup> issue the Court returns that the parties were indeed in a contract of service. The respondent employed the claimant as an Internal Audit Assistant Officer Grade 3 on 19.12.2016 and she reported on duty effective 03.01.2017. She satisfactorily served a probation period of 6 months. The claimant served until 15.01.2019 when, as per her testimony in Court, she agreed voluntarily to be redesignated to the position of a Digital Marketing Officer in the respondent's Marketing and Corporate Affairs Department. While the claimant alleged that she was promoted to head the Marketing and Communications Unit at Grade 6, the evidence before Court was that the parties never entered such promotional contract. The evidence was that the claimant had raised a grievance that she was performing extra duties and she was negotiating for recognition of that performance. To confirm as much, the claimant testified thus "I was initially employed as Internal Audit Assistant Officer and transferred to Marketing Department. The transfer was voluntary. Once I went to Marketing Department there was no role of Head of Communication and Marketing Unit. There was no such role. Indeed there was no organization chart or documentation. I have not filed such document. There was organogram of our reporting to Head of Marketing and Business Development." The various e-mail correspondence between the parties in March 2022 show that the claimant had worked as a Digital Marketing Officer effective January 2019 for a period of about three years and three months. Over time she had negotiated for change of her job title, salary and job description. She had received annual salary increment of the last one being for Kshs.5,000.00 in 2021 and placing her at Kshs.70,000.00 per month. Her last annual performance appraisal rated her at 91%. The evidence was that she was raising a grievance about her job title, her salary level, and her job description. As at her resignation, the grievance appears not to have been resolved or that her employment concerns took another turn of events. The court returns that the claimant served as an Internal Audit Assistant Officer Grade 3 from 03.01.2017 to 15.01.2019 when she redesignated to Digital Marketing Officer Grade 4 until she resigned on 04.05.2022. The respondent's case and submissions are upheld in that respect.
9. To answer the 2<sup>nd</sup> issue, the Court returns that the contract of service terminated when the claimant wrote the resignation letter dated 04.05.2022 and the respondent accepted the same by the letter dated 05.05.2022. The claimant wrote to the General Manager, HR & Admin, as follows:

"Re: Resignation As A Digital Marketing Officer

I hereby tender my resignation from the position of a digital marketing officer with GA Insurance Ltd with immediate effect due to the following reasons;

1. Harassment and abuse by GA Executive
2. Baseless witch hunt
3. Demotion, despite excellent performance

These negative experiences have adversely impacted and demoralized me which has led me to my resignation.

Due to the hostile work environment, I will not be able to serve a one month notice and will therefore pay in lieu of notice, as stated in my contract.



I would also like to take this opportunity to say that making this decision has been difficult, as working with at GA Insurance Ltd was such a positive experience at first and one for which I am grateful.

Yours faithfully,

Nelly Kathambi Tuluba

CC GM, Business Development and Marketing”

The respondent accepted the resignation by the letter dated 05.05.2022 addressed to the claimant as follows:

“Dear Ms. Nelly

RE: Resignation From The Company’s Service

We acknowledge receipt of your letter dated 4<sup>th</sup> May 2022 informing us of your intention to resign from the Company’s service with effect from 4<sup>th</sup> May 2022. You will be expected to serve a one month notice or pay in lieu of notice as per your employment contract dated 19.12.2016.

We hereby confirm that your resignation has been accepted. Your last date of service shall be 3<sup>rd</sup> June 2022. This acceptance is subject to a well - structured handover. Please ensure you surrender any Company Property in your possession. In addition, you are required to fully clear your liabilities before your last date of service.

Kindly arrange to change your staff bank account at I&M Bank Ltd to an ordinary client account after 3<sup>rd</sup> June 2022.

Meanwhile, on behalf of the management, I take this opportunity to wish you every success in your future endeavours.

Yours faithfully, For: GA Insurance Ltd

Ozem Muriuki

Manager –HR and Admin.”

The Court returns that the contract of employment terminated by way of a resignation agreement manifested in the claimant’s resignation letter and the respondent’s acceptance letter and terms of which were agreed between the parties accordingly.

10. To answer the 3<sup>rd</sup> issue, the Court returns that the resignation agreement by its terms amounted to the claimant’s unfair constructive termination. The Court finds that it is trite law that parties are bound by terms of their contracts and the Court shall not re-write the contracts. The respondent accepted the claimant’s resignation without contesting the stated reasons for the resignation and the reasons are found to bind the parties accordingly. Unlike the submission made for the respondent that the resignation was voluntary on the part of the claimant, the terms of the resignation agreement are elaborate that the reasons for the resignation were harassment and abuse by GA Executive; baseless witch hunt; and demotion, despite excellent performance. While the Court binds the respondent to the stated reasons by operation of the resignation agreement, the Court has considered the material evidence on record and finds as follows:
  - a. The Court has found that the e-mail correspondence in March 2022 showed that the claimant has raised a well founded grievance about her job title, her salary level, and her job description over a long period of time but the respondent had failed to address it conclusively



despite meetings, correspondence and promises to amicably handle the grievance. The circumlocutive conduct by the respondent over a long period of time in failing to genuinely address the grievance, in the considered opinion of the Court, amounted to extremely intolerable working environment.

- b. The e-mail correspondence between the claimant and the respondent's one Ozen Muriuki had raised the reasons for the resignation as stated in the resignation letter. The correspondence further confirm that the claimant had raised the issues of intense harassment in February 2022 but the same had not been addressed but had been ignored. The correspondence show that the claimant had suffered a toxic and hostile work environment and the respondent was purporting to take action only after the claimant had already communicated her decision to resign. The said Ozen Muriuki had on 04.05.2022 at 9.22pm wrote an e-mail to the claimant (in response to the claimant's email of 04.05.2022 at 5.22pm communicating the decision to resign upon the stated grounds) stating thus, "This is a request for you to provide more details, in writing, of the issues for the management's investigation and resolution. You are also requested, should the need arise, to present yourself, for any meeting that you may be called upon should clarity of the issues you will document be needed." It is that the respondent then disregarded its own proposed path and proceeded to accept the claimant's resignation letter upon her stated grounds without any further process, unconditionally, unilaterally and voluntary so on the part of the respondent. Thus, the Court finds the respondent was bound accordingly.
- c. The claimant's e-mail of 20.12.2021 shows that the claimant apologised in view of an oversight to uphold courtesy in her communication to Mr. Sandip, the CEO. It therefore appears to the Court that the communication between the parties in that respect did not amount to harassment of the claimant by the CEO. The claimant had accepted the CEO's correction that basic courtesy and business mail writing etiquettes were that the CEO be addressed thus "Mr. Sandip, Mr. Bhadury or Dear CEO" and further, failing such basic courtesy, the CEO's opinion was that the claimant would then rather refrain from communicating with the CEO. The Court considers that such work place sharpening corrections for a proper functional relationship between various ranks of employees is sound and by itself would not amount to hostile or intolerable work environment as to constitute a ground for unfair constructive dismissal.
- d. The claimant had received a letter to show cause dated 30.03.2022 alleging that on 28.03.2022 at 0420hrs she had posted on the company internal internet communication platform confidential salary data and discussions she had with her supervisor and proceeded to exit the same platform without removing the content and offering an apology – which was contrary the the respondent's ICT Acceptable Use Policy. It was further alleged that the claimant had absconded duty on 28<sup>th</sup> and 29<sup>th</sup> March 2022 without lawful authority and without officially communicating to the HR or her supervisor. The claimant had replied by her letter that the posting of confidential data had been accidental as was a screenshot meant only for the supervisor one Sundeep Vaghela regarding her dissatisfaction about her salary increment and on allegation about the absconding of duty for the two days, she had obtained permission from her supervisor Mr. Sundeep. The claimant was invited to a hearing by letter dated 04.04.2022 and fixed for 06.04.2022 at 2.30pm. In the meantime and without a suspension notice or decision, the respondent had effective 29.03.2022 suspended the claimant's rights to access official emails and system, and, the claimant could not continue performing assignments. The Court finds that the claimant had validly written to complain in that respect and the respondent's conduct had indeed amounted to an intolerable harassment whereby during the material days the



claimant had reported on duty from morning to evening but had been unable to work and in circumstances that the respondent had not officially imposed a suspension to keep her away from duty. It was an unfair working practice in the findings of the Court.

- e. The disciplinary hearing was held on 06.04.2022. The disciplinary panel found that the claimant had acted negligently and breached the ICT Acceptable Use Policy by revealing confidential communication and data between herself and her supervisor especially that thereafter, she failed to take remedial measures (such as deleting the communication after she discovered the mistake but instead left the group). In that respect a punishment of a warning was imposed and the further, the panel recommended her redesignation from her current role as would be communicated by the supervisor. The subsequent email correspondence show the claimant and Ozem Muriuki exchanging on the scope of the recommended redesignation. It appears that the claimant was to retain the position of Digital Marketing Officer but with diminishing roles. The resignation agreement then followed.
11. The Court has considered the foregoing findings and returns that to the extent as elaborated, the claimant has established unfair constructive termination.
12. As submitted for the respondent, Dr. Gakeri J. in the case of *Ngoge v Straight Security Services Limited* (Cause 1140 of 2018) [2022] KEELRC 12924 (KLR) (24 October 2022) (Judgment) quoted Lord Denning in *Western Excavating ECC Ltd v Sharp* (1978) 2 WLR 344, thus, “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.”
13. In the instant case, the claimant had served a resignation letter. The respondent had accepted the resignation letter which set out the grounds amounting to a constructive termination. It was that but for the claimant’s stated reasons and accepted by the respondent, the employment relationship was ending. The claimant left promptly without any further condoning of the intolerable work environment under which the respondent had breach the duty to amicably resolve the claimant’s well founded grievance about her job description, salary and designation.
14. In *Ayonga v Falcon Signs Limited* (Cause 878 of 2017) [2023] KEELRC 300 (KLR) (9 February 2023) (Judgment) Manani J held about resignation thus, “11. Being a unilateral act, the employee who wishes to sever the employer-employee relation can elect to serve the employer with a resignation. The resignation may be expressed to take effect either immediately or at a later date as indicated by the employee.” In the instant case the claimant served the notice which was duly accepted by the respondent thereby, as found by the Court, cementing the terms of the separation.
15. As submitted for the respondent, in *Coca Cola East & Central Africa Limited v Maria Kagai Ligaga* [2015] KECA 394 (KLR), the burden of proof of constructive termination is upon the employee. The Court of Appeal stated as follows thus, “The burden of proof lies with the employee. The employer’s conduct must be such as when viewed objectively, it amounts to a repudiatory and fundamental breach of the contractual obligations. (See *Wooder -v- Wimpey* [1980] 1 WLR 277; see also *Malik*



and Mahmud -v- Bank of Credit and Commerce International [1998] AC 20). If the employee makes it clear that he or she is working under protest, he/she is not to be taken to have waived the right to terminate the contract under constructive dismissal. We adopt the dicta in the above cited persuasive judicial decisions as establishing relevant principles in constructive dismissal.” The Court finds that the claimant was elaborate that her grievances had not been resolved for a long time and were recurring consequential to the manner the respondent was implementing the redesignation decision. After the respondent considered the claimant’s grievances per concerns in the emails as exchanged after the disciplinary decision and as the parties considered the claimant’s disclosed grounds for the redesignation, the respondent accepted the claimant’s terms of resignation and which the Court has found amounted to unfair constructive termination.

16. The 4th issue is on remedies as prayed and urged for the claimant and respondent. The Court returns as follows:
- a. The claimant has not established the claimed withheld or underpaid salary and house allowance on account as there was no promotion to Grade 6 as was alleged but, the claimant served as a Digital Marketing Officer Grade 4 throughout the contested period.
  - b. Service pay, overtime, and leave claims are special claims to be particularised and strictly proved. The Court returns that as submitted for the respondent, the claimant was not entitled because the same have not been established at all. Service pay was as well not due because the claimant was a member of the respondent’s pension scheme and NSSF and section 35 (6) of the *Employment Act* bars the claim as made.
  - c. The claimant has not established the basis of the claimed bonus and the computation thereof. The contractual basis of the bonus is not shown. The claim will fail.
  - d. The claimant agreed in the resignation agreement to pay a month salary in lieu of resignation notice . Parties are bound accordingly and no payment in lieu of notice is due the the claimant.
  - e. The claimant has established unfair constructive termination. The aggravating factor is the long standing grievance the claimant had on review of her designation, salary and job description. The Court has found that by accepting the resignation the respondent had confirmed the intolerable and hostile working environment. The mitigating factors are the warning imposed on the claimant after the disciplinary process and the admitted lack of courteous communication with her CEO which may have contributed to her predicament. To balance justice for parties she is awarded 8 months’ gross salaries at Kshs.60, 000.00 per month making Kshs. 560, 000.00 for unfair constructive termination.
  - f. The claimant admitted to owing the respondent Kshs.120, 250.00 unpaid staff loan and Kshs.60,000.00 in lieu of resignation making Kshs.180, 250.00.
  - g. By way of a set off the respondent to pay the claimant Kshs. 560, 000.00 less Kshs.180, 250.00 making Kshs. 379, 750.00.
  - h. The claimant is not entitled to further general damages on account of harassment and the circumstances constituting the unfair constructive termination in view that the same have been taken into account as aggravating factors in awarding the compensation for unfair termination under section 49 of the *Employment Act*.
  - i. The claimant is entitled to a proper certificate of service showing she served the respondent as an Internal Audit Assistant Officer Grade 3 from 03.01.2017 to 15.01.2019 when she redesignated to Digital Marketing Officer Grade 4 until they separated on 04.05.2022.



j. The Court has considered the parties' margins of success and each party to bear own costs.

In conclusion the court enters judgment for the parties with orders as follows:

1. The declaration the termination of employment herein amounted to unfair labour practices.
2. The respondent to pay the claimant a sum of Kshs. 379, 750.00 by 15.12.2025 failing interest to run thereon at Court rates from the date of this judgment till full payment.
3. The respondent to deliver to the claimant, within 30 days from today, the proper certificate of service showing she served the respondent as an Internal Audit Assistant Officer Grade 3 from 03.01.2017 to 15.01.2019 when she redesignated to Digital Marketing Officer Grade 4 until they separated on 04.05.2022.
4. Each party to bear own costs of the suit.

**SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS THURSDAY 30<sup>TH</sup> OCTOBER, 2025.**

**BYRAM ONGAYA**

**PRINCIPAL JUDGE**

