



REPUBLIC OF KENYA



KENYA LAW
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**Korir v Classic Moulding Limited (Cause E346 of 2023)
[2025] KEELRC 3185 (KLR) (13 November 2025) (Judgment)**

Neutral citation: [2025] KEELRC 3185 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E346 OF 2023
CN BAARI, J
NOVEMBER 13, 2025**

BETWEEN

SILAS KIPRKOECH KORIR CLAIMANT

AND

CLASSIC MOULDING LIMITED RESPONDENT

JUDGMENT

Introduction

1. In a Statement of Claim dated 20th April, 2023, the Claimant sued the Respondent alleging constructive dismissal and violation of his Constitutional rights. He seeks the following reliefs: -
 - i. A declaration that the Claimant's fundamental rights under Articles 25(a),27,29(f),41(2)(a) &(b),43(1)(a) & (2),47(1) & (2) of *the Constitution* of Kenya 2010 have been infringed upon by the Respondent.
 - ii. A declaration that the Respondents actions during the pendency of the Claimant's employment amounted to unfair, unlawful, and constructive dismissal and was in breach of the *Employment Act* and applicable Employment laws.
 - iii. Compensation and damages for wrongful termination of employment by reason of constructive dismissal equivalent to:-
 - a. 12 Months' Salary at Kshs.169,954.00 per month in Compensation for unfair dismissal and wrongful termination totalling to Kshs.2,039,448.00
 - b. Service Pay/Charge for 8 Years worked at (Kshs.169,954/30*24 working days *8 years) totalling to Kshs. 1,087, 705.60.



- c. Compensation for leave days accrued but not taken up being 54 days at (Ksh.169,954/30"54) totalling to Kshs. 305,917.20
 - d. Salary for 10 unpaid working days at Kshs.5,665.13 per day for the month of January, 2023 totalling to Kshs.56,651.33
 - e. Exemplary damages for malicious, unlawful and constructive dismissal from employment
- iv. The Respondent be compelled to issue the Claimant with a Certificate of Service.
2. The Respondent filed a Statement of Response to the Claimant's claim dated 2nd June, 2023, acknowledging that the Claimant was its employee, but denying that it unfairly dismissed him. The Respondent maintained that the Claimant voluntarily resigned.
 3. The matter proceeded for hearing on 4th March, 2025 when the Claimant and CW2, one Ike Sande testified in support of his case. The Claimant's third witness CW3; Allan Otieno Ouma and the Respondent's witness were heard on 3rd June, 202. Both parties closed their respective cases on this hearing, paving way to filing of submissions.
 4. Submissions were received from both parties and have been duly considered.

The Claimant's Case

5. The Claimant states that he was employed by the Respondent on 13th November 2014 as a Project Manager in the Construction Projects Department at the company's head office, earning a gross monthly salary of Kshs.169,954.00. He avers that throughout his employment, he diligently performed his duties, maintained integrity and discipline, and enjoyed good relations with colleagues and superiors. He maintains that he consistently fulfilled his contractual obligations satisfactorily.
6. The Claimant states that in November 2022, he was diagnosed with an oral infection and continued working while receiving treatment, but his condition worsened and his doctor advised that he needed urgent specialized medical treatment and a recovery period, along with follow-up check-ups.
7. He avers that following his doctor's recommendation, he applied for 30 days of medical leave on 9th January 2023, intending to resume work on 13th February 2023, but upon submitting the leave request, the Respondent frustrated and harassed him by refusing to approve the medical leave without any valid reason, being subjected to questioning by one Mr. Mohamed whose employment status was unclear, the said Mohamed making baseless accusations and demands for explanations despite his illness, and that when he explained that he could not respond due to his medical condition and requested formal written communication, Mr. Mohamed insisted that he resigns if he could not answer the inquiries.
8. It is his case that as a result of this continued harassment, the Claimant resigned on 10th January 2023, and the resignation was acknowledged by the Respondent via email on 11th January 2023. He states that he later learned that some of his colleagues had been dismissed for refusing to implicate him in alleged misconduct.
9. The Claimant asserts that he was forced to resign because of the untenable and hostile working conditions created by the Respondent. He alleges that the Respondent tried to coerce and influence his colleagues to falsely implicate him in misconduct, and when those efforts failed, they deliberately created a toxic work environment to push him out.



10. The Claimant argues that the Respondent's actions constituted a fundamental breach of his employment contract, showing an intention not to be bound by its essential terms, which effectively terminated his employment. He therefore claims that this amounted to constructive dismissal.
11. The Claimant accuses the Respondent of several acts of malice, discrimination, and harassment, including; unreasonably withholding approval of his medical leave without lawful cause, discriminatory treatment by selectively denying him medical leave, creating a hostile work environment through intimidation and harassment by senior staff acting as the Respondent's agents, verbal threats from Mr. Mohamed, who told the Claimant to resign if he could not answer certain questions and failure to follow due process amongst others.
12. It is the Claimant's case that the Respondent's actions were unlawful, unjust, discriminatory, and carried out in bad faith.
13. On cross-examination, the Claimant told court that he recorded the conversation he had with the Respondent's Manager without informing him that he was recording.
14. Again, on cross exam, the Claimant's evidence at one point is that he applied for leave, and at the same time, contends that what he applied for was 30 days sick-off.
15. The Claimant further confirmed that it was normal/fair for the employer/Respondent to ask him about his wellbeing. It is his position that his doctor advised him to take 30 days off, but which was not indicated in the Doctor's letter.
16. The Claimant's further testimony on cross is that his leave was outrightly declined and that he was called at around 12noon and he tendered his resignation at about 5pm the same day. He avers that it was the first time his leave application was rejected.
17. CW2, one Ike Sande told court that there were allegations of employee theft of construction and interior materials which were against the Claimant, one Isaiah and himself.
18. CW3, Mr. Allan Otieno Ouma told court on cross-exam, that the Claimant handed over his work laptop, but did not follow proper procedure in so doing.
19. The Claimant prays that his claim be allowed and he be awarded costs of the suit.

The Respondent's Case

20. The Respondent states that the Claimant's employment terms were outlined in the appointment letter dated 13th August 2014 and confirmation letter dated 28th November 2014, both of which were signed by the Claimant.
21. The Respondent states that the Claimant did not properly apply for medical leave nor provide a medical certificate, but instead, he stormed into the General Manager's office on 9th March 2023, demanding an indefinite sick leave, and thereafter resigned abruptly the following day via email.
22. The Respondent asserts that the General Manager acted lawfully and did not act with malice or instruct Mr. Mohamed to harass the Claimant. It avers that Mr. Mohamed's interactions with the Claimant were part of a routine internal audit, and not targeted harassment.
23. The Respondent states that the Claimant voluntarily resigned and was not constructively dismissed as he alleges. It maintains that no hostile work environment was created, and no employees were dismissed for refusing to implicate the Claimant.



24. The Respondent states that terminal dues will be paid once the Claimant completes the standard clearance process, but rejects the Claimant's calculations as unsubstantiated and unrealistic.
25. The Respondent maintains that none of its actions during the Claimant's employment amounted to unfair, unlawful, or constructive dismissal, nor did it breach the [Employment Act](#) or the employment contract.
26. It is the Respondent's case that the facts do not establish a valid cause of action, making the Claimant's suit unfounded. It asserts further, that it remained compliant with all contractual terms throughout the employment period.
27. The Respondent finally argues that the Claimant provided no evidence of rights violations, making all his claims and prayers untenable.
28. In his oral testimony, the Respondent's witness RW1, told court that the Respondent's Board raised issues of fraud happening in the country and sought to interview employees, and that on informing the Claimant that he was required to appear before the Board the following day, the Claimant immediately filed a leave form seeking to go on an indefinite leave.
29. He states that though the Claimant's leave of 30 days was not approved, he left and never returned. He states that the next day on 10th January, 2023, the Claimant applied for compassionate leave and did not again report to work, and on being called, he told the Respondent that he had proceeded on sick leave without submitting a medical certificate and subsequently wrote a resignation letter.
30. RW1 states that the Claimant resigned without giving notice as required under his contract as his resignation was to take effect immediately.
31. It is RW1's evidence that sick leave is approved against a medical certificate, and that it is never denied.
32. On cross-examination, the Respondent's witness told court that all employees were notified of the on-going internal audit having held a meeting with them on 4th January, 2023, and the persons conducting the audit were introduced to the staff.
33. RW1 states that a Mr. Musau who was the Claimant's help was interviewed by the auditors on 9th January, 2023 and issues arose that necessitated the interviewing of the Claimant, who was then to be interviewed the following day.
34. It is his evidence that though the Claimant later returned his work laptop, they found that the same had been formatted and all information on the Respondent's projects wiped out.
35. It is his case that a cheque of the Claimant's terminal dues was drawn and deposited at the Labour Offices, but the Claimant declined to pick it up.
36. He avers that the Respondent accepted the Claimant's resignation upon receipt of his resignation letter, and required him to clear as per his contract.
37. The Respondent prays that the Claimant's claim be dismissed with costs.

Analysis and Determination

38. After careful consideration of the pleadings, the evidence adduced, and the parties' submissions, the following issues present for determination:-
 - i. Whether the Claimant was constructively dismissed or he voluntarily resigned.



- ii. Whether the Claimant is entitled to the reliefs he seeks.

Whether the Claimant was constructively dismissed or he voluntarily resigned

39. Constructive dismissal occurs where an employee resigns on the basis that the employer has made continued employment intolerable or has fundamentally breached the employment contract.
40. In the case *Catherine Wanjiku Ndirangu v. TSC* [2014] eKLR, the court applied a three part test in determining constructive dismissal, one being that the employer's conduct must be so intolerable that the employee cannot reasonably continue working, secondly that the employer must have intended or could reasonably be seen to intend to repudiate the contract and thirdly, that the employee must resign soon after the intolerable conduct occurs.
41. The Claimant's position is that he applied for 30 days of medical leave on 9th January 2023 following his doctor's recommendation. It is his assertion that his request was not approved, and instead, he was questioned by one Mr. Mohamed, who allegedly made baseless accusations and told him to resign if he could not answer his questions. He averred that due to this harassment and denial of leave, he tendered his resignation the same day, which was acknowledged by the Respondent on 11th January 2023.
42. The Respondent's witness (RW1) testified that the Respondent's Board had ordered an internal audit regarding theft of construction materials, and that in a meeting held on 4th January 2023, all staff were informed of the audit. It contends that on 9th January 2023, the Claimant was informed that he would be interviewed the following day after his assistant had been questioned, and that on being made aware of the interview by the auditors, the Claimant sought indefinite leave followed by sick-off without presenting a medical certificate.
43. The Respondent asserts that when the Claimant's leave was not approved, he resigned the next day by email, which resignation was to take effect immediately. RW1 testified that the Respondent accepted the resignation and drew a cheque for terminal dues, which was deposited at the Labour Office, but the Claimant declined to collect it. He denied that any harassment or discrimination occurred, adding that sick leave is never denied when supported by proper documentation.
44. In the case of *Coca Cola East & Central Africa Limited v Maria Kagai Ligaga* [2015] KECA 394 (KLR), the Court of Appeal while considering the issue of constructive dismissal stated; -

“In this appeal, we have considered the local and persuasive foreign authorities cited by counsel. The authoritative meaning of constructive dismissal was articulated by Lord Denning MR in *Western Excavating (ECC) Ltd. -v- Sharp* [1978] ICR 222 or [1978] QB 761, as follows:-

“If the employer is guilty of conduct which is a significant breach going to the root of the contract of employment or which shows that the employer no longer intends to be bound by one or more of the essential terms of the contract, then the employee is entitled to treat himself as discharged from any further performance. If he does so, then he terminates the contract by reason of the employer's conduct. He is constructively dismissed. The employee is entitled in those circumstances to leave at the instant without giving any notice at all or alternatively, he may give notice and say that 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 (emphasis ours). (See also *Nottingham County Council -v- Meikle* (2005) ICR 1).”



45. Section 30 (1)& (2) of the *Employment Act*, 2007 states:-

“After two consecutive months of service with his employer, an employee shall be entitled to sick leave of not less than seven days with full pay and thereafter to sick leave of seven days with half pay, in each period of twelve consecutive months of service, subject to production by the employee of a certificate of incapacity to work signed by a duly qualified medical practitioner or a person acting on the practitioner’s behalf in charge of a dispensary or medical aid centre (emphasis mine).

For an employee to be entitled to sick leave with full pay under subsection (1), the employee shall notify or cause to be notified as soon as is reasonably practicable his employer of his absence and the reasons for it (emphasis own).

46. On cross-examination, the Claimant admitted that his doctor’s letter did not expressly state that he required 30 days sick-off. He also confirmed that he did not provide a medical certificate to the employer, and finally that it was the first time his leave application was being rejected.
47. There is therefore, no denying that the Claimant applied for leave without a supporting medical certificate and the Respondent was not made aware of his intention to proceed on sick leave earlier, while its evident that he was at work the entire day on 9th January, 2023. It is also evident that the Respondent’s inquiry into his leave request occurred amid a legitimate internal audit, and that the Claimant resigned the same day after being informed that his leave was not approved.
48. Further, the court record does not show credible evidence of harassment, discrimination, or verbal abuse of the Claimant by the Respondent or any of its other workers, as to entitle him to resign at once and consider himself as having been discharged.
49. Employers have a right to inquire about ongoing investigations, especially regarding fraud or audit issues from their employees, hence the Claimant’s refusal to respond and subsequent resignation, could only be seen as a voluntary exit and not harassment.
50. In my considered view, the Respondent’s conduct in requesting clarification and declining leave in the absence of medical proof, did not amount to a fundamental breach of contract. The resignation in my view appears abrupt and voluntary, rather than coerced.
51. Accordingly, I find and hold that the Claimant has not proved a case of constructive dismissal.

Whether the Claimant is entitled to the reliefs he seeks

52. With the court’s finding that the Claimant was not constructively dismissed, the claim for compensation for unfair dismissal and wrongful termination fails.
53. The claim for payment of service pay for 8 Years worked, also fails on the Claimant’s admission that the Respondent remitted NSSF deductions.
54. On the claim for leave days accrued but not taken, the Respondent’s position is that the Claimant had a balance of 26 leave at the time of resignation contrary to his claim of 54 days. For reason that the court was told that the Claimant did not pick his terminal dues cheque from the labour office, the claim is thus found to have merit.
55. The claim for salary for 10 working days was not contested and is allowed as prayed.



Conclusion

56. I conclude by making the following orders:-

- a. A declaration that the Claimant was not constructively dismissed.
- b. That the Respondent shall pay the Claimant for 26 leave days accrued but not taken at Kshs.147,293/-
- c. That the Respondent shall pay salary for 10 unpaid working days at Kshs.56,651.33
- d. That Respondent shall issue the Claimant with a Certificate of Service within 14 days of this judgment.
- e. The suit having succeeded partly, parties shall bear their own costs of the suit.

57. Orders accordingly.

SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS 13TH DAY OF NOVEMBER, 2025.

C. N. BAARI

JUDGE

Appearance:

Mr. Rono h/b for Mr. Mumo for the Claimant

Ms. Titus h/b for Mr. Michuki for the Respondent

Ms. Esther S - C/A

