

**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI**  
**CAUSE NO. E142 OF 2022**

*(Before D.K.N. Marete)*

**CHRISTINE NZILANI JOSEPH.....CLAIMANT**

**VERSUS**

**GOLDEN YEARS LTD.....RESPONDENT**

**JUDGMENT**

This matter was originated by way of a Memorandum of Claim dated 11th February, 2022. It does not cite any issue in dispute on its face.

The Respondent in a Memorandum of Response dated 23rd September, 2022 denies the claim and prays that the same be dismissed with costs.

The claimant in a Reply to Memorandum of Response dated 30th December, 2022 rubbishes the Memorandum of Response and prays that it be struck out with costs and judgment entered as prayed in the claim.

The claimant's case is that at all material times to this case, she was employed by the Respondent as a Supervisor at a starting salary of Kshs.16,500.00. She worked dedicatedly thereby immensely contributing to the Respondents growth and progress.

The claimant's further case is that she applied for maternity leave and this was granted from 1st September, 2020 to 1st December, 2020 but on proceeding on such leave, the Respondent discontinued remitting her salaries for the those leave months. This, she posits, is a clear violation of Section 17 of the Employment Act, 2007.

The claimant's other case is that upon resumption to work, the salary was reduced to Kshs.15,000.00 without her consent or notice of which is also unlawful. Upon questing over her unpaid dues, she was warned that she should be careful or lose her job.

Other issues raised by the claimant in support of her claim come out thus;

- In the preceding month of the year 2021, the Respondent refused, declined and or neglected to remit the claimant's salary for January to May, 2021.
- On 23rd March, 2021 to 30th March, 2021, she requested for sick leave to take her infant daughter to hospital and was admitted to Shalom Hospital.
- She was further admitted to Kenyatta Hospital for 15th to 24th April, 2021 on the same issues for her daughter.
- Upon resumption of duty on 26th April, 2021, she was demoted from a supervisor to a general cleaner.
- Her salary was reduced to Kshs.7,000.00 without notice or consultation and further warned that should her daughter fall ill, she would be terminated from employment.
- Out of these frustrations at the work place, she would not continue working and left employment. This amounted to constructive dismissal.
- She was not paid her dues as per the law.

She claims as follows;

- a) *Certificate of service*
- b) *One month salary in lira of notice.....Kshs.16,500.00*
- c) *Compensation for unfair termination and wrongful dismissal.....  
(12 x 16,500).....Kshs.198,000.00*
- d) *Accrued leave days for 2 years (2 x 1 x 16,500).....Kshs.33,000.00*
- e) *Unpaid salary for*

a) September, October and November 2020 (3 x16,500).....	Kshs.49,500.00
b) December, 2020, January, February, March and April 2021 (5x1,500+500)....	
.....	Kshs8,000.00
c) May, 2021 .....	Kshs.9,500.00
d) Service pay (15 days salary x 2 years).....	Kshs.19,038.46
e) House allowance (15% 16,300 x 24 months).....	Kshs.59,400.00
<b>Total .....</b>	<b>Kshs.392,938.46</b>

She prays thus;

- a) A declaration that the Claimant's actions amounted to constructive dismissal.
- b) A declaration that the Claimant's constructive dismissal was unprocedural, unfair and/or unlawful and amounted to unfair termination of the Claimant.
- c) The Respondent to pay the Claimant statutory terminal dues of Kshs.392,938.46/- dues as tabulated in Paragraph 18 above.
- d) Costs and interest in prayer (b) above.
- e) Any other relief that this Honorable court deems fit.

The Respondent's case is that it is the company's policy to recruit employees for three months renewable contracts depending on availability of contracts. It is usually operates on contracts for 3 - 6 months on its clientele depending on the availability of signed contracts with its clientele and would sometimes retain the clientele to this extent.

The Respondent further avers that at the time the Claimant was seeking maternal leave she was not an employee as the company and had no running contracts with her, the 3 months contract having lapsed. Other issues arising out of the Respondent's case are;

- The claimant applied to be reconsidered for employment after her maternity leave and this was accepted by an issue of a new contract of service.
- The terms of the new contracts were that on being hired, one would assign any available position at the time.
- The Respondent denies non-payment of salary during maternity leave.
- The Respondent further denies any threats of termination of employment by the claimant or any non-payment of salary.
- The claimant employment contract ended in February, 2021 and she took a break only to resume in April of the same year.
- Upon resumption of duty as general cleaner, she deserted duty without valid reasons and remained unreachable on her mobile phone at the time until she resigned in May, 2021.
- No warnings were issued to the claimant on termination in the event of continued illness for her daughter.
- The Respondent denies frustrating or issuing threats to the claimant and she resigned on her own volition.
- The claimant never raised any issues of harassment and the claim presented is false.

This matter came to court variously until the 29th October, 2024 when it was heard *inter partes*.

The parties testified in support of their respective cases.

The issues for determination therefore are;

1. Whether there was constructive dismissal of the claimant by the Respondent.
2. Whether the claimant is entitled to the relief sought.
3. Who bears the costs of this cause?

The 1st issue for determination is whether there was constructive dismissal of the claimant by the Respondent. The claimant pleads and submits to a case of constructive dismissal which is emphatically denied by the Respondent.

The claimant in their written submission dated 13th November, 2024, seeks to rely on the authority of **Black's Law Dictionary** where constructive dismissal is defined as *a termination of employment brought about by the Employer making the employee's working conditions so intolerable that the employee feels compelled to leave*. This, the claimant submits was the case in her employment. It is undisputed that the Claimant was employed by the Respondent under a valid and ongoing contract, a fact confirmed by RW-1 during the hearing.

The Claimant in further buttressing her case so to rely on the celebrated authority of **Coca-Cola East & Central Africa Limited v Maria Kagal Ligaga (2015) eKLR** which raised the following element as pointer to the doctrine of constructive dismissal;

*The Court of Appeal held that constructive dismissal occurs when the employer's actions make it impossible for the employee to continue working, and the resignation is deemed a forced response. The court established an objective test to determine whether the working conditions were intolerable and whether a reasonable person would have resigned under similar circumstances. The Claimant contends that her resignation was precipitated by a harsh working environment and various threats regarding her employment made by the Respondent Furthermore, for a claim of constructive dismissal to succeed, the Claimant must demonstrate that the Employer has fundamentally breached a term of the employment contract and that this breach may manifest explicitly, such as through non-payment of wages, or implicitly, by undermining the trust inherent in the employer-employee relationship. Manifestations of such breaches may include **unilateral salary reductions unjustified and existent harassment toxic atmosphere, or significant alterations to job duties without the employer's consent.***

The Claimant moves on to submit that the irregular salary deductions and non-payment of salaries includes unjustified and persistent harassment and the toxic atmosphere at the work place all constitute constructive dismissal which befell the claimant leading to her resignation from employment.

The Respondents in denial of a case of constructive dismissal seeks to rely on the same authorities besides that of **Nathan Ogada Atiagaga v David Engineering Limited (2015) eLKR** where the court observed the following as the criterion for constructive dismissal;

*"Constructive dismissal, occurs when an employee resigns because their employer's behaviour has become so intolerable or made life so difficult that the employee has no choice but to resign. Since the resignation was not truly voluntary, it is in effect a termination. For example, when an employer makes life extremely difficult for an employee to force the employee to resign rather than outright firing the employee, the employer is trying to effect a constructive discharge."*

The Respondent denies that the claimant has satisfied the threshold for constructive dismissal in the circumstances.

The claimant's case overwhelms that to of the Respondent. The Respondent seeks reliance on short term contract is not supported by any documentary evidence. It merely remains oral testimony at trial and no more. The employer is obligated by sections 10 and 74 of the Employment Act, 2007 to keep, maintain and produce records of employment as at all times and especially when these become necessary as tools of establishing employment or its terms. It was the Respondent's onus to avail these documents in support of their defence. In the absence of this,

the case tilts in favour of the claim. This is more so bearing in mind that the Respondent merely and casually gets out of their way to only deny the claim.

The balance of probability further comes in to support the claimant's case. The Respondent merely denies the claim and deems the claimant case as lies and falsehoods. This is not enough. Its case fails on their default. I therefore find a case of constructive dismissal of the claimant and hold as such.

The 2nd issue for determination is whether the claimant is entitled to the relief sought. She is. Having won on a case of constructive dismissal she becomes entitled to the relief sought.

I am therefore inclined to allow the claim and order relief as follows;

- (i) A declaration be and is hereby issued that the Respondent's hostile actions during the stint of the claimant's employment amounted to constructive dismissal.
- (ii) A declaration be and is hereby issued that the Claimant constructive dismissal amounted to unfair and unlawful termination of employment.
- (iii) One (1) month salary in lieu of notice.....Kshs.16,500.00
- (iv) Twelve (12) months salary as compensation for unlawful termination of employment  
Kshs.16,500x 12.....Kshs.198,000.00
- (v) Accrued leave days for 2years (2 x 1 x 16,500).....Kshs.33,000.00
- (vi) Unpaid salary for September, October and November 2020.....shs.16,500 x 3  
.....Kshs.49,500.00
- (vii) Unpaid balance of salaries for December, 2020, January, February, March and April  
2021 (5 x 1,500 + 500).....Kshs8,000.00
- (viii) Unpaid balance of salary for May, 2021 .....Kshs.9,500.00
- (ix) Service pay (15 days salary x 2 years).....Kshs.19,038.46

(x) House allowance (15% 16.300 x 24 months).....Kshs.59,400.00

**Total of award .....Kshs.392,938.46**

(xi) The Respondent is ordered to issue the claimant with a certificate of service in thirty (30) days from this judgment of court.

Delivered, dated and signed this 19th day of November 2025.

**D. K. Njagi Marete  
JUDGE**

Appearances:

1. Miss Mutinda instructed by Laichena Mugambi & Ayieko Advocates for the Claimant
2. Mr. Alosa instructed by Alosa Advocates LLP for the Respondent.