

**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT**  
**NAIROBI**  
**CAUSE NO. E123 OF 2025**

**IAN ACHANDO ODHIAMBO.....CLAIMANT**

**VERSUS**

**HISA TECHNOLOGIES LIMITED.....RESPONDENT**

**JUDGMENT**

1. The Claimant commenced this suit through a Statement of Claim dated 21<sup>st</sup> February 2025, wherein he avers that he entered into a fixed-term contract of employment with the Respondent on or about 1<sup>st</sup> June 2023.
2. The Claimant avers that he resigned from employment with effect from 7<sup>th</sup> March 2024, having issued his notice of resignation on 8<sup>th</sup> February 2024.
3. The Claimant contends that he faithfully discharged his duties until he was compelled to seek alternative opportunities due to the Respondent's persistent and fundamental breach of the employment contract, being the failure to pay his monthly salaries as they fell due for a period of six months, from September 2023 to February 2024.

4. He further avers that following his resignation, the Respondent assured him that arrangements were underway to settle the outstanding salary arrears by the end of March 2024. Relying on these assurances, he remained hopeful that the issue would be resolved. However, to date, no payment has been made, leaving him feeling betrayed and financially distressed.

5. According to the Claimant, his resignation was necessitated by the Respondent's unreasonable conduct, which left him with no option but to consider himself discharged. In his view, the Respondent's conduct amounted to a fundamental breach of his employment rights.

6. In light of the foregoing, the Claimant seeks the following reliefs against the Respondent: –

***a) A declaration that the unlawful withholding of the Claimant's final dues following his resignation violates the Claimant's right under Articles 40(1) and 47 of the Constitution of Kenya, 2010.***

***b) An order compelling the Respondent to immediately pay the Claimant KES.682,146, being the total unpaid salary for six (6) months.***

- c) *A declaration that the Respondent's conduct and/or omissions that forced the Claimant's resignation amount to Unfair Termination or Wrongful Dismissal on account of constructive dismissal.*
- d) *3 months' net salary as compensation for the remainder of the term of the contract following unfair termination on account of constructive dismissal.*
- e) *That the Honourable Court be pleased to order the Respondent to pay the Claimant the sum of KES. 42,635 as service pay pro-rata, for the period worked, being 9 months of employment with interest at court's rates from the date of termination of employment until payment in full.*
- f) *General damages for mental anguish, emotional turmoil, and psychological distress suffered by the Claimant due to the Respondent's conduct.*
- g) *Interest on the unpaid salary at court rates from the date the salary became due until payment in full.*
- h) *Costs of this suit and interest thereon at the rates of the Court from the date of filing suit until payment in full.*
- i) *Any other orders as the Honourable Court may deem fit and just.*

7. The Respondent neither entered an appearance nor filed a Defence despite being duly served with the Notice of Summons and Statement of Claim. In this regard, an Affidavit of Service sworn by **Anungo Kavele** on 2<sup>nd</sup> April 2025, was filed on behalf of the Claimant confirming service on the Respondent. Annexed to the Affidavit is a copy of the Notice of Summons, signed by Beverly Mwangi, acknowledging service on behalf of the Respondent.
8. Satisfied with the proof of service, the Court directed that the matter proceed as an undefended suit. The matter was subsequently scheduled for a formal proof hearing on 28<sup>th</sup> July 2025, during which the Claimant testified in support of his claim.
9. In her testimony before the Court, the Claimant reiterated the averments contained in his witness statement, which he adopted as his evidence in chief. He further produced the list and bundle of documents filed together with the Statement of Claim as his exhibits before the Court.
10. The Claimant testified that his employment came to a premature end following his resignation, which was necessitated by the adverse conditions he endured during his tenure. He added that he served the requisite notice period, ensuring a smooth transition for both parties.

11. The Claimant further averred that the Respondent's conduct, of failing to pay his entitled remuneration, severely undermined the professional relationship between the parties. He contended that this conduct constituted a serious breach of trust and fundamentally altered the terms and circumstances of his employment.

12. The Claimant stated that the working environment had become untenable, leaving him with no reasonable alternative but to resign.

13. According to the Claimant, the decision to resign was not merely a personal choice but a necessary response to the Respondent's unreasonable behavior, which rendered his continued employment intolerable.

14. The Claimant added that the Respondent's actions amounted to a deliberate and fundamental breach of the employment contract, effectively compelling him to resign and amounting to constructive dismissal.

### **Submissions**

15. After the close of the hearing, the Claimant filed written submissions, which the Court has duly considered. The Claimant argued that Section 18(1)(b)(i) of the

Employment Act, 2007, obligates an employer to pay all wages due at the end of each pay period. He argued that the Respondent's persistent failure to pay his salary for six consecutive months was a clear breach of this mandatory statutory duty. In support of this position, reliance was placed on the case of **Jonathan Spangler v Centre for African Family Studies (CAFS) [2017] eKLR.**

16. Citing the decision in **Karimi v Katheri Farmers Co-operative Society Limited (Cause E022 of 2023) [2024] KEELRC 2195 (KLR) (12 September 2024) (Judgment)**, the Claimant submitted that the prolonged non-payment of wages, which ultimately forced his resignation, amounted not only to a contractual breach but also to unfair termination through constructive dismissal under Section 45 of the Employment Act.

17. The Claimant further contended that the Respondent's conduct amounted to a fundamental breach of the employment relationship, entitling him to recover all outstanding salary arrears, damages, and compensation for the unfair labour practices suffered. To reinforce this argument, the Claimant relied on the decision in **Coca Cola East & Central Africa Limited v Maria Kagai Ligaga [2015] eKLR.**

## **Analysis and Determination**

18. Flowing from the record, the issues for determination are as follows:

- i. Whether the Claimant was constructively dismissed; and**
- ii. Whether the Claimant is entitled to the reliefs sought.**

### **Constructive dismissal?**

19. The gist of the Claimant's case is that the Respondent failed to pay his salary for a period of six months, from September 2023 to February 2024. According to the Claimant, his resignation was not a voluntary choice but a response to the Respondent's unreasonable conduct.

20. To this end, the Claimant contends that the Respondent's actions constituted a fundamental breach of his employment contract, effectively forcing him into unfair and wrongful termination through constructive dismissal.

21. Constructive dismissal arises when an employee is compelled to leave employment, not voluntarily, but due to the conduct of the employer.

22. In the leading case of **Coca-Cola East & Central Africa Limited v Maria Kagai Ligaga [2015] eKLR**, the Court of Appeal held as follows with respect to constructive dismissal: -

*“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

23. The learned Judges of Appeal proceeded to articulate guiding principles in respect of claims of constructive dismissal, key among which are that the conduct of the employer must be a fundamental or 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.

24. As earlier adverted, the Respondent did not file a Response to the Claimant's Statement of Claim, hence the Claimant's assertion that his salary was unpaid for six months remains uncontested.

25. The duty of an employer to remunerate an employee for services rendered is a fundamental tenet of any employment relationship. This principle is expressly reflected in Section 17(1) of the Employment Act, which provides as follows:

*"[17(1)] Subject to this Act, an employer shall pay the entire amount of the wages earned by or payable to an employee in respect of work done by the employee in pursuance of a contract of service..."*

26. Applying the guiding principles set out in **Coca-Cola East & Central Africa Limited v Maria Kagai Ligaga (supra)**, it is evident that the Respondent's failure to pay the Claimant's salary as and when it fell due amounted to a fundamental breach going to the root of the employment contract.

27.Indeed, the Respondent's conduct demonstrated that it no longer intended to be bound by one or more of the essential terms of the contract, in which case the Claimant had the right to leave with or without notice.

28.What's more, the Respondent's withholding of the Claimant's salary constituted an unfair labour practice and, in effect, violated Article 41(1) of the Constitution, bearing in mind that the Respondent's actions and omissions exposed the Claimant to financial hardship and other attendant consequences.

29.Accordingly, the Court finds that the Respondent's actions amounted to constructive dismissal, and the Claimant was thereby unfairly and unlawfully terminated from employment.

#### **Reliefs?**

30.Having found that the Claimant's termination was unfair and unlawful on account of constructive dismissal, the Court holds that he is entitled to compensatory damages under Section 49(1) of the Employment Act, 2007. Accordingly, the Claimant is awarded compensatory damages equivalent to three months' gross salary. In determining this award, the Court has taken into account the duration of the employment relationship, the unexpired period of the contract of employment, and the fact that the Respondent's conduct

subjected the Claimant to unfair labour practices in violation of Article 41(1) of the Constitution.

31. The Claimant's claim for unpaid salary for a period of six months succeeds, there being no evidence that the Respondent has settled the same. In any event, the Respondent has not disputed that it owes the Claimant salary for this period.

32. The Claimant's claim for service pay is disallowed. Here is why. The Claimant's employment contract provided that his salary was subject to all applicable statutory deductions, including contributions to the National Social Security Fund (NSSF). The Claimant has neither alleged nor provided evidence that, during the period in question, the Respondent failed to remit the required deductions to the NSSF. Consequently, the Claimant falls within the exclusions set out under Section 35(6)(d) of the Employment Act.

### **Orders**

33. In the final analysis, judgment is entered in favour of the Claimant against the Respondent as follows:-

**(a) A declaration that the Claimant was constructively dismissed by the Respondent and, accordingly, was unfairly and unlawfully terminated from employment.**

- (b) The Claimant is awarded compensatory damages amounting to Kshs 341,075.79, equivalent to three (3) months' gross salary.
- (c) The Claimant is awarded the sum of Kshs 682,151.58.00 being unpaid salary for six (6) months.
- (d) The total award is Kshs 1,023,227.37.
- (e) Interest shall apply on the amount in (d) at court rates from the date of filing the suit until payment in full.
- (f) The Respondent shall also bear the costs of the suit.

**DATED, SIGNED and DELIVERED at NAIROBI this 1<sup>st</sup> day of December 2025.**

.....

**STELLA RUTTO  
JUDGE**

**In the presence of:**

For the Claimant	Mr. Anungo
For the Respondent	No appearance
Court Assistant	Mohammed

**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**