



**Ochola v Porini Gems Limited (Cause E512 of 2024)  
[2026] KEELRC 111 (KLR) (23 January 2026) (Judgment)**

Neutral citation: [2026] KEELRC 111 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E512 OF 2024  
SC RUTTO, J  
JANUARY 23, 2026**

**BETWEEN**

**CHRISTINE JULIAH AWUOR OCHOLA ..... CLAIMANT**

**AND**

**PORINI GEMS LIMITED ..... RESPONDENT**

**JUDGMENT**

1. The Claimant instituted this suit by way of a Statement of Claim dated 4<sup>th</sup> July 2024, in which she avers that she was employed by the Respondent on 7<sup>th</sup> March 2024 and diligently discharged her duties until 16<sup>th</sup> May 2024. The Claimant contends that despite fulfilling her duties and responsibilities, the Respondent consistently failed to pay her salary for the entire duration of her employment.
2. The Claimant further avers that upon repeatedly seeking clarification regarding the delayed payments, the Respondent proffered various explanations, including challenges arising from the implementation of a new payroll system, alleged banking complications, and a change in the mode of payment from EFT to RTGS.
3. The Claimant avers that the persistent non-payment of her salary, coupled with the Respondent's dismissive responses, rendered the working environment intolerable and left her with no option but to resign on 16<sup>th</sup> May 2024.
4. It is on the basis of the foregoing that the Claimant seeks the sum of Kshs. 1,433,333.10 being unpaid salary for a period of two (2) months and ten (10) days, together with compensation for constructive dismissal. She further prays for the costs of the suit and interest thereon at court rates.
5. The Respondent has opposed the Claim by filing a Statement of Response in which it admits the existence of an employment relationship but contends that the Claimant voluntarily resigned from her employment on 8<sup>th</sup> May 2024 pursuant to clause 17(c) of the employment contract.



6. Putting the Claimant to strict proof, the Respondent denies that the Claimant was subjected to a hostile work environment, contending that no such allegations were raised in her letter of resignation. The Respondent further denies that the Claimant was coerced into resigning and asserts that the claim for constructive dismissal is untenable. Accordingly, the Respondent prays that the Claimant's suit be dismissed with costs.
7. In her Reply to the Respondent's Statement of Response, the Claimant reiterates the contents of the Statement of Claim, maintaining that the averments therein are accurate and well-founded. She further asserts that her primary grievance arises from the Respondent's failure to discharge its contractual obligation to pay her salary throughout the period of her employment, a breach which she contends significantly affected her financial and overall well-being.
8. The Claimant further contends that the Respondent's breach of the employment contract rendered the continuation of the employment relationship untenable, leaving her with no option but to resign, thereby qualifying her claim for constructive dismissal. She maintains that the Respondent's failure to adequately address her concerns and demands appropriately led her to the decision to resign. Consequently, the Claimant has urged the Court to dismiss the Respondent's Defence and enter judgment in her favour as prayed in the Statement of Claim.
9. The matter proceeded for hearing on 21<sup>st</sup> July 2025 and 29<sup>th</sup> September 2025, during which both parties called oral evidence in support of their respective cases.

#### **Claimant's Case**

10. The Claimant testified in support of her case as CW1 and called an additional witness, Belinda Jesire Kiptorus, who testified as CW2. The Claimant sought to adopt her witness statement, together with the list and bundle of documents filed contemporaneously with the Statement of Claim, as her evidence-in-chief.
11. In her testimony, the Claimant stated that her duties entailed managing office operations, overseeing administrative functions, and ensuring compliance with the Respondent's policies and procedures. She averred that notwithstanding the diligent discharge of her duties, the Respondent failed to pay her salary for the entire duration of her employment. According to the Claimant, she worked continuously from 7<sup>th</sup> March 2024 to 16<sup>th</sup> May 2024 without receiving any remuneration, amounting to two (2) months and ten (10) days of unpaid salary.
12. The Claimant further testified that she consistently observed the prescribed working hours and, on numerous occasions, worked beyond official hours in order to complete assigned tasks. Despite her dedication and commitment, her repeated inquiries regarding the delayed salary payments were met with dismissive responses and unsubstantiated excuses, which she contends created a hostile and stressful work environment.
13. She averred that upon initially raising concerns over the non-payment of her salary, she was informed that the delay was attributable to challenges arising from the implementation of a new payroll system. Finding this explanation plausible, she patiently awaited the resolution of the said issues.
14. In the weeks that followed, the Claimant stated that she was informed of alleged banking challenges and that the mode of payment had been changed from EFT to RTGS. She averred that each inquiry elicited a different explanation for the delay and that, despite repeated assurances, no payment was made.
15. The Claimant further testified that she was repeatedly assured that her first month's salary would be paid together with the subsequent month's salary, assurances which never materialised.



16. She stated that upon persistently but politely requesting payment of her salary, she was eventually told not to bring her personal issues into the workplace. In her view, this response was dismissive and unprofessional and further aggravated the hostile working environment.
17. The Claimant testified that she communicated in writing on several occasions, explaining that she was compelled to borrow money to cater for her transport to work and was unable to meet her personal and household obligations due to the continued non-payment of her salary. Despite these communications, her predicament remained unaddressed.
18. She averred that notwithstanding her efforts to resolve the matter amicably, she eventually exhausted all avenues for borrowing funds to sustain both her work-related and family obligations. Consequently, she was left with no alternative but to resign from her employment on 16<sup>th</sup> May 2024.
19. The Claimant contended that the Respondent's conduct amounted to constructive dismissal, asserting that the persistent failure to pay her salary, coupled with the hostile work environment, fundamentally breached the employment contract and rendered it incapable of performance.
20. She further averred that despite issuing several demand letters, the Respondent has persistently failed and/or refused to settle the outstanding dues.
21. According to the Claimant, she has endured months of stress, financial strain and emotional turmoil due to the Respondent's blatant disregard for her rights and well-being.
22. Belinda Jesire Kiptorus, who testified as CW2, identified herself as a former colleague of the Claimant, having been employed by the Respondent as an Office Administrator. She averred that she experienced circumstances similar to those of the Claimant, in that the Respondent failed to pay their salaries during the period of their employment.
23. CW2 further testified that the Claimant confided in her regarding the frustrations she was experiencing and that she ultimately resigned from her employment due to the persistent non-payment of salaries, which made it untenable for her to continue reporting to work.
24. She further stated that the working environment became increasingly tense, as the employees were expected to continue performing their duties despite the nonpayment of their salaries.

### **Respondent's Case**

25. The Respondent presented its oral evidence through Hilda Anyango, who testified as RW1. Ms. Anyango identified herself as a Director of the Respondent company. Similarly, she adopted her witness statement, the Respondent's Statement of Response, and the list and bundle of documents filed on behalf of the Respondent as her evidence-in-chief.
26. RW1 testified that the Claimant underwent a performance appraisal during her employment, which indicated that her performance fell below the expectations of her position. However, she was never dismissed.
27. She further averred that on 8<sup>th</sup> May 2024, the Claimant tendered her resignation, providing seven (7) days' notice in accordance with the employment agreement dated 5<sup>th</sup> March 2024, and indicated that her last working day would be 16<sup>th</sup> May 2024.
28. RW1 admitted that the Claimant's salary was not paid as the Respondent was experiencing financial challenges.



29. According to RW1, the concept of unlawful termination does not arise where an employee resigns voluntarily, expresses gratitude to the employer for the opportunity of employment, and raises no complaints regarding the terms of separation. To this end, she urged the Court to dismiss the Claimant's suit with costs in favour of the Respondent.

### **Submissions**

30. Following the close of the hearing, both parties filed written submissions, which the Court has duly considered. On her part, the Claimant submitted that the Respondent's failure to pay her salary for a period exceeding two months constituted a persistent and fundamental breach of both the express terms of the contract and the Respondent's statutory obligation under section 18(1) of the Employment Act, 2007. In support of this position, reliance was placed on Gilbert Jedidah Ogang'o v J.A.B. Orengo Advocates [2018] eKLR.
31. The Claimant further contended that the Respondent's conduct, characterised by admitted non-payment of salary, disregard of statutory duties, and hostile responses to lawful queries, amounted to a clear repudiation of the employment contract.
32. It was the Claimant's position that her resignation was a direct and foreseeable consequence of this conduct and therefore met the legal threshold for constructive dismissal. In support of this argument, the Claimant placed reliance was placed on Coca Cola E. & C.A. Ltd v Maria Kagai Ligaga [2015] eKLR and Kenneth Kimani Mburu v Kibe Muigai Holdings Ltd [2014] eKLR.
33. The Claimant maintained that her separation from employment was not voluntary but was precipitated by the Respondent's wrongful conduct, in breach of section 45 of the Employment Act.
34. Arguing against the Claimant's Claim, the Respondent submitted that the Claimant was not constructively dismissed and that the circumstances surrounding her resignation did not meet the legal threshold for constructive dismissal.
35. Relying on the case of Kute v Free Kenya Foundation (Cause No. 291 of 2018) [2022] KEELRC 1505 (KLR), the Respondent submitted that it did not commit any fundamental breach of the contract of employment and that the delay in payment of salaries was occasioned by challenges encountered in streamlining its financial systems. According to the Respondent, such conduct could not be construed as demonstrating an intention not to be bound by the contract.
36. The Respondent further contended that the Claimant did not cite any single frustration in her resignation letter. In this regard, the Respondent sought to rely on DPL Festive Limited v Okuny (Appeal No. E070 of 2024) [2025] KEELRC 2122 (KLR).

### **Analysis and Determination**

37. Flowing from the record, the issues identified 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?**

38. The essence of the Claimant's case is that the Respondent failed to pay her salary for the entire period of her employment, specifically from 7<sup>th</sup> March 2024 to 16<sup>th</sup> May 2024.



39. According to the Claimant, her repeated inquiries regarding the delayed salary payments were met with dismissive responses and various excuses, creating a hostile and stressful working environment.
40. Citing the Respondent for constructive dismissal, the Claimant avers that she was left with no alternative but to resign on 16<sup>th</sup> May 2024.
41. The Respondent, while admitting that the Claimant's salary remains unpaid to date, disputes the claim of constructive dismissal, arguing that the Claimant expressed gratitude in her letter of resignation.
42. The Black's Law Dictionary (10<sup>th</sup> Edition, p.561) defines constructive dismissal as "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."
43. In essence, constructive dismissal arises where an employee is forced to terminate their employment, not voluntarily, but as a direct result of the employer's conduct. In instances of constructive dismissal, an employee may terminate employment without notice.
44. In the leading case of *Coca-Cola East & Central Africa Limited v Maria Kagai Ligaga* [2015] eKLR, the Court of Appeal set out the guiding principles for determining constructive dismissal, key among them being that the employer's conduct must constitute a fundamental or significant breach that goes to the root of the employment contract, or demonstrate that the employer no longer intends to be bound by one or more of the essential terms of the contract.
45. Turning to the present case, the key issue that arises is whether the Claimant was justified in treating herself as constructively dismissed due to the Respondent's failure to pay her salary.
46. It is undisputed that the Claimant did not receive her salary during her employment with the Respondent. RW1 herself conceded as much in her testimony before Court, explaining that the Respondent is presently experiencing financial challenges. This concession lends support to the Claimant's contention that the Respondent failed to pay her salary in accordance with the terms of her employment contract.
47. The obligation to remunerate an employee for work performed is a cardinal rule in any employment relationship. Indeed, this duty is expressly enshrined in Section 17(1) of the [Employment Act](#), which provides as follows:

"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..."
48. Applying the principles established in *Coca-Cola East & Central Africa Limited v Maria Kagai Ligaga* (supra) to the present case, it is clear that the Respondent's failure to pay the Claimant's salary for her services as contractually agreed constituted a fundamental breach going to the root of the employment contract.
49. Indeed, the Respondent's conduct plainly manifested an intention not to be bound by a fundamental term of the employment contract, specifically, the obligation to pay wages.
50. In light of the foregoing, the Claimant was justified in treating herself as constructively dismissed and was therefore entitled to resign, with or without notice.



51. While the Respondent may have been facing financial difficulties, as acknowledged by RW1, the failure to pay the Claimant's salary in accordance with the employment contract and as required by statute was unjustifiable and constitutes an unfair labour practice. Effectively, the Respondent's conduct amounted to a breach of Article 41(1) of *the Constitution*, which guarantees every person the right to fair labour practices.
52. This is so, particularly in light of the fact that the Respondent had an option to lawfully disengage with the Claimant through other lawful means, such as declaring redundancy as opposed to retaining her in employment without pay.
53. It is for precisely this reason that the *Employment Act* provides clear mechanisms for an employer to lawfully terminate an employment relationship where operational requirements so necessitate.
54. In the final analysis, the Court finds that the Respondent's conduct amounted to constructive dismissal, as it clearly demonstrated an intention not to be bound by the employment contract. Accordingly, the Claimant's termination from employment was unfair and unlawful.

### Reliefs?

55. Having found that the Claimant's termination was unfair and unlawful based on constructive dismissal, the Court holds that she is entitled to compensatory damages under Section 49(1) of the *Employment Act*. To this end, the Claimant is awarded compensatory damages equivalent to two (2) months' gross salary. In determining the quantum of this award, the Court has considered the relatively short duration of the employment relationship and the fact that the Respondent's conduct subjected the Claimant to unfair labour practices in breach of Article 41(1) of *the Constitution*.
56. The Claimant's claim for unpaid salary covering a period of two (2) months and ten (10) days succeeds, as there is no evidence that to date, the Respondent has made any payment.

### Orders

57. In sum, judgment is entered in favour of the Claimant against the Respondent as follows:-
  - a. The Claimant is awarded compensatory damages amounting to Kshs 200,000, equivalent to two (2) months' gross salary. Interest shall accrue on this amount at the prevailing court rates from the date of this judgment until payment in full.
  - b. The Claimant is awarded the sum of Kshs 233,333.10 being unpaid salary for two (2) months and ten (10) days. Interest shall apply on this amount at court rates from the date of filing the suit until payment in full.
  - c. The Respondent shall also bear the costs of the suit.

**DATED, SIGNED and DELIVERED at NAIROBI this 23<sup>rd</sup> day of January 2026.**

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**STELLA RUTTO**

**JUDGE**

In the presence of:

For the Claimant Ms. Maina instructed for Mr. Owiti

For the Respondent Mr. Mitugo



Court Assistant Catherine

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.

