



Ongalo v Society (Cause E323 of 2023) [2026] KEELRC 175 (KLR) (28 January 2026) (Judgment)

Neutral citation: [2026] KEELRC 175 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E323 OF 2023
CN BAARI, J
JANUARY 28, 2026**

BETWEEN

VELMA HORINDA ONGALO CLAIMANT

AND

HARAMBEE SACCO SOCIETY RESPONDENT

JUDGMENT

Introduction

1. Before the Court is the Claimant’s Memorandum of Claim dated 9th March, 2023, wherein the Claimant seeks a declaration that she was constructively dismissed, three months’ salary in lieu of notice, and costs of the claim.
2. The Respondent did not defend the suit despite service, and the same proceeded as undefended.
3. The case proceeded for hearing on 3rd June, 2025. The Claimant testified in support of her case, adopted her witness statement dated 9th March, 2023, and produced her list and bundle of documents evenly dated.
4. Submissions were filed for the Claimant and have been duly considered.

The Claimant’s Case

5. The Claimant states that she was employed by the Respondent in December 2016 on a gross monthly salary of Kes. 65,948, and began working on 15th January 2017 as a Loans Assistant. It is her case that, after completing three months of probation, she received a deployment letter on 18th April 2017, transferring her from the Loans Department to the Credit Control Section.
6. It is her case that on 9th May 2017, she received a confirmation letter, confirming her appointment as a loans assistant from the Respondent’s Board. She avers that on 25th October 2018, she received a staff transfer letter moving her from the Operations Department to the Finance Department.



7. The Claimant states that on 4th November 2019, she received yet another letter from the Respondent informing her that her appointment to Job Grade 4 was irregular.
8. The Claimant states that she appealed the Respondent's decision to redesignate her from Job Grade 4 to Job Grade 1, and that in its response to her appeal, the Respondent rejected the appeal, upheld the redesignation decision, and directed that the salary difference be recovered from her salary.
9. The Claimant states that the Respondent SACCO immediately began recovering the alleged salary difference from her salary, leaving her with no pay at all. She avers that, despite this, she continued to report to work in the hope that the Respondent would reconsider its decision. The Claimant further avers that she later reported the matter to her union, the Banking, Insurance and Finance Union, which wrote to the Respondent requesting her reinstatement to her former position, but the union's demands were not met.
10. The Claimant states that the Respondent invited the union to a meeting to discuss her reinstatement and promised to review and reconsider the decision to redesignate her, which position is confirmed by the union in a letter dated 27th February.
11. The Claimant avers that due to continued frustration by the Respondent, she resigned from employment. It is her case that the union reported a dispute to the Ministry of Labour and Social Protection, which accepted the dispute and undertook to initiate conciliation by engaging the parties.
12. The Claimant states that she resigned from employment, citing frustration caused by the Respondent's conduct. It is her submission that the Respondent committed a significant and fundamental breach of her contract of employment, amounting to a repudiatory breach.
13. The Claimant submits that the breach arose when the Respondent unilaterally changed her job description from Loans Assistant, Grade 4, to Office Assistant, Grade 1, on the basis that she allegedly lacked the minimum qualifications, despite having possessed the required qualifications at the time of engagement. She maintains that the Respondent fundamentally breached the terms of her contract by recovering an alleged overpaid salary through unlawful deductions that left her with no salary at all.
14. It is the Claimant's submission that Section 10(5) of the [Employment Act](#) requires that any change to the terms of employment be made through consultation with the employee and communicated in writing. She submits that the Respondent failed to consult her before altering her contract, contrary to the law.
15. It is the Claimant's position that the demotion and reduction in remuneration constituted a significant amendment to her employment contract, which directly led to her resignation.
16. The Claimant states that the Respondent also created a hostile work environment by unilaterally demoting her and effecting unlawful salary deductions, despite her continuing to report to work without pay. She submits that the unilateral amendments to her employment contract were detrimental, went to the root of the contract, and justified her resignation.
17. The Claimant prays that the court allow her claim.

Analysis and Determination

18. I have considered the pleadings, the Claimant's evidence and her submissions. The following issues present for determination:
 - i. Whether the Claimant was constructively dismissed.



- ii. Whether the Claimant is entitled to the reliefs sought.

Whether the Claimant was constructively dismissed

19. The Claimant's position is that she resigned from the service of the Respondent on account of continued frustration, the Respondent having unilaterally changed her job description from Loans Assistant, Grade 4, to Office Assistant, Grade 1, on the basis that she allegedly lacked the minimum qualifications, despite her having possessed the required qualifications at the time of engagement.
20. She maintains that the Respondent fundamentally breached the terms of her contract by recovering an alleged overpaid salary through unlawful deductions that left her with no salary at all contrary to Section 10(5) of the *Employment Act*, 2007.
21. Constructive dismissal occurs where an employer's conduct is so grave that it fundamentally breaches the employment contract, leaving the employee with no option but to resign. In *Coca Cola East & Central Africa Limited v Maria Kagai Ligaga* [2015] eKLR, the Court of Appeal held that for constructive dismissal to be established, the employee must prove a fundamental breach of the contract by the employer, that the breach went to the root of the contract, that the employee resigned as a direct result of the breach, and that the employee did not delay unreasonably before resigning.
22. In the instant case, it is evident that the Claimant was confirmed as a Loans Assistant, at Job Grade 4, by the Respondent's Board and that the Respondent later unilaterally redesignated her to Office Assistant, Job Grade 1, citing alleged lack of qualifications, despite having employed and confirmed her with full knowledge of her qualifications.
23. There is also no disputing that the redesignation resulted in the Claimant's demotion and reduction of remuneration, the Respondent having proceeded to recover alleged salary overpayments through deductions that left the Claimant with no salary, while requiring her to continue reporting to work. This conduct mirrors what the Court in *Maria Kagai Ligaga* (supra) described as "conduct that makes continued employment intolerable."
24. Further, Section 10(5) of the *Employment Act*, 2007 is explicit that where any term of employment changes, the employer must consult the employee and notify the employee of the change in writing. The Respondent (who did not defend the suit) did not place before Court any evidence of consultation prior to the re-designation, demotion, or salary reduction. Its actions were unilateral.
25. In *Kenya Airways Limited v Aviation & Allied Workers Union Kenya & 3 others* [2014] eKLR, the Court affirmed that unilateral variation of fundamental terms of employment without consultation is unlawful and amounts to breach of contract. Further, Section 19 of the *Employment Act* strictly regulates salary deductions, and any deductions that result in an employee receiving no wages without consent or lawful justification, are unlawful.
26. Further in *Elizabeth Washeke & 62 others v Airtel Networks (K) Ltd* [2013] eKLR, the Court held that salary deductions not sanctioned by law or consent, amount to an unfair labour practice and breach of contract.
27. The Court further notes that despite being unpaid, the Claimant continued to report to work and even sought her union's intervention. This in my view, is demonstration that resignation was not her first option and did not just rush to resign. In *Western Excavating (ECC) Ltd v Sharp* [1978] QB 761, constructive dismissal was defined as arising where the employer's conduct shows an intention no longer to be bound by the terms of the contract.



28. By demoting the Claimant, stripping her of pay, and ignoring union interventions, the Respondent clearly evinced an intention not to be bound by the original contract of employment. This no doubt constituted a repudiatory breach, entitling the Claimant to treat the contract as terminated.
29. In light of the foregoing, it is evident that the Respondent fundamentally and unilaterally breached the Claimant's contract of employment by demoting her, redesignating her to a lower grade, and by unlawfully deducting her salary without consultation or lawful justification.
30. I reach the conclusion that the Claimant's resignation was a direct consequence of the Respondent's conduct and therefore amounts to constructive dismissal, and so I hold.

Whether the Claimant is entitled to the reliefs sought

31. The Claimant seeks a declaration that she was constructively dismissed, three months' salary in lieu of notice, and costs of the claim.
32. Ordinarily, a finding of constructive dismissal entitles an employee to compensation under Section 49 of the Employment. The Claimant, however, did not seek such compensation and is thus bound by her pleadings.
33. Further, although the Claimant sought an award of any "other remedies that the Court deems fit and expedient," it is well settled that granting relief pursuant to such a prayer may amount to the Court fashioning remedies not specifically sought by a party. The law is clear that a party must distinctly and specifically state the reliefs it seeks from the Court.
34. On the claim for three (3) months' salary in lieu of notice, the court notes that the employment contract between the parties carries a notice period of two months, and on that basis, and the finding that the Claimant was constructively dismissed, the Claimant is awarded two (2) months' salary in lieu of notice.
35. Accordingly, the Court enters judgment for the Claimant and grants the following orders:-
 - a. A declaration is hereby issued that the Claimant was constructively dismissed.
 - b. The Claimant is awarded two (2) months' salary in lieu of notice.
 - c. The Claimant is awarded costs of the suit.
 - d. Interest shall accrue on prayer (b) at court rates from the date of judgment until payment in full.
36. Judgment accordingly.

SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS 28TH DAY OF JANUARY, 2026.

C. N. BAARI

JUDGE

Appearance:

Ms. Kubai present for the Claimant

N/A for the Respondent

Ms. Esther S – C/A

