



REPUBLIC OF KENYA

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT
NAIROBI**

(ON Makau J on 26th February, 2026)

CAUSE NO. E333 OF 2023

KLAUS DAVID

MALUMBE.....CLAIMANT

-VERSUS-

TRACK & TRACE LIMITED.....

.....RESPONDENT

JUDGMENT

Introduction

1. By a Statement of Claim dated 24th April 2023, the Claimant sought the following relief:-

a) A declaration that the Claimant's Termination was Constructive and amounted to unfair termination.

b) Kshs. 4,190,000.00 in Terminal Dues as particularized in Paragraph 4 of this Statement of Claim.

c) Costs of the suit.

d) Interest on (b) and (c) above.

e) Such further or other relief as this Honourable Court may deem fit.

2. The Respondents filed a Memorandum of Response dated 18th July 2023 and amended it on 29th November 2023. It denied all the allegations and reliefs sought in the Statement of Claim and prayed for the suit to be dismissed with costs.

3. The suit Raises the complex question of cross -border employment and Business organization.

Background

4. The Respondent is a limited liability company incorporated in Kenya and on 24th June 2015 it was registered in Uganda under section 253 of the Ugandan Companies Act.

5. By a letter dated 24th August 2021, written by the Respondents Managing Director, the Claimant was appointed as the General Manager – Uganda. He was to report to the Managing Director or any other person to whom the management may delegate their authority. His salary was a consolidated monthly basic salary of Kshs. 200,000 subject statutory deduction as provided by Uganda. He was entitled to 21 days annual leave and a termination notice of one month.

6. He worked continuously until on 29th March 2023 when he wrote a resignation letter to Respondent in Nairobi citing lack of salary since January 2023 which led to his eviction from his residential house. He also cited lack of financial support from the Respondent as the request for budget to run the branch office was never concluded and all the payments had to go through Nairobi, even for urgent matters.

7. The Respondent amended Response and denied that it had employed the Claimant. It also filed a Notice of Preliminary Objection challenging the jurisdiction of the court but by a ruling dated 25th July 2024 the court declined the objection and directed that the issue be deferred until evidence was taken.

Evidence

8. The Claimant testified before Ndolo J on 24th February 2015, adopted his written statement dated 24th April 2023 as his evidence in chief and produced six (6) documents as exhibits. In brief his evidence was that he was employed by the Respondent on 1st September 2021 as the General Manager of the Respondents Uganda office. He was reporting to the Managing Director of the Respondent based at Head office in Nairobi. His appointment letter indicated the Respondent as his employer and the salary to be Kshs. 200,000 per month. The pay slips also indicated that his employer was the Respondent.

9. He contended that the Respondent failed to support the Ugandan office financially leading to operational nightmare. He

was also not paid salary from January to March 2023 forcing him to write a resignation letter. He clarified that the money was sent from Nairobi was not his salary but operational costs. He resigned because he could not support his family in the foreign country and matters were aggravated by eviction from his residence for rent arrears.

10. He contended that the resignation amounted to constructive dismissal and prayed rightful dues. He contended that the Respondent did not make contribution to the National Social Security Fund or any pension scheme.

11. On cross- examination, he reiterated that his monthly salary was Kshs. 200,000 less National Social Security Fund deductions which were never remitted. He was employed from 1st September 2021 and left on 29th March 2023, equaling to 18 months service. He confirmed that his annual leave was 21 days which would be forfeited if not taken.

12. He confirmed that he resigned with a notice of 7 days vide a letter dated 29th March 2023. He admitted that no one forced him to write and sign the resignation letter. The letter stated that his career goals had changed. He admitted that he never wrote to demand his salary for January - March 2023. He contended that the cheques in his name were not for his salary but office running and staff expenses. He had two other staff members in the office and their salary cheques were sent to him.

13. He admitted that he wrote emails dated 15th March 2023 stating that Uganda side had financial challenges. He maintained that he was evicted from his house but he did not produce a lease agreement for the house. He confirmed that he was paid salary for November and December 2022. He denied that he had target in terms of revenue and restructuring of the office. Finally, he maintained that he had no choice but to resign due to non-payment of his salary leading to eviction from his residence.

14. The Respondent called its Director Mr. Edward Njoroge as its witness. He adopted written statement dated 20th February 2015 as his evidence in chief and produce 13 documents as exhibits. In brief his testimony was that the Claimant was employee of the Respondent serving as General Manager of Track and Trace Limited, Uganda. That the Uganda company was an independent subsidiary of the Respondent, with separate operations from the Respondent.

15. He further stated that the Claimant took over the subsidiary when it was profitable but he ran it down through poor performance to an extent that it had no money for operations and payment of salaries. He contended that the Claimant's performance was only 16% of the expected level and he was due for termination. However he pleaded for time to turn things around and the top management accepted to him more time.

16. In view of the foregoing matters, the witnesses stated that the resignation letter alleging constructive dismissal came as a

shock. He therefore averred that the resignation was self-instituted and did not amount to constructive dismissal.

17. On cross examination he admitted that paragraph 3 of his witness staff confirmed that the Claimant was employee of the Respondent. He admitted that the Respondent was incorporated in Kenya and registered in Uganda. He further admitted that he had not produced in court any statement of accounts to prove that the branch in Uganda was profitable before the Claimant took over the reigns.

18. He contended that the Claimant had a revenue target of Uganda Shillings 250,000,000 but he only achieved Uganda Shillings 41,700,000. (see template in Page 44 of the Respondent's bundle). He maintained that the company made losses while the Claimant was in charge of the subsidiary company but reporting to the Managing Director. He maintained that the Claimant was paid his salary for January to March 2023.

19. In re-examination he admitted that the Respondent has branches in Uganda and Tanzania headed by General Manager who report to the Managing Director on Kenya. He contended that the Page 23-33 of the Respondent's documents was profit and loss account documents for Ugandan office reported in Uganda Shillings and reflected a net loss in January, February and March 2023.

20. He stated that Page 26-33 is a report showing that had reported positive returns after the Claimant exit. He maintained that the appraisal forms filled by the Claimant (Page 43-47) and his emails dated 1st March 2022 confirmed that the business in Uganda plummeted in the first quarter.

21. He contended that the bank statement on Page 39 of the Respondents bundle was proof that the Claimant was paid salary Ug Sh. 2,507,369 on 13th January 2023 and Page 40 Ug Sh. 3,600,000 on 14th January 2023 Ug shs. 570,000 on 11th February Ug shs. 2,270,000. He contended that he was paid more than the salary due to him leading to an audit query on Page 21 of the Respondents bundle. He further averred that

the Claimant had a laptop loan and he owed the Company one month salary in lieu of notice.

22. After the hearing both sides filed written submissions which basically reiterated the facts and testimonies summarized above. Having carefully considered the pleadings, evidence and submissions the following issues fell for determination:-

- a) Whether or not the Claimant was employed by the Respondent.
- b) Whether the resignation by the Claimant amounted to constructive dismissal.
- c) Whether the reliefs sought are merited.

Employment relationship

23. The Claimant averred that his employer was the Respondent herein because it gave him appointment letter signed by its Managing Director. The contract was signed in the Respondents offices in Nairobi and he was reporting to the Respondent's Manager. His salary was indicated as Kenya Shillings 200,000 per month. He maintained that the Ugandan

office was a branch of the Respondent and all operations costs were subject to the Respondent's Head office in Nairobi.

24. The Respondent, on the other hand contended that the Claimant was employed by its subsidiary in Uganda and produced a certificate of registration issued by the companies in Kampala. It contended that the Ugandan subsidiary company and the parent company in Kenya are separate entities and as such the Claimant should direct his claim to the rightful employer, which is the Ugandan subsidiary.

25. I have carefully considered the evidence on record. It is without doubt that the Respondent is a company incorporated in Kenya and then registered in the companies Registry of Uganda on 24th June 2015 under section 53 of the companies act of Uganda.

26. My understanding of registration of a foreign company in another County does not mean incorporation of a new company. It only creates a branch office in the local jurisdiction for purposes of obtaining business licenses. Therefore, in the

case before the court, the registration of the Respondent in Uganda did not create a subsidiary company, but rather, a branch of the company to operate in Uganda.

27. In view of the foregoing I do not find it difficult to find that the so-called Track and trace Uganda was a mere branch of the Respondent and the employees of the branch in Uganda were in fact employees of the Respondent. In the circumstances, I hold that the Claimant was an employee of the Respondent posted to serve the company in Uganda as the General Manager.

28. The foregoing position is fortified by the appointment letter dated 21st August 2021 which was issued by the Respondent's Managing Director and which clearly provided that the Claimant was subject to control by the Respondent's Managing Director. The letter did not state that the Claimant was an employee of any other person, or that he would report to any other entity or person. Consequently, I reiterated my finding that the Claimant was indeed employed by the Respondent

under a contract of service, only that was performed in Uganda.

Constructive dismissal

29. The Claimant testified that he faced frustrations into while working in Uganda because of lack of financial support from the Respondent's Nairobi office. He contended every financial expenditure required approval from Nairobi and that delayed operations. Further the operations of the Uganda office were affected by lack of financial support.

30. He alleged that his salary was not paid for January, February and March 2023 and the only funds send to him were for operations. He produced documents to prove that he was evicted from his residence for non-payment of rent due to the non- payment of salary. As a result, he resigned and sued for constructive dismissal.

31. The Respondent on the other contended that the Claimant was fully in charge of the Ugandan office, which included generating revenue to meet operational costs and salaries. It

blamed the Claimant for running down the company in Ugandan to loss making entity. It further produced documents to prove that the Claimant was paid his salary for January to March 2023 and accused him of resigning before the salary for March 2023 fell due. Therefore, it denied the alleged constructive dismissal.

32. Kenyan statute law does not mention constructive dismissal of employment. The concept of constructive dismissal is a common law principle developed by courts. According to **Concise Oxford English Dictionary 12th Edition**, constructive dismissal refers to

“the changing of an employees’ job or working conditions with the aim of forcing their resignation.”

33. The **Black’s Law Dictionary 10th Edition** defines constructive dismissal or constructive discharge as:-

“An employer’s creation of working conditions that leave a particular employee or group of employees with 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."

34. In the case of **Coca Cola East and Central Africa (2015)**

eKLR, the Court of Appeal held that:-

"The criterion to determine if constructive dismissal has taken place is repudiatory breach of contract through conduct of the employer. The employer's conduct must be such as when viewed objectively, it amounts to a repudiatory and fundamental breach of the contractual obligations...there must be a causal link between the employers' conduct and the reason for employee terminating the contract."

35. From the above precedent and the dictionary explanation, it is clear that in a claim for constructive dismissal, the Claimant must prove that:-

- a) He was forced to resign by the employer's conduct;
- b) That the conduct was intolerable or that the employer fundamentally breached the contract of employment that he treated it as a repudiation of the contract.
- c) The employee must show that he did not condone the said conduct but he resigned without much delay.

36. The Claimant resigned vide the letter dated 29th March 2023 citing unbearable working condition including lack of finance for operational costs and non-payment of salary leading eviction from residential house abroad. The letter is duplicated below:-

“To: The Human Resource Manager

Dear sirs,

REF: RESIGNATION AS THE GENERAL MANAGER
UGANDA

“ I write to inform you of my intention to resign from my position as the General Manager Uganda effectiveintend to serve my notice period as per my employment contract

My career goals have changed as it has been a challenge working under the conditions given in the company as addressed hereunder:

As per my employment contract, my remuneration is paid on a monthly basis. To date, I have not received my salary since January 2023. Additionally, the support I was promised for restructuring the Uganda office have not been awarded in terms of budget and manpower of running the office thus making it impossible to run the Uganda office.

As the General Manager - Uganda, my decision making for the betterment of the company is impeded as my ideas have to go through Kenya which defeats the logic of being the country head.

Financial support is also a major hindrance as all payments have to go through Nairobi even in matters that are quite urgent. This makes situations to be protracted as the payments despite being made late are made by way of cheques. Furthermore, my request for a budget to run the office was never conclusive. Consequently, this hinder growth and efficiency within the Ugandan team and as the manager, it is quite difficult to make decisions that can be acted upon swiftly.

I have been evicted from my residence owing to rent arrears that have accumulated over the past 3 months. My children are currently out of school as well. These living and working conditions are extremely harsh while in a foreign country.

During this transition period. I am available to offer any assistance as required and humbly request that my salary for the last 3 months be remitted to me together with all my dues.

I wish you and the company th very best going forward.

Best regards,

Signed

Klaus David Malumbe

General Manager Uganda

Track and Trace Ltd.”

37. The above resignation was not voluntary. It was forced by the stated circumstances. The Respondent disputed the said allegations by the Claimant’s and contended that it paid the Claimant all his salary up to March 2023 and produced bank statements as proof. It further blamed the Claimant for running down the “Ugandan subsidiary” into a loss-making entity but the Claimant maintained that the Respondent failed him through lack of budgetary support and non-payment of salary.

38. I have considered the evidence on record. To begin with the bank statements do not indicate regular payment to the Claimant. Secondly, the appointment letter provided for salary in Kenya shillings but as confirmed by RW1, salary was paid in Ugandan Shillings. Further it was admitted by RW1 that the Respondent treated the Uganda branch office as an independent entity and the Claimant as the person responsible

for generating revenue to run it without expecting any financial support from the Respondent. The said attitude was like a tree telling its branch to develop its own roots and feed itself or perish.

39. I have already made a finding that the Claimant was a General Manager of the Respondent's branch in Uganda and therefore the Respondent had the full responsibility over the operational costs including Claimant's salary. It was never the responsibility of the Claimant to pay himself.

40. The Respondent did not rebut the Claimant's evidence that all the budget and expenditures were sanctioned by the head office in Nairobi and therefore there was never financial or operational autonomy for the branch in Uganda. This is a kin to what is called the Alter Ego Doctrine. The Respondent has also not rebutted the evidence by the Claimant that he was evicted from his residence in Uganda for non-payment of rent due to lack of salary. In circumstances, I find that the Claimant has proved on a balance of probability that he was exposed to unbearable working conditions abroad without regular

payment of salary forcing him to resign. The resignation was not voluntary and it amounted to constructive dismissal.

Reliefs

41. In view of the foregoing conclusion, I find that the Claimant's resignation amounted to constructive dismissal and I declare that it was unfair termination. For the same reason, he is entitled salary in lieu of notice and compensation for unfair termination under section 49 of the Employment Act. His contract provided for termination notice of one month and therefore I award him one-month salary in lieu of notice equaling kshs . 200,000.

42. As regards compensation for unfair termination, I have noted that he served for about one and half years and he did not cause his termination through misconduct. I have also noted the frustrations he suffered abroad including eviction from his residence due to the non- payment of salary by the Respondent. I further take judicial notice that he had to incur the cost of relocating back to Kenya after the resignation. Putting all those factors into consideration, I award the

Claimant three months salary as compensation for the unfair termination equaling Kshs. 600,000.

43. The claim for leave of one and a half years is granted for the current year as the Claimant admitted that contract provided for 21 days every year but it could not be carried over. Therefore I award him 10.5 days (for six months) equaling to Kshs. 70,000.

44. The Claimant prayed for salary arrears for January to March 2023 is equaling Kshs. 600,000. RW1 alleged that the Claimant was paid salary for January to March 2023 but he denied and maintained that the payment done in January and February 2023 was for operational expenses. I have considered bank statement produced and it is evident that on January and February 2023 the Claimant was paid some money through cheques. However, a Statement of Disbursements (document 10) produced by the Respondent, clearly indicates that the cheques cashed by the Claimant in January and February 2023 were not for his salary but petty cash for the Uganda branch and directors expenses. The statement further indicates that

the last salary was paid to him on 23rd December 2022. Consequently, I award the Claimant the salary arrears of Kshs. 600,000.

45. The Claim for service pay is declined because there is evidence that the Respondent registered the claimant for National Social Security Fund remitted contribution.

46. The prayer for certificate of service is not disputed. The Respondent produced a copy of the certificate of service dated 28th April 2023 and therefore I direct the Claimant to go for it immediately.

Conclusion

47. I have found that the registration of the Claimant in Uganda merely created a branch of the same entity and not an independent company. I have further found that the Claimant was at all material times to this suit an employee of the Respondent answerable to the Managing Director of the Respondent.

48. I have further found that the resignation of the Claimant from employment was not voluntary and it amount to constructive dismissal. Finally, I have found that the claimant is entitled to the reliefs highlighted above. Consequently, I enter Judgment for the Claimant against the Respondent in the following terms:-

a) Declaration that the Claimant's employment was constructively terminated by the Respondent.

b) The Respondent to pay the Claimant the following:-

i) Notice	Kshs. 200,000
ii) Compensation	Kshs. 600,000
iii) Salary arrears	Kshs. 600,000
iv) Leave	Kshs. 70,000

Total	Kshs.
1,470,000	

c) Issuance of certificate of service.

d) The award of damages is subject to statutory deductions.

e) Claimant will have costs plus interest at court rates from the date of this Judgment.

**DATED, SIGNED AND DELIVERED VIRTUALLY IN OPEN
COURT AT NAIROBI THIS 26TH DAY OF FEBRUARY, 2026.**

ONESMUS MAKAU

JUDGE

Appearance:

Kariuki for the Claimant

Onyango for the Respondent