



**Mirithu v County Government of Kiambu & another (Cause E208 of 2022) [2026] KEELRC 486 (KLR) (20 February 2026) (Judgment)**

Neutral citation: [2026] KEELRC 486 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E208 OF 2022  
JW KELI, J  
FEBRUARY 20, 2026**

**BETWEEN**

**NAOMI WANJIKU MIRITHU ..... CLAIMANT**

**AND**

**COUNTY GOVERNMENT OF KIAMBU ..... 1<sup>ST</sup> RESPONDENT**

**KIAMBU COUNTY PUBLIC SERVICE BOARD ..... 2<sup>ND</sup> RESPONDENT**

**JUDGMENT**

1. Vide an amended statement of claim dated the 18<sup>th</sup> of July 2022, the Claimant sued the Respondents and sought the following Orders:-
  - a. The Respondents be and are hereby ordered and directed to pay the Claimant Kshs. 6,575,358.00.
  - b. A declaration be and is hereby made that the Respondents subjected the Claimant to forced labour.
  - c. The Respondents be and are hereby ordered and directed to pay damages of Kshs. 5,000,000.00 for breach of the Claimant's Constitutional rights.
  - d. The Respondents be and are hereby ordered and directed to pay the Claimant interest on the sum of Kshs. 11,575,358.00 at Court rates from the date of filing suit until payment in full.
  - e. The Respondents be and are hereby ordered and directed to issue the Claimant with a Certificate of Service.
  - f. The Respondent be and is hereby ordered and directed to pay the Claimant costs of this together with interest thereon at court rates from the date of filing this suit until payment in full.



- g. Any such other or further relief as this Honourable Court may deem appropriate.
2. The Claimant in support of the claim filed her list of witnesses dated 23<sup>rd</sup> March 2022; witness statement dated 28<sup>th</sup> March 2022; and list and bundle of documents dated 23<sup>rd</sup> March 2022.
  3. The Respondent entered appearance through the County Attorney, County Government of Kiambu on 23<sup>rd</sup> June 2022, and filed a replying affidavit dated 18<sup>th</sup> February 2025.

### **Hearing and evidence**

4. The claimant's case was heard on the 15<sup>th</sup> October 2025, when the claimant testified in her case, adopted as her evidence in chief her witness statement dated 28<sup>th</sup> March 2022, and produced her documents under the list dated 23<sup>rd</sup> March 2022. The claimant was cross-examined by counsel for the Respondent, Ms Maina and re-examined by her counsel, Ogato. The respondent adopted as their evidence a replying affidavit of Waithira Waiyaki dated 26<sup>th</sup> September 2025.

### **The Claimant's case in summary**

5. The Claimant's case is that she was employed by the Respondent on or about the 5<sup>th</sup> day of September 2017, by being offered employment as the Director-Liaison upon terms contained in the Letter of Offer of the same day. She accepted the offer on 8<sup>th</sup> September 2017 by signing a duplicate copy of the letter and returning it to the office of the 2<sup>nd</sup> Respondent, thereby creating a contract of service under the provisions of the *Employment Act*. Express terms of the contract of service between the Respondents and the Claimant was that the contract was for a term of 3 years with effect from 23<sup>rd</sup> August 2017 to 22<sup>nd</sup> August 2020; and she would earn a salary of Kshs. 165,210/- per month. Some implied terms of the contract were that prior to termination of the contract, the Respondents would give Claimant prior and adequate notice of the charges the Respondents intended to bring against her; give the Claimant sufficient time to prepare her defence; inform or explain to the Claimant that she was entitled to have another employee of her choice during the explanation or hearing; hear or consider any representations made by such other employee; and refrain from terminating the contract wrongfully or unfairly. Pursuant to the terms aforesaid, the Claimant commenced her employment on 9<sup>th</sup> September 2017.
6. The Claimant states that her woes began in May 2019, 20 months into her employment, when the 1<sup>st</sup> Respondent suddenly stopped remitting her salary without justification or notification. Upon enquiring into the reason for stoppage of her salary, the Claimant received verbal assurance from the County Secretary, who is the head of the 2<sup>nd</sup> Respondent, that her salary would be reinstated and any arrears owed to her settled. On the strength of this verbal assurance, the Claimant continued working for the Respondents until November 2019 when she took official leave as she was frustrated and no longer able to continue working without pay. The Claimant states that the stoppage of her salary amounted to constructive termination of her employment.
7. It is averred that the Claimant's contract expired on 22<sup>nd</sup> August 2020 without any communication from the Respondents despite innumerable verbal, written and physical follow ups.
8. The Claimant pleads that she was wrongfully and unfairly terminated as she was not given notice of any charges the Respondents preferred against her if at all; she was not afforded an opportunity to prepare and adduce a defence to any charges against her if at all; the Respondents did not inform or explain to her that she was entitled to have another employee of her choice present during the explanation or hearing if at all; the Respondents did not hear or consider any representations made by



such other employee; and the Respondents did not satisfy themselves that any charges laid out against the Claimant, if at all, had merit.

9. The Claimant's claim is for salary for the remainder of the term of the contract of service being 17 months i.e. Kshs. 2,808,570.00 calculated at Kshs.165,210.00 per month; damages for unfair termination of employment i.e. Kshs. 1,982,520.00 being 12 months' salary; service gratuity calculated at 30% of Kshs.165,210.00 for 36 months i.e. Kshs. 1,784,268.00; and damages for breach of the Claimant's Constitutional rights not to be subjected to slavery, servitude and forced labour and to fair labour practices. The Claimant states that she worked in conditions of slave labour since she worked for six (6) months without pay.

### **Respondents' case in brief**

10. The Respondent admits that the Claimant was its employee, having been employed under the terms set out by her in her court documents.
11. It is the Respondent's case that via a letter dated 24th December 2018 Ref KCG/MAUD/CHIEF/VOL.1.3/7, the Chief Officer Municipalities wrote to H.E Governor on the redeployment of the claimant. Later, through a letter referenced: KCG/ST/2/12/VOL XXVI/96 dated 17th June 2019, the County Secretary and Head of Public Service wrote to the Director Human Resource Management requesting him to stop salaries for officers including the Claimant, owing to the fact that these officers were appointed by H.E the Governor and issued with appointment letters contrary to laid down procedures. The salary stoppage salary was therefore based on reasonable grounds and was in line with the law.
12. Through a letter dated 30th November 2019 addressed to the Chief Officer Municipal Administration & Urban development, the claimant requested for unpaid leave with effect from 1<sup>st</sup> November 2019 to enable her handle some personal matters. By this date, she had handed over all the monitoring and evaluation tasks she was dealing with to the KUSP Program Coordinator.
13. The Respondents agree that the Claimant's contract of service was due for expiry on 22<sup>nd</sup> August 2020, but state that she pre-empted its expiry by requesting for unpaid leave with effect from 1st November 2019, approximately 10 months before the expiry date. The claimant proceeded for unpaid leave without approval from the Respondents of her own volition, an action that according to the Respondents, terminated her contract of employment.
14. For the above reasons, the Respondent is emphatic that there was no unfair termination. The Respondent argues that there were no provisions within the Claimant's contract on the extension of her term. They take the position that the claim for injury and damages for wrongful and unfair termination is unfounded, and deny the allegation that the Respondents subjected the Claimant to slavery, servitude and forced labour thereby violating her Constitutional rights.
15. The Respondents challenge the Claimant's claim as against the 1<sup>st</sup> Respondent on the premise that it does not have a legal mandate and or capacity to employ or dismiss the Claimant, this mandate being vested in the 2<sup>nd</sup> Respondent under Part VII of the [County Governments Act](#) 2012. They therefore conclude that the 1<sup>st</sup> Respondent has been wrongfully sued, and state that the Claimant's claim against the 1<sup>st</sup> Respondent is incompetent, fatally defective and bad in law. Further, no intention to sue the Respondents was ever served on them.
16. The parties filed written submissions which the court perused.



## Determination

17. The court having heard the case and perused the pleadings and documents by the parties was of the considered opinion that the issues for determination in the claim were-
  - a. Whether the termination of the employment contract of the claimant amounted to constructive dismissal and,
  - b. Whether the claimant was entitled to relief sought
18. The undisputed facts of the case were that the claimant held a contract of three years from 23<sup>rd</sup> Augusts 2017 to 22<sup>nd</sup> august 2020; the salary was stopped vide communication of 17<sup>th</sup> June 2019 by the County Secretary and Head of Public Service of the Respondent; and that the claimant continued to work without salary for 6 months and proceeded on unpaid leave till expiry of the contract.
19. The claimant stated that the respondent by stopping of her salary in May 2018, it had constructively terminated her employment. On the other hand, the respondent vide replying affidavit of Waithira Waiyaki dated 18th February 2025 stated that the claimant asked for unpaid leave vide letter dated 30th November 2019 for 2 years effective 1st November 2019. That her contract expired on 22<sup>nd</sup> August 2020.
20. The letter of stoppage of salaries was dated 17<sup>th</sup> June 2019 and stated-‘ the following officers were appointed by H.E. Governor and issued with respective letter signed by him contrary to the laid down procedures. In view of this, therefore, urgently stop any further payment of salaries.’” The job of the claimant was indicated as Director Liaison, and it was noted that salaries were stopped effective June 2019(R-ww3). The claimant stated she continued to work as the County Secretary and Head of Public Service of the Respondent assured her that her salary would be reinstated.
21. The court was persuaded plausible reasons existed for the stoppage of salary in that during cross-examination, the Claimant confirmed that the position of Director - Liaison to which she was appointed was never advertised by the Kiambu County Public Service Board (the 2nd Respondent), and that she was never shortlisted for any interview conducted by the County Public Service Board for that position. This confirms that the appointment of the claimant was made in blatant contravention of the statutory framework and the constitutional principles of fair competition and merit, as outlined in Article 232 of *the Constitution*. The respondent contended that an appointment made in violation of mandatory statutory provisions is not merely irregular; it is unlawful and null and void and relied on the decision by the Court of Appeal in *Ngetich & 3 others v County Service Board Bomet & another* (Civil Appeal 20 of 2018) [2022] KECA 575 (KLR) (28 April 2022) that “Be it as it may, the appellants continued to serve and draw salaries for the duration of their respective fixed-term contracts of service. But that is not to say that their defacto recruitment was in accordance with statute law, which requires either recruitment by a Board or by an of icer expressly empowered by the Board in writing to do so pursuant to section 86(1). In the circumstances, we find nothing to fault the learned Judge in concluding that the appellants’ contractual engagement was contrary to statute law. In effect, it was irregular and, therefore, could not found a sustainable claim or right to continue in service on expiry of their contracts.” The court agreed with the claimant that she was entitled to the salary as the employer had not terminated the employment it alleged was irregular. The court upheld decision in *Henry 4 others v County Government of Vihiga* (Employment and Labour Relations Cause 36 of 2023) 2024 KEELRC 2852(KLR), where the Court held “The Respondent cannot rely on defence of its own irregular recruitment process to deny wages for employees who hold valid contracts with it and have worked for the days for which they seek payment. That would be akin to slavery where one gives services for no payment without consent.”



22. The respondent produced a letter by the claimant dated 30<sup>th</sup> November 2019 to the Chief Officer of the Municipal Administration & Urban Development Kiambu County which stated as follows- ‘30th November 2019

Chief Officer,

Municipal Administration & Urban Development

Kiambu

Re: Unpaid Leave Request: I would like to request for a 2-year unpaid leave with effect from 1<sup>st</sup> November 2019 to enable me handle some personal matters.

I have already handed over all the monitoring and evaluation tasks I was dealing with to the KUSP Program Coordinator.

In case of any queries and follow up feel free to contact me on my below phone number.

Thanking you in advance.

Naomi Mirithu Director MAUD.” In view of the foregoing, the court concluded that the claimant’s request for unpaid leave was not a break because of the unpaid salary, but for personal reasons. Constructive dismissal cannot exist without resignation of an employee as per the threshold in decision of the Court of Appeal cited by the claimant in Coca Cola East & Central Africa Limited v Maria Kagai Lugaga [2015] eKLR . The Court of Appeal then went further to set out the following as guiding principles in determining the issue of constructive dismissal at page 129 of the authorities: ‘a. What are the fundamental or essential terms of the contract of employment; b. Is there a repudiatory breach of the fundamental terms of the contract through conduct of the employer; c. 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. d. An objective test is to be applied in evaluating the employer’s conduct. e. There must be a causal link between the employer’s conduct and the reason for employee terminating the contract i.e causation must be proved. f. An employee may leave with or without notice so long as the employer’s conduct is the effective reason for termination. g. The employee must not have accepted, waived, acquiesced or conduct himself to be estopped from asserting repudiatory breach; the employee must within a reasonable time terminate the employment relationship pursuant to the breach. h. The burden to prove repudiatory breach or constructive dismissal is on the employee. i. Facts giving rise to repudiatory breach or constructive dismissal are varied.” The situation of the claimant did not meet the test of constructive dismissal. An employee proceeding on unpaid leave to pursue personal interests remains in employment. No constructive dismissal can be deemed in such circumstances. The contract ended by effluxion of time while the claimant was on voluntary unpaid leave. I find no case of unfair termination on account of constructive dismissal. Had the claimant resigned while the contract was valid the court would have found constructive dismissal on account of the stoppage of salary.

### **Whether the claimant is entitled to the relief sought.**

23. The claimant sought for the following reliefs-
- a. The Respondents be and are hereby ordered and directed to pay the Claimant Kshs.6,575,358.00.



- b. A declaration be and is hereby made that the Respondents subjected the Claimant to forced labour.
  - c. The Respondents be and are hereby ordered and directed to pay damages of Kshs.5,000,000.00 for breach of the Claimant's Constitutional rights.
  - d. The Respondents be and are hereby ordered and directed to pay the Claimant interest on the sum of Kshs. 11,575,358.00 at Court rates from the date of filing suit until payment in full.
  - e. The Respondents be and are hereby ordered and directed to issue the Claimant with a Certificate of Service.
  - f. The Respondent be and is hereby ordered and directed to pay the Claimant costs of this together with interest thereon at court rates from the date of filing this suit until payment in full.
  - g. Any such other or further relief as this Honourable Court may deem appropriate.
24. The court found there was no constructive dismissal. The contract expired on effluxion of time.

### **Unpaid salary**

25. The court found the stoppage of salary without hearing is unfair as the services of the claimant were not terminated. The County Secretary ought to have kept his word to the claimant and paid the salary for work done. The court finds the claimant is entitled to full wages for work done. The claimant told the court her last salary was paid in April 2019 and this was not in dispute. The court awards the claimant's unpaid salary for the months worked. The letter of unpaid leave stated it was effective 1st November 2019. Thus salary was due for the months of May, June, July, August, September and October 2019. The claimant told the court in examination in chief that her last salary was Kshs. 165,210 and this was not controverted at cross-examination. The court then applied the figure Kshs. 165,210 and awarded the unpaid 6 months salary Kshs. 991,260/-.
26. On whether the stoppage of salary amounted to forced labour; it was undisputed fact that the salary of the claimant was stopped but she continued working for 6 months. The court was persuaded by the decision in Jonathan Spangler v Centre for African Family Studies (CAFS) [2017] eKLR, whose facts on the issue of non – payment of salary by the employer despite an employee's labours are in all fours with the facts in the instant case, the Court commented as follows at pages 190 to 191 of the authorities: "112. There is something that a salary does to a man. It gives him job satisfaction. Payment of a salary comes with that spring and gait towards the office to accomplish tasks. The job therefore gives one a dignified self and a purpose to return each day to accomplish more. 113. When then a salary is not paid for work done, the opposite takes place. An employee becomes anxious; demoralized; each day comes with bills and distress; and eventually, with delays and no pay at all, panic comes in and an employee is reduced to begging, scavenging from fellow workers, friends and well-wishers. 114. Each day the employee continues to report to work with the hope and prayer that the employer will pay and pay all arrears so as to reduce the suffering. The reporting to work then becomes a moment of anxiety and with hope that the pain of yesterday will reduce with receipt of pay. When then such pay does not come for days, weeks, and months, ye the employee faithfully continues to attend to work, such continued work performance is no long voluntary. It is forced upon the employee with the hope of a pay and the arrears due. The context of article 31 of *the constitution* then sets in; 30. (1) A person shall not be held in slavery or servitude. (2) A person shall not be required to perform forced labour 115. Such vassalage is not by a simple work that an employee is held by force and made to work; that an employee is placed in bondage and forced to perform his duties; no, circumstances putting an employee in a position that work stops



being dignified but a means to get arrears and due wage, such I find to be in a series of what is servitude. The continuation of work without pay and continued allocation of work and additional duties so as to evade and avoid a redundancy even when one is glaringly present is forced labour. 116. Such is degrading, inhuman and tortuous. Such should not be visited upon any employee who has offered their labours and instead of receiving a salary is instead 10 reduced to inhuman conditions. Such cannot be defined in any other words as the context within which slavery and servitude were conceptualized such were the circumstances envisaged. That no employee should be subjected to slavery and servitude as conditions specifically prohibited under our constitution and conditions that there should be no derogation. Such prohibition is what should happen to all civilized societies which are governed by the rule of law and are democratic such as ours..." The claimant is entitled to compensation for violation of her constitutional right to fair labour practice and not to be subjected to forced labour. While a plausible reason for the stoppage was raised by the respondent of the claimant having been irregularly employed, the court found the same was done without hearing the claimant and others. The claimant did not resign no were the services terminated. She worked without salary. The court finds that the award for constitutional right violation against forced labour and unfair labour practice is deserved, and the same is awarded for Kshs. 300,000, taking into account the manner of employment and the short contract.

27. On the claim for gratuity, the court on perusal of the letter of employment did not find any clause on gratuity. The claimant submitted as follows- Since the Claimant was not under any pension scheme and her terminal benefits are not determined under the *Pensions Act*, Cap. 189 of the Laws of Kenya, she is eligible 12 for gratuity upon leaving the Respondents' service under the provisions of clause D 19 (3) of the Public Service Commission of Kenya Human Resource Policies and Procedures Manual for the Public Service, 2016 ("the policy"). In the Claimant's letter of appointment, any allowances due to the Claimant would be at the approved rates as per the Salaries and Remuneration Commission ("SRC") guidelines. We invite this honourable Court to use the formula as published by the SRC in Gazette Notice No. 2888 of 1st March, 2013 which provides that County State Officers serving on contract are to be paid a service gratuity at the end of the term at the rate of 31% of annual basic pay for every year served. In *Nelson Keshei v Narok County Government & another* [2019] eKLR, at pages 268 to 272 of the authorities, Mbaru J. awarded Service Gratuity the Claimant who had worked as a County Executive Committee member of Narok County Government for just over 3 years computed using the SRC circular.
28. The court on perusal of the payslip did not find any pension item. The court is inclined to apply the guidelines published by the Salary and Remuneration Commission in the Gazette Notice No. 2888 of 1st March 2013 which provides:
  - (i) A State officer, serving or appointed for a fixed term of office, shall be paid a service gratuity at the rate of 31 per cent of the annual pensionable emoluments for the term served. "The Claimant is hereby awarded service gratuity for the 3 years served as hereunder:(31/100 X 165, 210 X 36/12) thus Ksh. 153,645.30.

### **In conclusion**

29. The court found no proof on balance of probabilities of the claim for constructive dismissal. Judgment is entered for the claimant against the respondent as follows-
  - a. Compensation for violation of constitutional rights not to be subjected to forced labour and unfair labour practices Kshs. 300,000/-.
  - b. unpaid wages for 6 months Kshs. 991,260/-.



- c. Gratuity Kshs. 153,645.30.
- d. The amounts above (a, b and c) are awarded with interest at the court rate from the date of filing the suit.
- e. Cost of the suit.
- f. Certificate of service to be issued by the respondent pursuant to section 51 of the [Employment Act](#)

30. It is so ordered.

**DATED, SIGNED, AND DELIVERED IN OPEN COURT AT NAIROBI THIS 20<sup>TH</sup> DAY OF FEBRUARY, 2026.**

**J.W. KELI,**

**JUDGE.**

In The Presence Of:

Court Assistant: Otieno

Claimant: Namarome h/b Mr. Ongato

Respondent: absent

