Wanjora v Partnership for African Social & Governance Research (Cause E919 of 2022) [2026] KEELRC 488 (KLR) (20 February 2026) (Judgment)

Neutral citation: [2026] KEELRC 488 (KLR)

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE E919 OF 2022

JW KELI, J

FEBRUARY 20, 2026

BETWEEN

COLLETA NJERI WANJORA .... CLAIMANT

AND

PARTNERSHIP FOR AFRICAN SOCIAL & GOVERNANCE RESEARCH .... RESPONDENT

JUDGMENT

1. The claimant sued the respondent vide statement of claim dated 9th November 2022, alleging constructive dismissal from employment. The claimant served on various fixed-term contracts from 20th October 2012, of 3 years and renewed several times, with the last contract ending 30th June 2022. The claimant was aggrieved with the failure to be issued with a new contract and issued the respondent with a letter of resignation alleging constructive dismissal. The claimant sought for the following relief against the respondent-

    a) A declaration that the Claimant was constructively dismissed from employment.

    b) Payment of the Claimant's terminal dues and 12 months' salary compensation as set out in paragraphs 25 and 26 herein above, totaling to Kshs. 8,645,927/=.

    c) A declaration that the Respondent breached the Claimant's rights under Articles 29, 41 and 47 of *the Constitution*.

    d) A declaration that the Claimant is entitled to the provident fund benefit arrears as per annex b of the contract which the Respondent was to contribute 8% of the Claimant's annual gross salary total to Kshs. 520,439/=.

    e) Damages for breach of the Claimant's legitimate and reasonable expectations.

f) Damages for breach of the Claimants' rights protected under Article 41 and 47 of *the Constitution*.

g) Interests at court rates.

h) Costs of the suit.

2. The claimant filed a witness statement dated 9th November 2022, which she adopted as her evidence in chief. The claimant further filed and relied on her documents under list of documents dated 10th November 2022 at pages 1-86 of the claimant's bundle.

3. The claim was opposed by the respondent, who filed a statement of response dated 18th January 2023, together with a list of documents dated 1st February 2023. The respondent filed and relied on the witness statement of Constance Furaha Mwahunga dated 16th February 2023. The respondent adopted the witness statement as the evidence in chief.

Hearing and evidence

4. The claimant's case was heard on the 22nd September 2026, when the claimant testified on oath, adopting her witness statement dated 9th November 2022 as her evidence in chief. She further produced her documents as evidence in chief, as per the list of documents dated 10th November 2022 (pages 17-104 of the claimant's trial bundle). The claimant was cross-examined by counsel for the respondent, Mr. Ashitiva and re-examined by her counsel Ms. Nekesa holding brief for Mrs. Kashindi.

5. The respondent's case was heard on the 1st October 2025. The respondent called as its witness Constance Furaha Mwahunga, who testified on oath and adopted as the respondent's evidence in chief her witness statement dated 16th February 2023 and produced the documents filed by the respondent under list dated 1st February 2023(documents at pages 5-65 of the respondent's trial bundle).

Claimant's case

6. The claimant adopted as her evidence in chief her witness statement dated 9th November 2022 as follows-

By a contract of employment dated 20th October, 2012, I was enlisted to serve the Respondent as a Finance Assistant in the Finance & Administration Units and at an annual gross salary of Kshs. 1,288,356/= payable as monthly gross rate of Kshs. 107,363/=. (a copy of the contract dated 20th October, 2012 is at pages 1-10 of the Claimant's bundle) My contract of employment was renewed and became effective 22nd October, 2015 for a period of 3 years to 21st October, 2018 at an annual gross salary of Kshs. 1,326,999/= payable as monthly gross rate of Kshs. 110,583/=. (A copy of the contract dated 20th October, 2015 is at pages 11 – 15 of the Claimant's bundle) The contract further provided that I would be entitled to an annual salary adjustment (with consequential changes to benefits like provident fund contributions) based on a mix of cost of living allowance (COLA) and documented annual performance reviews (in accordance with the Human Resource policy) and that the salary adjustment envelope would be determined for the following year as part of the Board's approval of the Plan of Work and Budget (PWB) each Nov/Dec as described in the Organization's Financial and Administration Policy, subject to availability of funds. My employment was further extended vide a contract of employment dated 22nd October, 2018 (pages 16- 23 of the Claimant's bundle) for another period to 21st October, 2020 and at an annual gross salary of Kshs. 1,620,000/= payable monthly at Kshs. 135,000/= gross. Clause 6 of the contract provided that annual increment to my salary would be made as provided under the Organization's PASGR's Policies (a mix of cost of living and performance, based on availability of funding). Due to my diligence and faithfulness

in service, my employment contract was again extended vide a letter dated 22nd October, 2020 to 21st October, 2021 (pages 24 of the Claimant's bundle) and at a monthly gross salary of Kshs. 135,000/=. The contract again provided that my salary was to remain at Kshs. 135,000/= during the period or as otherwise provided by PASGR's Board of Directors subject to availability of funding. This contract was further extended to 31st December, 2021 by a contract of employment dated 22nd October, 2021 (see pages 25 of the Claimant's bundle of documents), and at a monthly gross salary of Kshs. 135,000/= subject to availability of funding. I continued to faithfully and diligently serve the Organization and on or about 14th March, 2022, my employment was further extended vide a contract of employment of even date and with effect from 31st December, 2021 to 30th June, 2022 (pages 26 of the Claimant's bundle). According to the contract of employment, 'all other terms and conditions of (my) employment, including the position held' were to remain as detailed in my employment contract of 22nd October, 2018. Upon expiry of the contract ending 22nd October, 2021, the Respondent further extended my employment vide a contract of employment of dated 22nd October, 2021 to 31st December, 2021 and a further extension was made on 14th March 2022 but backdated with effect from 31st December, 2021 to 30th June, 2022, which extension was in breach of the Respondent's own Human Resource Procedure and policy manual which stipulates that contracts may be extended up to a maximum of one year or succeeded by another contract. The Respondent's failure to issue me with a new contract given that the existing contract had already been extended for one year was unfair and a further frustration seeking to hound me out of employment. Clause 3.4.1 of the Respondent's Human Resource Procedure & Policy Manual (pages 27 - 59 of the Claimant's bundle) provides in part as hereunder: "All PASGR staff shall be engaged on fixed-term employment contracts ranging from one to three years in length. No contract shall exceed a period of three years. Contracts may be extended (to a maximum of a year) or succeeded by another contract as determined by the ED, and relevant supervisor or the Board in case of Grades A and B." The Respondent in utter violation of my labour and constitutional rights, and in disregard to my exemplary performance, during the period I had been in employment with the Respondent, the Respondent had been subjecting me to aggressive intimidation, mental and emotional distress, anxiety and unfair treatment including being issued with a show cause letter on unsubstantiated allegations.(see pages 60 –64 of the Claimant's bundle) Although I maintained my position of being a Finance Assistant (entry level), I was assigned a number of tasks (since 2018) beyond my position for 10 years and outside my job description including management of projects (the financial aspect). The Respondent also retained me at that pay grade in order to avoid compensation commensurate with the tasks to which I had been assigned outside my job description. The Respondent's failure and/or refusal to adjust my salaries as per my contracts of service also violated Clause 4.1 of the Organization's Human Resource Policies and Procedures (pages 27- 59 of the Claimant's bundle) which provides as follows: 4.1.1.1.1 Negotiation of salaries shall be done at the time of employment and during the process of renewing contracts subject to budgetary constraints. Salaries shall fall within the provisions of the compensation policy and staff grades. 4.1.1.1.2 Subject to availability of funds, salary levels will be reviewed on the anniversary date of employment for purposes of making adjustments for cost of living and performance. There were neither negotiations of salaries during the process of contracts renewal nor on the date of anniversary of employment and no reasons had been given for the failure by the Respondent to make the necessary salary adjustments as per the Human Resources Policy yet I was entitled to annual salary increment subject to the Organization's Policies (a mix of cost of living and performance, based on availability of funding). However, the Respondent effected the pay increment only once in 10 years during my renewed contract of 22nd October, 2018 and it was not . Upon receipt of my letter of 27th April, 2022, and in response thereto by emails of 27th April, 2022 and 9th May, 2022 (see page 68 of the Claimant's bundle), the Respondent declined and/or ignored to address my issues/claims. For instance: a) The Respondent alleged through its response of 9th May, 2022 that my salary was increased which is not

true. Save for two instances in 2013 and 2018, my salaries remained unchanged for a period of 10 years I served the Respondent despite there being clear contractual and policy provisions that entitled me to annual salary b) c) increments; By email of 27th April, 2022 the Respondent alleged that I was out of employment yet I had remained in the Respondent's service for a period of over 10 years. By letter of 9th May, 2022 (pages 69 -70 of the Claimant's bundle) the Respondent alleged that I intended to bring disrepute to it which was not true because I highlighted that in 2021, a male staff joined the department with lesser professional qualifications than mine, he was assigned similar tasks to mine and was paid over two times my salary. My urge and act of highlighting the Respondent's discrepancy which demonstrates discrimination and unfair treatment could not be termed as disrepute. Further to the above, as a continuation of the Respondent's malicious act and frustration to me, the Respondent hastily and inhumanely withdrew my medical insurance cover despite my email of 31st May 2022 (see pages 71 -72 of the Claimant's bundle) highlighting the Board Chairperson's position, that it was not necessary for staff to be asked to surrender medical card since the annual premium already paid are not refundable. The above hostile events and others that happened in the past made the work environment intolerable for me causing me mental and emotional distress. As a result of the inevitable disenchantment, I was thus compelled to offer my resignation against my will vide a letter dated 11th May, 2022 (see pages 73 - 74 of the Claimant's bundle) by issuing a one month's resignation notice as per the contractual requirement. I was thus constructively dismissed from employment. Consequent to my resignation, I cleared and handed over to the Respondent on 30th May, 2022 (see a copy of the Claimant's clearance form at pages 75- 78 of the Claimant's bundle) but was never paid all my salary arrears and benefits as I would be entitled to as per my contracts of employment. In view of the above, the Respondent's unlawful and unfair actions breached my right to fair labour practice and fair administrative action as guaranteed by the law. The Respondent also breached my fundamental rights under *the Constitution* of Kenya, 2010. As a result of the Respondent's unlawful actions and omissions, I together with those who depend on me, have continued to be subjected to untold financial hardship and embarrassment arising from my inability to satisfy my short and long-term financial commitments. Considering me for salary increment on an annual basis as required by the clauses within the individual contracts of employment. The Respondent's actions and omissions were therefore in utter breach of the contractual terms in so far as the salary increment is concerned. The Respondent subjected me to unfair and unlawful discrimination in terms of salaries review since I had no salary rise all the time my contracts were being extended yet it was a contractual right as per the latest contract and the Respondent's Human Resource policy. On the other hand, the Respondent's other employees were subjected to salary reviews, including a male staff who was hired in my department on a salary of Kshs. 300,000/= which was 2.2 times more than mine. The new staff had less professional qualifications as compared to mine and yet we performed similar duties, not to mention that I had 9 years seniority on the job as at the time the male employee was being hired. The Respondent acted in contravention of the law which further requires the employer to pay his employees equal Remuneration for work of equal value. Noting the above breaches and continued trend by the Respondent to breach my constitutional rights, by a letter dated 27th April, 2022 (pages 65- 67 of the Claimant's bundle) I protested and sought among other things to be paid all my salary arrears and also challenged the abrupt change of my employment terms wherein the Respondent indicated by its extension of contract letter dated 14th March, 2022 which did not give explanation on how the Respondent intended to pay the salary increments that I was entitled to in line with the terms of the preceding contracts. This was a scheme by the Respondent to frustrate my employment and to unfairly do away with my services yet I had been in constant employment despite the violation of the express contractual terms that had been governing my employment relationship with the Respondent.

7. The claimant computed her due salary arrears from years 2012 to 2021 for the total sum of Kshs. 6,505,488. The same was based on expected salary increment on the basis of cost-of-living adjustments,

and the claimant alleged that the adjustment was based on Central Bank of Kenya inflation rates over the years. The claimant further stated that she based the inflation rates on the 2018 salary increment by the employer at a rate of 22%.

The respondent's case in brief

8. The respondent adopted the statement of its witness Constance Furaha Mwahunga, who testified on oath and adopted as the respondent's evidence in chief her witness statement dated 16th February 2023. The evidence was as follows - The Statement of Constance Furaha Mwahunga, the head, finance and administration of the Partnership for African Social & Governance Research, the Respondent herein, who stated as follows-

9. I am aware that the Claimant was employed by the Respondent for a contractual and specified term in the year 2018 as Finance Assistant in the Respondent's Finance Unit, through a fixed term Renewal of Employment Agreement Contract dated 22nd October, 2018. I am also aware that the Respondent's position in this matter is that any prior contractual and/or employee-employer relationship that existed between the Claimant and the Respondent was extinguished, alongside any claim relative thereto, by the said contract of 22nd October, 2018 and that the Respondent's obligations prior to that date were duly discharged. In any event, any claim herein being asserted by the Claimant as arising in connection with any contract prior to the 22nd October, 2018 is time barred, and, therefore, not sustainable in law or otherwise. Indeed, it is evident from the said Contract of 22nd October, 2018 and the annexures thereto (also 'the parent Contract'), between the parties that the same was for a fixed-term duration for the period between 22nd October, 2018 and 21st October, 2020 and, in that regard, the contract stated that: -

   Duration

   'This Agreement will take effect from October 22, 2018 to October 21, 2020 subject to the availability of funding and unless terminated by either party in accordance with the termination provisions described in paragraphs 10 and 11, or succeeded by a different agreement, whichever is the sooner.'

   The said parent Contract of 22nd October, 2018 was sequentially/systematically vide the following documents:- renewed and specific terms thereof mutually retained, by both parties hereto

   (i) Renewal of Employment Contract dated 30th September, 2020;

   (ii) Renewal of Employment Contract dated 22nd October, 2021; In line with and reliance upon the then established practice and conduct of the parties and, in particular, reliance upon the Claimant's previous representations vide the Contract renewals at paragraph 5 above, the Respondent yet again offered to renew the employer-employee relationship between the parties vide an offer in that regard for Extension of Employment Agreement dated 14th March, 2022 but the Claimant declined to take the same up. I am aware that the renewals indicated at paragraph 5 hereof, as well as the extension offer indicated at paragraph 6 above were all in line with the terms of the parent Contract of 22nd October, 2018 and the annexures thereto, as well as within the provisions under the Respondent's applicable Human Resource Policies and Procedures. I believe that, by virtue of the specific terms of the parent Contract of 22nd October, 2018 as retained vide the renewals at paragraph 5 hereof; coupled with the Claimant's conduct of, inter alia, not raising any issue regarding any dues, claim or other entitlement that she now asserts, the Claimant thereby represented and/or acquiesced to the extent to which in law and fact is ipso facto estopped from asserting, claiming or representing otherwise at this rather late stage. I wish to state that, the terms of engagement, including but not limited to the Claimant's salary, responsibilities, assignments, tasks, concerns that were raised about her

performance, et al, were at all times in accordance with the parties' contractual terms and that no discrimination, unlawful, unfair or other irregular treatment were meted out against the Claimant as alleged or at all. Indeed, the Respondent has, in all of its actions, endeavoured to uphold fairness and application of the best practices on all human resource issues and has never discriminated against the Claimant or indeed any person as asserted or at all and further that contrary to the Claimant's assertions and the decision not to take up the extension offer referred to in the Claim and her purported resignation were aforethought and were a scheme driven by the Claimant's desire to concoct assertions aimed and calculated at bringing this Claim for benefits and reliefs to which she is otherwise not entitled. In any event, the Claimant never raised or reported to the Respondent of any issue of discrimination meted against her. In any event, the issues being raised at the said paragraphs and elsewhere were satisfactorily addressed vide both the Respondent's letter of 9th May. 2022 and M/s. Swanva & Swanva Advocates' letter of 18th August, 2022 (on behalf of the Respondent).1, therefore, reiterate the foregoing and state that none of the Claimant's rights, constitutional or otherwise, have never been breached, and she is not entitled to any benefits as have been analysed or made in the Claim or elsewhere. In the circumstances herein, the Claimant is not justified to claim anything since, parties entering into an employment relationship do so based on the need, purpose or the interests of both parties or the persons involved and that once there is a written contract, the Court will seek to give meaning to such written contract based on its terms in determining any issue that may arise. Accordingly, the Claimant having been employed on a fixed term contract that was to and did end. and also the fact that she had been given but declined the extension offer, she voluntarily resigned and determined any employer-employee relationship that was existent between her and the Respondent then. She cannot therefore now assert or allege any expectation or constructive dismissal by the Respondent. Indeed, the Claimant's resignation, although disguised as involuntary, is valid and voluntary in every sense and therefore the entire Claim and reliefs being urged herein are an attempt at inviting this Honourable Court to extend and re-write the employment contract between the parties and the reliefs that are usually attached thereto; an invitation the Court should resist since to do so would be contrary to what was intended, as evidenced through the entire fabric of the relationship that existed between the parties over the duration thereof and, as such, would be to grant reliefs that are otherwise anchorless and untenable. I am aware that the Respondent was served with a demand and notice of intention to sue by the Claimant but denies that the same had any basis as claimed or at all.

Determination

Issues for determination

10. The claimant outlined the following issues for determination -

    a. Whether the Respondent’s conduct amounted to a fundamental breach of the Claimant’s employment contract, thereby rendering continued employment intolerable and leading to constructive dismissal.

    b. Whether, as a consequence of that constructive dismissal, the Claimant is entitled to the remedies provided under Section 49 of the *Employment Act*, together with the contractual and constitutional reliefs pleaded.

11. Conversely, the respondent outlined the following issues for determination-

i. Whether the Respondent breached the Claimant's employment contract or violated any statutory or constitutional right?

ii. Whether the Claimant voluntarily resigned?

iii. Whether the Claimant deserves the reliefs being sought?

12. The court, having heard the parties and perused the issues outlined by the parties in submissions, was of the considered opinion that the issues for determination in the claim were as follows-

a. Whether the termination of the employment amounted to constructive dismissal

b. Whether the claimant was entitled to the relief sought.

Whether the termination of the employment amounted to constructive dismissal

Claimant's submissions

13. The respondent breached the employment contract rendering the claimant's employment intolerable and led to constructive dismissal. It is trite that where an employee resigns, the Court must assess whether that resignation was voluntary, or whether it was compelled by the employer's conduct amounting to a fundamental breach of the employment contract. Constructive dismissal arises not from an express act of termination, but from the employer's conduct which, by its nature or cumulative effect, makes continued employment untenable. In such cases, the employee's resignation is not voluntary; it is legally deemed to be a termination initiated by the employer. The governing principles for constructive dismissal were articulated by the Court of Appeal in Coca-Cola East & Central Africa Ltd v Maria Kagai Ligaga [2015] eKLR, which held that constructive dismissal occurs where inter alia: a. The employer's conduct amounts to a fundamental or repudiatory breach of the contract of employment; b. The breach is sufficiently serious to demonstrate an intention not to be bound by the contract; c. The employee resigns in response to that breach; and d. The employee does not unduly delay in resigning, thereby affirming the contract. 19. In the Coca Cola Case (Supra), the Court of Appeal cited with approval, the judgment of the trial court thus: "The trial court in considering the criteria for constructive dismissal, held as follows at pages 12 and 13 of the judgment: "There are several issues that could be framed for the purpose of settling this dispute. The core issue is whether Maria terminated her contract of employment of her own free will or whether she was let into doing so. Both parties did not put their finger on the basic principle at play in this dispute. They skirted around the implicated legal concept without giving it a name. The matter revolves around the concept known in employment law as "constructive dismissal." It is defined in most employment statutes in other jurisdictions but unfortunately, has not been defined in our employment and labour statutes. It is adequately defined in common law. Some of the statutes that have defined the concept include the English Employment Rights Act of 1996 and the South African *Labour Relations Act* Number 66 of 1995. Under a majority of statutory laws, constructive dismissal occurs where, "an employee terminates the contract under which he is employed, (with or without malice) in circumstances in which he is entitled to terminate it without notice, by reason of the employer's conduct." These Acts of foreign parliaments do not of course bind this Court, but an overall understanding of the concept is gained from a comparative look, particularly in view of the omission in our own statutory law. Common law, which has been embraced in our law through section 12 of the *Labour Institutions Act* Number 12 of 2007, treats constructive dismissal as a repudiatory breach by the employer of the contract of employment. The employer's behavior in either case must be shown to be so heinous, so intolerable, that it made it considerably difficult for the employee to continue working. The employee initiates the termination, believing herself, to have been fired. The employee needs to show that the

employer, without reasonable or proper cause conducted himself in a manner likely to destroy or seriously damage the employment relationship. Resignation is regarded as constructive dismissal if the employer's conduct is a significant breach of the contract of employment and that the conduct shows the employer is no longer interested in being bound by the terms of the contract. There is no practical difference in terms of effect, between the statutory and the common law concept on constructive dismissal; it is unlikely that an employer is in fundamental breach of the contract of employment, but all the same is found to have acted fairly. It is very unlikely that a common law breach occurs without amounting to a statutory wrong. The employee's resignation is therefore treated as an actual dismissal by the employer and the employee may claim compensation for unfair termination...... The onus of proof in this form of employment termination, unlike in other termination, lies with the employee. While under Sections 43 and 45 of the *Employment Act* 2007 the duty in showing that termination was fair is on the employer, constructive dismissal demands the employee demonstrates that his resignation was justified. Other collateral issues that must be shown by the employee are; that the employer made a fundamental change in the contract of employment, and that such change was unilateral; that the situation was so intolerable the employee was unable to continue working; that the employee would have continued working had the employer not created the intolerable work environment; and, that the employee resigned because he did not believe the employer would abandon the pattern of creating unacceptable work environment. These are some of the rules governing a claim for constructive dismissal." Applying these principles to the present case, the Claimant has shown that the Respondent's actions and omissions amounted to a fundamental breach of the contract, effectively rendering her continued employment impossible, giving effect to the holding in the Coca Cola Case(supra), in which the Court of Appeal followed with approval the authoritative meaning of constructive dismissal as was articulated by Lord Denning MR in Western Excavating(ECC)Ltd v. Sharp(1978)ICR 222, as follows: "If the employer is guilty of conduct which is a 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, then the employee is entitled to treat himself as discharged from any further performance. If he does so, then he terminates the contract by reason of the employer's conduct. He is constructively dismissed. The employee is entitled in those circumstances to leave at the instant without giving any notice at all or alternatively, he may give notice and say that he is leaving at the end of the notice. But the conduct must in either case be sufficiently serious to entitle him to leave at once (emphasis ours). (See also Nottingham County Council -v- Meikle (2005) ICR 1)." The Court in the Coca-Cola Case (supra) underscored that an employee is entitled to regard herself as dismissed where the employer's behaviour shows an intention not to be bound by the contract, and that the test is objective-whether a reasonable employee in the Claimant's position would have felt compelled to resign. The concept of constructive dismissal is underpinned on the notion that there is implied in a contract of employment a term that the employer will not, without reasonable and proper cause, conduct itself in a manner calculated or highly likely to destroy or seriously damage the relationship of confidence and trust between the employer and the employee. Breach of that implied term will entitle the employee to treat him or herself as wrongfully dismissed. The Court in Henry Ochido v. NGO Co-ordination Board (2015) cited with approval the holding in the case of Mariana Onica and Another versus Sky Aero Limited, Cause No.1815 of 2014 thus; ... in bringing such a dispute, it is for the employee to prove that the employer was responsible for introducing the intolerable condition, and for the employee to prove that there was no other way of resolving the issue except for resignation. In other words, it is not for the employer or the Respondent in this case to show that he did not introduce any intolerable condition it is for the employee to show that he did. The evidence on record demonstrates that the Respondent's conduct cumulatively destroyed the mutual trust and confidence inherent in the employment relationship. The breaches were not isolated or administrative oversights; they were persistent, deliberate and went to

the root of the Claimant's terms of service. As will be demonstrated hereunder, the Respondent's breach of the employment contract is evidenced through several distinct acts and omissions, including: i. Irregular contract and renewal/extension practices. ii. Failure to effect contractual salary adjustments. iii. Causing the Claimant to perform duties beyond job description without commensurate pay. iv. Discrimination and related show cause process. v. Failure to maintain a conducive and respectful work environment, coercion and undue influence resulting in constructive dismissal. i. Irregular contract and renewal/extension practices. Clause 3.4.1 of the 2020 Human Resource Policy and Manual (page 50 of the CTB) as read with clause 2.4.1 of the earlier 2012 Human Resource Policy and Manual (page 32 of the RTB) states that staff are to be engaged on fixed term employment contracts ranging from one to three years in duration. More specifically, the clause reads: 3.4.1 All PASGR staff shall be engaged on fixed-term employment contracts ranging from one to three years in length. No contract shall exceed a period of three years. Contracts may be extended (to a maximum of a year) or succeeded by another contract as determined by the ED, and relevant supervisor or the Board in the case of Grades A and B. Employment contracts shall be based on the template presented in Annex B (developed in liaison with legal counsel but updated from time to time in order to comply with the *Employment Act*). . The foregoing provision implies that any renewal or extension of an employment contract was not to exceed one year. In practice, the Claimant served the Respondent continuously and without interruption from 22nd October 2012 to 11th May 2022, when she resigned upon giving one month's notice. Her employment was governed by successive fixed-term contracts and extensions as follows: a. 22nd October 2012-21st October 2015(3 years) (page 19 of CTB) b. Renewal from 22nd October 2015-21st October 2018(3 years) (page 29 of CTB) c. Renewal from 22nd October 2018-21st October 2020(2 years) (page 34 of CTB) d. Extension from 22nd October 2020-21st October 2021(1 year) (page 42 of CTB) e. Extension from 22nd October 2021-31st December 2021(2 months) (page 43 of the CTB) f. Contract backdated, extended from to 31st December 2021-30th June 2022(6 months) (page 44 of CTB). The Claimant refused to sign due to coercion and influence to sign it and further, for failure to address her grievances as further detailed below. This chronology demonstrates a continuous employment relationship spanning nearly ten years, characterised by serial renewals and extensions well beyond the policy framework under Clause 3.4.1 of the Respondent's Human Resource Manual. 27. The contract extension referred to under paragraph (d) above, running from 22nd October 2020 to 21st October 2021, had already met the one-year maximum permissible limit for extensions under the Respondent's own Human Resource Policy. In accordance with Clause 3.4.1 of the HR Manual, any subsequent engagement beyond that period ought to have been effected through the issuance of a new contract, rather than further extensions. Despite this clear policy directive, the Respondent proceeded to grant additional extensions of two months and nine days and six months respectively, in flagrant breach of its own Human Resource Policy and Manual and by extension, in breach of the Claimant's contract of employment, since the said policies formed an integral part of the contractual framework governing the parties' relationship. This breach of the Respondent's own renewal/extension policy was further compounded by its conduct during the final extension period. For the first time in the history of renewals, the Respondent's letter dated 14th March 2022 (page 44 of the Claimant's Trial Bundle), which backdated the contract extension to run from 31st December 2021 to 30th June 2022, expressly stated that it was "not obligated to extend the contract beyond that date." Prior to this, for the first time also, the Respondent had issued an extension of less than three months. This sudden disclaimer and departure from the duration of previous extensions, introduced after nearly a decade of consistent renewals and extensions, represented a stark departure from the Respondent's past practice and signalled an underlying intention to bring the Claimant's employment to an end. The Respondent's actions, viewed against the backdrop of its repeated policy violations, demonstrate a deliberate effort to frustrate the Claimant's continued employment under the guise of routine contract administration. The Respondent's witness, without any supporting

pleading or evidence, stated at trial that the Claimant was not the only employee that received a shortterm contract up to June 2022 including the witness herself, but there was no proof to back this up. In addition, RW1 continued working for the Respondent beyond June 2022, which is consistent with the assertion that all employees were serving under similar terms. This issue was also not pleaded and first came up at trial and should be completely disregarded. The Respondent has relied on a lop-sided interpretation of clause 3.4.1 of the HR Policy to argue that there was no violation. The Claimant's position is that the clause is clear in black and white as to its meaning. If however, the court finds that there is an ambiguity, it should be resolved in line with the contra-preferentum rule of interpretation noting that this was a document authored and issued by the Respondent as guided by the decision in Bhogatia v Madison Group (Cause 6564 of 2020) [2024] thus: Applying the rule of contra proferentem herein, it goes without saying that any ambiguity in the contracts of employment should be construed against the Respondent. In this regard, I will follow the determination of the Court (Radido, J) in the case of Mwangi Ngumo v Kenya Institute of Management [2012] eKLR where the learned Judged reckoned as follows: -"…I do agree with the Claimant that any ambiguities in the contract should be construed against the party who drew the contract and that party is the respondent. This is what has been construed as the contra proferentrum rule and which was applied in the case of Horne Coupar v Velletta & Co. 2010 BCSC 483 relied on by the Claimant." This position was also confirmed by the Court of Appeal in Ian Edwards v Bytes Technology Group Kenya Ltd [2018] KECA 428 (KLR) as follows: Even applying the contra proferentem rule, a clause in a contract considered to be ambiguous should be interpreted against the interests of the party that drafted it, in this case the respondent. The terms of the contract cannot be said to have taken the respondent by surprise and in our view, it knew of its obligation under the employment contract… 32. In the case of Keen Kleeners Limited v Kenya Plantation and Agricultural workers' Union (Civil Appeal 101 of 2019) [2021] KECA 352 (KLR) (17 December 2021) (Judgment), the Court of Appeal cited with approval the decision in In South African Clothing and Textile Worker's Union and Another v CADEMA Industries (Pty) Ltd (C 277/05) [2008] ZALC 5, in which a worker was similarly employed on several fixed term contracts on a continuous and unbroken period of 4 ½ years. The court held that the several renewals or extensions over this period without any discussions as to why they were renewed, created a reasonable expectation that the contract would be renewed. The Court in the Keen Kleeners Limited Case(supra) further held that the trial Court had a sound basis for reaching its conclusion that a legitimate expectation for renewal was created, emphasizing that the long standing, uninterrupted and consistent practice of renewing or extending the grievants' contracts would have surely led them to believe that their last contracts would be renewed, more so in the absence of any reasonable notice to the contrary given to them by the appellant. In the present case, the deviation from established practice cannot be viewed in isolation. It occurred after a sustained period during which the Claimant had consistently met all performance expectations and complied with contractual obligations. The Respondent's abrupt renunciation of its apparent duty to renew, coupled with its prior inconsistent application of the renewal policy, underscores a pattern of arbitrariness and selective enforcement. Such conduct is not only procedurally unfair but also indicative of an intent to undermine the Claimant's rights, contrary to the principles of good faith and fair dealing inherent in employment relationships. By failing to adhere to fair, transparent and consistent contract renewal practices, the Respondent violated contractual and policy provisions and also breached the Claimant's legitimate expectation of continuity and security in employment. The Claimant was deprived of the opportunity to plan her professional future, placed under undue uncertainty and subjected to an environment that was inherently hostile and destabilising. This conduct directly amounts to a breach of the employment contract, as it fundamentally undermines the terms and conditions under which the Claimant had agreed to serve. Consequently, the Respondent's actions rendered the Claimant's continued employment intolerable. The deliberate departure from

established renewal norms, combined with the arbitrary denial of an extension despite the Claimant's consistent performance, as well the failure to properly address her grievances effectively forced the Claimant to resign. The circumstances therefore satisfy the legal test for constructive dismissal, as the Respondent, through its conduct, created conditions so adverse that the Claimant had no reasonable alternative but to terminate her employment. The Claimant's resignation on 11th May 2022, following her unresolved grievance and the Respondent's dismissive response of 9th May 2022, was therefore not voluntary but a direct consequence of the Respondent's conduct. ii. Failure to effect contractual salary adjustments Contractual provisions. The relevant clause on remuneration stated that the Claimant was entitled to an annual salary increase. These adjustments were to be based on a combination of cost-of-living allowance (COLA) and performance in accordance with the Human Resource Policy. The contractual clause on remuneration (page 20 of the CTB) reads: Annual increases will be made as provided under PASGR's policies (a mix of cost of living and performance, based on available funding. All contracts issued to the Claimant expressly provided for annual salary adjustments (page 30,35 as well as 42,43 of the Claimant's Trial Bundle which applied previous contracts). Policy provisions a. Annual reviews 38. Clause 4.1.1 and clause 4.1.2 of the 2020 HR Policies and Procedures (page 52 of the CTB), which is a replica of the earlier 2012 policy at clause 3(page 34 of the RTB) reads inter alia: 4.1.1 Negotiation of salaries shall be done at the time of employment and during the process of renewing contracts subject to budgetary constraints. Salaries shall fall within the provisions of the compensation policy and staff grades. 4.1.2 Subject to availability of funds, salary levels will be reviewed on the anniversary date of employment for purposes of making adjustments for cost of living and performance. The Claimant has demonstrated that during the nine years of her employment with the Respondent, she received only two salary increments: a 3% increase in 2013 and a 22% increase in 2018 (paragraph 25 of the Statement of Claim at page 5 of the CTB). This record of minimal adjustment is striking, particularly given the Claimant's consistent performance and the contractual entitlement to annual salary reviews. The limited number of increments over nearly a decade underscores the Respondent's failure to comply with its own remuneration policies and the expectations it had set for the Claimant. 40. Furthermore, in all five instances in which the Respondent renewed the Claimant's contract, no negotiations were conducted with her regarding her remuneration. This failure is compounded by the Respondent's lack of supporting correspondence or documentary evidence indicating that any review discussions took place. Instead, the Respondent would merely issue new contracts or letters of renewal. The Respondent's witness stated during trial that negotiations happened but that they were allegedly undertaken orally and that the policy did not prescribe written negotiations. That was a fairly dismissive and high-handed response to a serious issue, which was untrue and there is no evidence backing it up. The Claimant was categorial that no such negotiations took place. It was incumbent that the Respondent proved such negotiations (if indeed they occurred, and they did not) and they did not proffer such proof. She also took the position that the fact that the Claimant signed the contracts amounted to consenting to the terms. That is a deflection of the real issue which is evident being the fact that the Respondent did not follow the applicable contractual and policy provisions. Having never participated in such negotiations, the Claimant was not informed that her salary had not been adjusted due to conditions such as performance considerations or budgetary constraints, as the Respondent later alleged. This lack of transparency and engagement further evidences the Respondent's arbitrary and unfair treatment regarding salary adjustments. In Mweni v Child Welfare Society of Kenya [2025] KEELRC 1951 (KLR), the Claimant's contract provided that renewal would be subject to availability of funds, as well as the Claimant's performance, conduct and productivity. Upon the contract's expiry, the Respondent did not renew the contract. The court held that in the circumstances, the Respondent was required to provide reasons for the non-renewal. This was because the employment contract had set out specific conditions for renewal, thereby creating a legitimate expectation that, prior to deciding whether or

not to renew the contract, the Respondent would assess the Human Resources needs, the Claimant's performance and conduct and the availability of funds. The Respondent's failure to address or evaluate these factors rendered the non-renewal unfair, resulting in unfair termination. Similarly, in Muchiri v Caritas Microfinance Bank Limited [2024] KEELRC 2546 (KLR), the Respondent informed the Claimant that his contract would not be renewed due to partially meeting performance expectations and failing to report two fraud cases within the company. The Claimant argued that his termination was unfair because he was not involved in his performance appraisal and was not given an opportunity to explain his awareness and handling of the fraud cases. The court observed that, as the Claimant's employment was governed by a fixed-term contract, the Respondent was not legally obligated to provide reasons for the nonrenewal of the contract. Given the time-bound nature of the agreement, the reasons influencing the non-renewal were irrelevant and the termination was inherently fair. However, since the Respondent chose to include reasons for the non-renewal in the notification letter, fairness required that the Claimant be allowed to participate in the appraisal process and respond to the allegations about the fraud cases. The court found this omission to be unfair, as the non-renewal letter would form part of the Claimant's permanent employment record, potentially impacting his future career opportunities. The Respondent's failure to conduct salary review negotiations or to implement annual adjustments as contractually provided constitutes a clear breach of the employment contract. By disregarding the Claimant's contractual entitlement to periodic remuneration reviews and failing to communicate the reasons for non-adjustment, the Respondent undermined the fundamental terms of her employment and created an environment of uncertainty and inequity. This persistent neglect, coupled with the Respondent's arbitrary issuance of renewal letters without engagement, rendered the Claimant's continued employment intolerable. In the circumstances, the Claimant was left with no reasonable alternative but to resign, thereby satisfying the legal threshold for constructive dismissal under the law.

14. Performance - Clause 6 of the 2020 HR Policy (page 59 of the CTB) provides for performance and development agreements, including performance reviews, which are to be discussed and agreed upon with the immediate supervisor and approved by the Executive Director. Similar provisions in the 2012 HR Policy appear under clause 5 (page 40 of the RTB). Despite these clear provisions, the Claimant's performance was never evaluated in accordance with the policy during her nine years of service. In fact, the performance evaluation process remained under development throughout her employment. As per Clause 6.1 of the HR Policy at page 59 of the CTB, the evaluation template was never developed during the Claimant's tenure. Accordingly, it is evident that performance could not have been a legitimate factor in the Respondent's failure to implement salary adjustments for the Claimant. The Respondent's failure to carry out performance evaluations as required under its HR policies directly dispelled any justification it later purported for withholding the Claimant's salary adjustments. Given that the evaluation template was never developed, the Claimant's performance was deemed to be satisfactory and could not have been deemed ineligible for increments based on performance criteria. In fact, RWI confirmed during cross examination that Claimant's performance of her duties was never an issue at all. This procedural lapse demonstrates a disregard for established policy and the Claimant's contractual rights, reinforcing the pattern of unfair treatment. By failing to adjust her salary yet there was no performance issue, the Respondent created intolerable working conditions, thereby compelling the Claimant to resign. Such conduct satisfies the elements of constructive dismissal, as the Respondent's omissions rendered her continued employment untenable and in breach of the terms of her contract.

15. COLA - As afore-mentioned, salary levels were to be reviewed on the anniversary date of employment for purposes of making adjustments to account for inter alia, the cost of living, thereby cushioning employees against inflationary changes. At paragraph 25 of the Statement of Claim (page 5 of the

CTB), the Claimant computed her salary adjustments based on the Central Bank of Kenya (CBK) inflation rates. The Respondent has neither pleaded nor produced any contrary computation or evidence to dispute the accuracy of the Claimant's figures. The Respondent's omission to adjust the Claimant's salary in line with prevailing inflation rates amounted to a clear violation of both the contractual and policy provisions governing remuneration. Having expressly committed to undertake annual reviews to address changes in the cost of living, the Respondent was under an obligation to ensure that the Claimant's purchasing power and standard of living were not eroded over time. Its failure to honour this commitment resulted in sustained financial disadvantage to the Claimant and demonstrated a disregard for fair labour practices as guaranteed under Article 41 of *the Constitution*. This persistent neglect of the Claimant's economic welfare, despite clear policy direction, further exemplifies the Respondent's breach of contract and contributes to the intolerable conditions that culminated in the Claimant's constructive dismissal. A nine-year period of service on the same entry-level position, without a structured salary review, stands in direct contradiction of the Respondent's HR policies, contractual provisions and established best practices in line with the requirements of fair labour practices. The Respondent's persistent failure to honour the Claimant's entitlement to periodic salary adjustments constituted a fundamental breach of the employment contract. This omission and conduct amounted to a repudiation of contract, thereby entitling the Claimant to treat the employment relationship as terminated.

16. Causing the Claimant to perform duties beyond job description without commensurate pay. The Claimant was consistently assigned tasks beyond her scope as Finance Assistant, including financial project management tasks since 2018(letter dated 27th April 2022 at page 83 of the Claimant's Bundle of Documents). Even worse, there was no communication of change in job description or salary review to match these additional responsibilities as envisaged by section 10(5) of the *Employment Act*. Article 41(2)(a) of *the Constitution* guarantees every worker the right to fair remuneration. Assigning significantly more duties beyond an employee's job description while retaining the pay grade amounts to unfair labour practice. Similarly, by assigning higher-level duties without commensurate compensation, the Respondent acted contrary to constitutional and contractual fairness, reinforcing its breach of the employment relationship. iv. Discrimination and related show cause process. While it is trite that disparity in wages for employees performing the same duties is discrimination and a violation of the principle of equal pay for work of equal value as was rightly stated by this court in Omondi & 4 others v Brava Food Industries Ltd (Employment and Labour Relations Cause E1772 of 2017) [2025] KEELRC 1378 (KLR) (9 May 2025) (Judgment), a male employee in the same department was hired in 2021 at a salary of Kes.300,000, which was 2.2 times more than that of the Claimant. This is a fact that was not disputed by the Respondent before this court. The new hire had less professional qualifications as compared to those of the Claimant who additionally had nine years seniority on the job as at the time the male employee was being hired. He was undertaking the same tasks as the Claimant. In fact, the Claimant and the then new hire were both tasked to manage financial aspects of the project. When the Claimant complained about this discrimination by letter of 27th April 2022(page 83- 85 of the CTB), the Respondent's response of 9 th May 2022 (page 87-88 of the CTB) was that she did not apply for the job, it did not however deny that there was such a hire. 56. That notwithstanding, the new hire performed similar if not the same duties as the Claimant yet the Claimant's salary was not reviewed to even be close if not the same as what the new hire got. It is inconceivable that the two would perform the same duties and yet the new hire's salary was approximately double that of the Claimant. 57. In the National Social Security Fund v Peter & 47 others (Civil Appeal E020 of 2021) [2023] KECA 804 (KLR) (30 June 2023) (Judgment), the Court of Appeal cited the decision in In Transport & General Workers Union & Another v Bayete Security Holding [1998] ZALC 147, where the South African Labour Court when dealing with the concept of discrimination at the work place noted as follows: "It is so that to pay one employee more

than another for doing the same work may have amounted to an unfair labour practice under the 1956 Act (see SA Chemical Workers Union v Sentachem Ltd [1988] 9 ILJ 410(IC)), and would also be so under the new Act if it is done for an arbitrary reason. ....Discrimination takes place when two similarly circumstanced individuals are treated differently. Pay differentials are justified by the fact that employees have different levels of responsibility, expertise, experience, skills, and the like." (Emphasis ours). Whereas the Respondent further testified that the vacancy was advertised both internally and externally and that the Claimant should have applied, it should be noted that that it had initiated the disciplinary process against the Claimant conveniently at the time it was recruiting. The Claimant testified that the Executive Director at the time indicated that she would not be considered for the role due to the disciplinary proceedings. The said recruitment was clearly calculated to be undertaken at a time the Claimant could not apply for it. The process was initiated by a show cause letter dated 17th May 2021 (page 80 of the CTB) while she was also serving the one-year contract (for the first time) that took effect from 22nd October 2020-21st October 2021. The Claimant was accused of failing to carry out instructions by RW1 to amend the financial reports for Q17 by transferring certain expenses into Q18. She responded on 21st May 2021(page 81-82 of the CTB) specifically stating that the instructions RW1 was accusing her of defying were irregular and would have amounted to falsifying financial records and concealing over-expenditure of donor funds. She further clarified that compliance with those directions would not only have contravened donor reporting requirements but also PASGR's internal financial policies. This issue was never controverted as the Respondent never responded to the Claimant's response to the show cause letter. In the show cause letter, the Respondent also accused her of not participating in the appraisal process (page 80 of the CTB) to which she correctly stated that the appraisal process was still an ongoing development that was yet to be documented at the time (page 81 of the CTB). The Respondent chose to target the Claimant by subjecting only her to a performance appraisal process that was under development. 61. It bears reiterating that no disciplinary action was taken against the Claimant after she responded to the show cause letter and that her letter was never responded to. The process ended with the Claimant's response which had raised weighty issued but the Respondent callously subsequently subjected the Claimant to intolerable conduct that culminated in her involuntary dismissal. It would thus suffice to say the subsequent shorter extensions of the contract for 3 months (October to December 2021) and later 6 months communicated in March and backdated from 31st December 2021 to 30th June 2022(with no obligation to extend the contract beyond this date) were influenced by her refusal to follow Constance Furaha's (RW1) instructions, the Respondent's Head of Finance and Administration, to amend the financial reports in a bid to evade reporting on over expenditure. Additionally, in the Claimant's response to show cause (page 82 of the CTB), she stated that she was the only employee that has not received a salary increase and that she had been constructively dismissed. The Respondent did not controvert the fact that she was the only employee who had not received a salary raise. The Claimant was subjected to selective and unfair discriminatory treatment through unwarranted show-cause letters and unjustified disciplinary measures. Such actions were neither supported by evidence nor consistent with how similarly placed employees were treated. 64. Article 27 and Article 41 of *the Constitution* as read with Section 5 of the *Employment Act* guarantee equality, fair labour practices and freedom from discrimination. Fairness and proportionality must then guide all employer disciplinary actions. Discrimination, victimisation or arbitrary warnings such as in the Claimant's case, breach this standard and may lead to constructive dismissal since they make continued employment untenable.

17. Failure to Maintain a Conducive and Respectful Work Environment, Coercion and Undue Influence Resulting in Constructive Dismissal. When the Respondent issued a backdated contract extension on 14th March 2022 (page 44 of the CTB), the Claimant promptly sent a formal letter on 27th April 2022 (pages 83-85 of the CTB), expressing her protest regarding the Respondent's treatment and seeking clarification on the terms of the extension. On the same day, the Executive Director (ED)

responded via email (page 86 of the CTB), asserting, among other things, that by not responding, the Claimant was "legally out of contract" with the Respondent. This assertion was made even though no communication had been issued to the Claimant after the expiry of the prior three-month contract in December 2021 until March 2022 when the impugned back dated extension was issued. During this period, the Claimant continued to perform her duties and was being remunerated on a monthly basis as was confirmed by R1 during her testimony, making clear that indeed an employment relationship subsisted. It was illogical for the Respondent, in March 2022, to claim that the Claimant was out of contract, yet it was incumbent upon it as the employer to have defined the terms of that relationship. The threat that she was out of contract was clearly intended to coerce and intimidate the Claimant into signing the impugned backdated contract. This coercive pattern continued in the ED's subsequent communication of 9th May 2022 (pages 87–88 of the CTB), in which the Claimant was pressured to sign the contract within seven days. Such conduct cannot reasonably be described as genuine negotiations; rather, it was a clear exercise of undue pressure, effectively forcing the Claimant's acceptance under duress. The fact that the Claimant continued working after the lapse of the contractual term in December 2021 and that an employment relationship admittedly continued to subsist, meant that by operation of law and under the Respondent's own policy provisions, particularly clause 3.4.1 as explained above, the only lawful contract or renewal that could issue was one of not less than three years. The Respondent's threats and undue pressure on the Claimant to sign a backdated extension, which expressly stated that it was the final extension and would not be renewed, were therefore contrary not only to its policy provisions but also to the applicable law. In Opiyo v Bedrock Holdings (Cotec Security Group Limited) [2025] KEELRC 1697 (KLR), the Court held that where an employee continues to work after the expiry of a fixed-term contract, and the employer continues to accept that service and pay salary, the contract is deemed to have been renewed by conduct. The Court further affirmed that in such circumstances, the employment relationship cannot be said to have lapsed by effluxion of time and any subsequent attempt to end the relationship without a valid reason or due process amounts to unlawful termination.

18. On Resignation and Respondent's Conduct - In her resignation letter of 11th May 2022(page 91 of the CTB), the Claimant expressly stated that her resignation was involuntary and amounted to constructive dismissal. It is inconceivable that an employee who had diligently served the Respondent for nearly ten years would abruptly resign without compelling and intolerable circumstances. Among the reasons cited in her letter was the Respondent's persistent failure to implement salary increments, save for only two adjustments over the entire decade of service. The Claimant further emphasized that she had worked continuously and uninterrupted for close to ten years, which created a legitimate expectation of continued contract renewal and annual salary reviews in line with established policy and past practice. She also underscored that the Respondent's assertion that she was "out of contract" was a deliberate act of coercion intended to compel her to sign the backdated contract without the Respondent first addressing her pending grievances. In light of the foregoing, it is evident that the Claimant's resignation was not a result of free will but rather the culmination of the Respondent's sustained pattern of unfair treatment, coercion and disregard for contractual and policy obligations. The Respondent's actions, including issuing a backdated contract, threatening that the Claimant was out of contract, failing to address her legitimate grievances and persistently neglecting to review her salary collectively created a hostile and untenable work environment. Such conduct fundamentally undermined the trust and confidence essential in the employment relationship. The Claimant was therefore justified in treating the contract as repudiated and in tendering her resignation. Accordingly, her separation from employment squarely amounts to constructive dismissal, for which the Respondent bears full responsibility. The Respondent tried to allude during trial that the Claimant did not leave immediately after resigning but rather served notice. The service of the notice does not dispel constructive dismissal. This was aptly addressed by the Court of Appeal in the Coca Cola case

(supra) that cited Lord Denning MR's decision in Western Excavating(ECC)Ltd v. Sharp(1978)ICR 222, to the effect that : " ...The employee is entitled in those circumstances to leave at the instant without giving any notice at all or alternatively, he may give notice and say that he is leaving at the end of the notice. But the conduct must in either case be sufficiently serious to entitle him to leave at once (emphasis ours). (See also Nottingham County Council -v- Meikle (2005) ICR 1)."

Respondent's submissions

19. Whether the Respondent breached the Claimant's employment contract or violated any statutory or constitutional right? It is common ground that the Claimant was employed by the Respondent as a Finance Assistant on successive fixed-term contracts from October 2012 until her voluntary resignation in May 2022. Indeed, at all material times that the Claimant was employed by the Respondent, her designation, duties, responsibilities, remuneration, benefits and relationship were governed by the specific provisions as contained in the Employment Contract as read with the Respondent's Human Resource Manual and subject to such operational and administrative factors as may have legitimately influenced the Respondent's staffing and contractual decisions from time to time, a fact which the Claimant was fully aware. It is the Respondent's position that, therefore, each of the contracts was duly executed, performed and expired in accordance with the agreed terms. Indeed, the Respondent's witness, Constance Mwahunga (RW), testified that the Claimant's employment was governed by successive renewals and, in some instances, extensions of her fixed-term contracts, all in strict compliance with the Respondent's Human Resource Policies and Procedures. In particular, Clause 2.4.1 of the PASGR Human Resource Manual provides that "all PASGR staff shall be engaged on fixed-term employment contracts not exceeding three years, which may be extended (to a maximum of one year) or succeeded by another contract as determined by the Executive Director or the Board, as the case may be." Accordingly, a plain reading of the employment contracts can only lead to one logical conclusion is that a renewal constitutes the execution of a new contract for a further term, while an extension denotes the continuation of an existing contract for a limited period pending renewal. In that regard, the Respondent's consistent Page 2 of 6 9. 10. practice, as evidenced in the documentation before this Honourable Court demonstrates full adherence to this policy framework. The Claimant's contention that her 2012 contract was merely extended continuously for nine (9) years, violation of HR policy is, therefore, both factually erroneous and legally untenable. in Additionally it is important to underscore that the wording of Clause 2.4.1 of the Respondent's Human Resource Manual is, by its very nature, discretionary. The clause vests the Executive Director and the relevant supervisors with authority to determine whether a fixed-term contract would be extended or succeeded by a new one. While the provision expressly provides for extensions of up to one (1) year, the language of the clause is discretionary, thereby allowing for reasonable administrative flexibility, including the grant of short additional months where circumstances so justify. Indeed, as testified by RW, the short extensions issued during the relevant period did not apply to the Claimant alone but were implemented across the organisation, affecting all employees due to the prevailing operational circumstances at the time so as to ensure continuity. We, therefore, submit that such limited extensions were policy-compliant, procedurally regular and informed by legitimate operational considerations. Accordingly, the Claimant cannot properly contend that the Respondent acted outside the scope of its policy framework or exercised its discretion arbitrarily. On the issue of salary increments and cost-of-living adjustments, the Respondent's Witness' evidence was unequivocal that such reviews were expressly subject to the availability of funds, as provided under Clause 3.1.2 of the Human Resource Manual. The Claimant herself admitted that her salary was reviewed and increased on two separate occasions during her tenure, which is consistent with the organisation's policy and financial capacity at the time. She has not, however, produced any evidence to demonstrate that funds were available on other occasions beyond those two, or that the Respondent, in bad faith, failed to

implement further increments. We, therefore, submit that in the absence of such proof, her allegations remain unsubstantiated by fact or evidence. On the allegation that the Claimant earned less than her colleagues performing similar duties, the Respondent has produced evidence to show that salaries were determined strictly in accordance with the organisational grading structure, job classification and approved budgetary allocations under as per the human resource policies. The Claimant's grade and remuneration were at all times consistent with her job description, pay scale and employment contracts. There is no evidence of any deviation from policy or discriminatory treatment. In any event, the Respondent submits that this claim is wholly unsubstantiated as the Claimant has neither identified the specific employees she sought to compare herself with nor provided any documentary evidence showing parity of qualifications, experience, responsibilities, or contractual terms for this Court to compare. It is trite that for a claim of unequal pay to stand, the Claimant must prove that she was performing like work, under like conditions, with like qualifications, but received dissimilar remuneration. Thus, the Court in the Court of Appeal case of Ol Pejeta Ranching Limited v Dayd Wanjau Muhoro [2017] KECA 329 (KLR), where the Court stated as follows:- 'In claims of equal pay for equal work or work of substantially equal value, there is always need on the part of the claimant to establish comparators for purposes of showing unequal pay in comparison to the comparators.' We, therefore, submit that the Claimant has failed to prove that the Respondent her discriminated commensurate against her by paying less than her colleagues or that it failed to pay to the work done. 16. With regard to the allegation of stagnation or lack of promotion, it was the Respondent's evidence that promotions are not automatic entitlements but are contingent upon organisational needs, availability of positions, employee performance and budgetary approval. When the Respondent identified the need for a more senior position than that held by the Claimant, it duly advertised the vacancy in accordance with its Human Resource Policies and Procedures. The Claimant, fully aware of the requirement to apply for such a position since promotion was not automatic, elected not to do so. She alleges that her decision was due to a pending disciplinary matter; however, there is no evidence that such proceedings disqualified her from applying or that the Respondent barred her in any way. Accordingly, her claim of stagnation or denial of promotion is unfounded, speculative, unsupported by evidence and, in any event, self-inflicted. 17. Accordingly, we submit that the Claimant has failed to demonstrate any wrongdoing on the part of the Respondent or that the Respondent unfairly denied her promotion. Further, the Claimant has not adduced any credible evidence to substantiate her allegations of harassment or to show that the show-cause letter issued to her was arbitrary or maliciously intended to bar her from applying for the senior position. In any event, the Claimant neither challenged the said show-cause letter through any internal grievance mechanism nor issued a demand letter or instituted proceedings contemporaneously to contest it. Her failure to act at the material time undermines her credibility and renders this allegation an afterthought, raised only in pursuit of the present claim. ii. Whether the claimant voluntarily resigned? That going by the foregoing, it is the Respondent's position that the Claimant's resignation was, in fact, voluntary. Evidence shows that she served notice in accordance with her contractual obligations and that at no point was she forced to leave immediately. The claim of constructive dismissal, asserting that the Respondent's actions rendered her continued employment intolerable, is unsubstantiated, as the Claimant has failed to demonstrate or establish the threshold set in the case of Coca Cola East & Central Africa Limited v Maria Kagai Ligaga [2015] KECA 394 (KLR), where the Court stated as follows:- 'The legal principles relevant to determining constructive dismissal include the following: 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? The conduct of the employer must be a fundamental or significant breach going Clos no to the longer root intends of the contract of employment or which shows that the employer contract. to be bound by one or more of the essential terms of the d. An objective test is to be applied in evaluating the employer's conduct. e. There employee must

be a causal link between the employer's conduct and the reason for 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 conducted himself to be estopped from asserting the 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.' A copy of the authority is attached for Your Ladyship's perusal. 19. In that regard, this Court in Njogu v Director D Light Solars Co Ltd (Cause as E412 follows of 2022) on [2025] KEELRC 2805 (KLR) (16 October 2025) (Judgment) stated the issue of constructive dismissal:- 'The burden to prove the claim for constructive dismissal lay with the claimant The (Ligaga Case, above) and the same was not proved on a balance of probabilities. court found no case of unfair termination.' We, therefore, submit that, in light of the foregoing, the Claimant's resignation cannot be classified as involuntary. Her claims of constructive dismissal are unsubstantiated and the resignation must be treated as voluntary under both contract and law. In any event, the mere contractual statement that the Respondent did not guarantee renewal of employment could not have warranted her resignation. The Claimant's contracts had been consistently renewed over a period of nearly nine years and her decision to resign, based on this clause, demonstrates that she acted on emotion rather than on any objectively intolerable circumstances.

Decision

The court upheld the decision on constructive dismissal cited by both parties, namely, Coca Cola East & Central Africa Limited v Maria Kagai Ligaga [2015] KECA 394 (KLR). The reason for resignation is as stated in the letter dated 11th May 2022- ' Involuntary Resignation/constructive Dismissal

> I refer to the above subject matter. I also refer to your email and letter of 28th April, 2022 and 9th May, 2022 respectively.
>
> I hereby tender my resignation by giving one month's notice running from the date hereof. The one month's notice is given pursuant to section 35 (1)(b) of the *Employment Act*, 2007.
>
> Please note that the resignation is not voluntary. This involuntary resignation is the result of the unconducive and hostile working environment that you have exposed me to and which issues I brought to your attention by my letter of 27th April, 2022 and to which, you did not appropriately address. For instance, you stated in your response of 9th May 2022 that my salary was increased which is not true. Save for two instances in 2013 and 2018, my salary remained unchanged for a period of 10 years I have served the Organization. This is despite clear contractual and policy provisions that entitled me to annual salary increments.
>
> By your email of 28th April, 2022 in response to the matters I raised in my letter of 27th April, 2022, you indicated that I am out of employment with the Organization yet I have consistently remained in employment for close to 10 years. I continued to consistently offer my services after the lapse of the period contracts in question. I have sought legal advice and have been informed by my lawyers that an employment relationship subsists to date; given that I have continued to work uninterrupted. There is thus an automatic implied contract of service that continues to exist by operation of the law.
>
> The continued uninterrupted working also created in me legitimate and reasonable expectations that my contract would be renewed and that I would be entitled to annual salary increments as per the relevant contractual and policy provisions.
>
> I believe that the assertion in your email of 28th April, 2022 that I am out of employment was intended to make me sign the contract extension under duress without appropriately

addressing my grievances. The letter concluded without according me a hearing that I am out of employment with the Organization. In addition, the decision directed that I am not entitled to my lawful dues which appear to be a perpetuation of the continuous breach and discrimination I had already pointed out in my letter of 27th April, 2022,

In the circumstances, I have treated the matters set out above and in my letter of 27th April, 2022 and consequent correspondence from yourselves as a constructive dismissal from employment. Please note that I do not wish to participate in any contract signing with the Organization ..."

20. The court found evidence that the claimant signed renewed contracts for various periods. Contrary to the claimant's assertions in the resignation letter (above), it was obvious that the salary had been increased in 2018, and she confirmed an increment by 22%. The contract of employment had stated the increment was subject to funding. There was no evidence placed before the court of the alleged increments for the other employees. The court found the main grievant was with the last contract clause of non-renewal. The claimant stated that having served for cumulative period of 10 years she had legitimate expectation of renewal. The Court of Appeal, in a case between Transparency International - Kenya v Omondi [2023] KECA 174 (KLR), recently determined that a fixed-term employment contract doesn't create an automatic expectation of renewal of the contract and that the non-renewal of a fixed-term employment contract does not amount to unfair termination of employment that warrants compensation. During cross-examination the claimant confirmed that the contracts issued before 22nd October 2018 were not relevant to the renewal. She confirmed that the reasons she did not sign contract of 14th march was because she was not satisfied with the terms. She confirmed to have signed the rest of previous contracts as she was satisfied. She did not raise issue with the increment in 2018. She confirmed she had no complaints of salary arrears in October 2021. The court finds that on non- issuance of a fresh contract on expiry of the last contract, the claimant having continued to work, it was deemed the contract was automatically renewed for 1 year which is the minimum contract period under Clause 3.4.1 of the Respondent's Human Resource Procedure & Policy Manual (pages 27 - 59 of the Claimant's bundle) which provides in part as hereunder: "All PASGR staff shall be engaged on fixed-term employment contracts ranging from one to three years in length. No contract shall exceed a period of three years. Contracts may be extended (to a maximum of a year) or succeeded by another contract as determined by the ED, and relevant supervisor or the Board in case of Grades A and B." The court then finds the belated issuance of contract of 14th March 2022 for 6 months was unfair labour practice as automatic renewal of 1 year was already running. The communication to the claimant that she was out of contract could thus be construed as having contributed to hostile working environment of the claimant to justify her resignation thus constructive dismissal. The court holds that it is a management prerogative to commence disciplinary measures against the employee and that the mere issuance of a show cause cannot amount to conduct that can repudiate an employment contract(Coca Cola case). In the upshot, the court found the only proved reason to conclude the resignation amounted to constructive dismissal was the lack of appreciation by the employer that upon lapse of the previous contract and having failed to renew the same, and the claimant having continued in service, there was automatic renewal of the contract by 1 year. The belated issuance of a 6-month contract amounted to unfair labour practice in the circumstances, and the claimant was justified in taking the position that she was constructively dismissed. The court holds that the claimant proved her claim of constructive dismissal on a balance of probabilities

Whether the claimant is entitled to relief sought

21. The claimant sought for the following relief-

a) A declaration that the Claimant was constructively dismissed from employment.

b) Payment of the Claimant's terminal dues and 12 months' salary compensation as set out in paragraphs 25 and 26 herein above, totaling to Kshs. 8,645,927/=.

c) A declaration that the Respondent breached the Claimant's rights under Articles 29, 41 and 47 of *the Constitution*.

d) A declaration that the Claimant is entitled to the provident fund benefit arrears as per annex b of the contract which the Respondent was to contribute 8% of the Claimant's annual gross salary total to Kshs. 520,439/=.

e) Damages for breach of the Claimant's legitimate and reasonable expectations.

f) Damages for breach of the Claimants' rights protected under Article 41 and 47 of *the Constitution*.

g) Interests at court rates.

h) Costs of the suit.

22. On prayer for a declaration that the Claimant was constructively dismissed from employment- The court held the claimant was constructively dismissed from employment.

23. on prayer for payment of the Claimant's terminal dues and 12 months' salary compensation as set out in paragraphs 25 and 26 herein above, totaling to Kshs. 8,645,927/=- The court returns that every time the contract was renewed the cause of action for terminal dues arose. The only relevant contract for the purpose of determining the prayer for underpayment would be the last 3 years of termination. Both the HR policy and the contracts signed by the claimants were to the effect that any increment was subject to the availability of funds. Further, during the hearing, the claimant confirmed that, before October 2021, she had never raised any issue regarding salary increments. Such claims as relates to those contracts have expired. The claims are not continuing injury to be considered by the court.

24. As relates to the relevant applicable contracts the court was guided by the Court of Appeal case of Ol Pejeta Ranching Limited v David Wanjau Muhoro [2017] KECA 329 (KLR), where the Court stated as follows:- 'In claims of equal pay for equal work or work of substantially equal value, there is always need on the part of the claimant to establish comparators for purposes of showing unequal pay in comparison to the comparators.' The Claimant has failed to prove that the Respondent discriminated against her by paying her less than her colleagues holding the same position or that the Respondent failed to pay for the work done. The court cannot force employer to increase salaries where the wages are not regulated. The court only needs to be satisfied that the worker was paid fair wages for work done and in accordance with the contract. The employer increased the salary during employment. The increment clause was subject to the availability of funds. The rate for the increment was not contractual. The court found no ambiguity in the term of contract as the increment was to be negotiated at the signing of each contract and the amount given. The claimant confirmed she did not raise the issue of increment at the signing of new contracts. The claims related to increments are thus expired under section 89 of the *Employment Act* as the cause of action, which is continuing in nature, arose on termination of the contracts and ought to have been filed within 12 months.

25. With regard to the allegation of stagnation or lack of promotion, it was the Respondent's evidence that promotions are not automatic entitlements but are contingent upon organisational needs, availability of positions, employee performance and budgetary approval. When the Respondent identified the need for a more senior position than that held by the Claimant, it duly advertised the vacancy in

accordance with its Human Resource Policies and Procedures. The Claimant, fully aware of the requirement to apply for such a position since promotion was not automatic, elected not to do so. She alleges that her decision was due to a pending disciplinary matter; however, there is no evidence that such proceedings disqualified her from applying or that the Respondent barred her in any way. Since she did not apply for the position the court has no basis to interrogate any issue of her promotion. Accordingly, her claim of stagnation or denial of promotion is unfounded, speculative, unsupported by evidence and, in any event, self-inflicted.

26. A declaration that the Respondent breached the Claimant's rights under Articles 29, 41 and 47 of *the Constitution*- The court held the that belated renewal of the contract amounted to unfair labour practice. The court has held that rights under Article 41 of *the Constitution* are enforced under the *Employment Act*. The court returns that claimant is only entitled to compensation for unfair termination on the court having found constructive dismissal.

27. A declaration that the Claimant is entitled to the provident fund benefit arrears as per annex b of the contract which the Respondent was to contribute 8% of the Claimant's annual gross salary total to Kshs. 520,439/=. The claim fails as the claim is based on the claim of underpayment for lack for increment which failed. The claimant confirmed she accessed her funds under the provident fund.

28. Damages for breach of the Claimant's legitimate and reasonable expectations. The court returns that the claimant is only entitled to compensation for unfair termination, on the court having found constructive dismissal.

28. Damages for breach of the Claimants' rights protected under Articles 41 and 47 of *the Constitution*- The court returns that the claimant is only entitled to compensation for unfair termination, on the court having found constructive dismissal.

29. Compensation for unfair termination on account of constructive dismissal- The claimant had served the respondent for a cumulative 10 years. No reason was demonstrated that the relationship could not have continued, though the automatic contract was for one year. There was no evidence that the claimant contributed to the termination. There was no basis for the court to find the claimant could not have secured a similar job in the market(section 49(4) of the *Employment Act* applied in the determination of the compensation amount) . Taking the foregoing into account I award compensation of equivalent of 6 months' last gross salary (135000)plus notice pay of 1 month Kshs.135,000.

Conclusion

29. In conclusion the court allows the claim for constructive dismissal only and enters judgment for the claimant against the respondent as follows-

    a. A declaration that the Claimant was constructively dismissed from employment

    b. Compensation for constructive dismissal, which is held to have amounted to unfair termination, the equivalent of 6 months' gross salary, Kshs. 810,000.

    c. Notice payment of Kshs. 135,000

    d. Costs and interest at court rate from date of judgment.

30. It is so Ordered.

DATED, SIGNED, AND DELIVERED IN OPEN COURT AT NAIROBI THIS 20TH DAY OF FEBRUARY, 2026.

J.W. KELI,

JUDGE.

In The Presence Of:

Court Assistant: Otieno

Claimant – Nekesa h/b Irene Kashindi

Respondents: Watanga