

REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS COURT AT

NAIROBI

CAUSE NO. E822 OF 2023

IDA

EVELYN

ANGEL.....

.....CLAIMANT

-VERSUS-

ABYSSINIA

IRON

AND

STEEL

LIMITED.....

.....RESPONDENT

JUDGMENT

Introduction

1. The Claimant's Statement of Claim is dated 29th September, 2023, and filed on 26th October, 2023. Under the Claim, the Claimant seeks a total of Kshs.11,970,983.29/- comprising the following specific reliefs:-

- i. A declaration that her employment was terminated by the Respondent in circumstances that amount to constructive dismissal, which amount to unfair and unlawful termination of employment.
- ii. An order compelling the Respondent to pay the Claimant her terminal dues, including: -
 - a) Withheld salary for May 2023 at Kshs. 498,747.00/-
 - b) Salary for 12 days worked in June 2023 at Kshs. 213,748.71/-
 - c) Outstanding leave days at Kshs.302,810.68/-

- d) House allowance for 1 year and 6 months at Kshs.1,346,616.90/-
- e) Notice pay of Kshs.1,496,241.00/-
- f) Over time of Kshs.2,127,855.00/-
- g) Compensation for unfair and unlawful termination of equivalent to 12 months' salary of Kshs. 5,984,964.00/-

iii. Costs of the suit

iv. Interest on ii above from the date of filing suit until payment in full.

2. The Respondent filed a Notice of appointment dated 1st November, 2023, and subsequently filed the Respondent's Memorandum of Reply 14th December, 2023, denying the Claimant's claim.
3. The Claimant's case was heard on 27th March, 2025, when she testified in support of her case, adopted her witness statement, and produced her list and bundle of documents as exhibits in the case. The Respondent's case was subsequently heard on 15th October, 2025, when one Rari Gada testified in support of the Respondent's case. He adopted his witness statement and produced the Respondent's documents as exhibits in the case.
4. Submissions were filed for both parties. The Claimant further lodged joinder submissions, and all have been duly considered.

The Claimant's Case

5. The Claimant's case is that she, at all material times relevant to the claim herein, was an employee of the Respondent. It is her case that through a letter of employment dated 6th January, 2022, the Respondent employed her as a group Human Resources Manager stationed at the Respondent's head office in Westlands, Nairobi, at a starting net salary of Kshs.320,000.00 plus fuel allowance of Kshs.5,000.00, which amount was increased to a gross salary of Kshs.491,747.00 and fuel allowance of Kshs.7,000.00 as at the time of her unfair and unlawful termination on or about 12th June,2023.
6. The Claimant states that upon completion of the three (3) months' probation period set out in her employment letter, the Respondent confirmed her to the position of group Human Resources Manager by a letter dated 20th July, 2022. It is her case that she thereafter diligently served the Respondent until the Claimant's employment was unfairly and unlawfully terminated.
7. It is the Claimant's case that on or about 6th May, 2023, at a meeting with the Respondent's Chief Executive Officer, Mr. Jateen Patel, she pointed out a factual error in a statement made by the Respondent's Chief Executive Officer concerning her working hours. She avers that the Respondent's Chief Executive Officer was not happy with her pointing out this error, and he promised her that he would find fault with her work at the Respondent and dismiss her from employment.

8. It is her case that after the stated incident, the Respondent brought in a Ms. Harsimrat Simran Bhamra Sawjani, who as at that time had no accreditation from the Institute of Human Resource Management (IHRM), to work as a Human Resources Consultant with a view of reviewing her work and find faults in the same that could be used as a basis for dismissing her from her employment with the Respondent.
9. The Claimant avers that after a fishing expedition to find fault in her work, the Respondent's Human Resources consultant wrote to her inviting her for a meeting on 12th May, 2023. The Claimant states that she attended the meeting wherein the said Human Resources Consultant showed her a list of complaints shared by her co-workers at the instigation of the Respondent's Chief Executive Officer.
10. It is her case that owing to the vague nature of the complaints, the Respondent Human Resources Consultant and the Claimant agreed that the Respondent should provide better particulars of the complaints to enable the Claimant address the same. She avers that, despite the foregoing, on 22nd May, 2023, the Respondent's Human Resources consultant wrote to the Claimant, setting out the same vague complaints and without referencing the discussions in the meeting on 12th May, 2023.
11. The Claimant states that she gave a written response to the letter of 22nd May, 2023, and upon the Human Resources

Consultant reviewing the same, she advised the Claimant to resign from her position as things would get tough for her in the coming days and months if she did not do so.

12. It is her further case that in view of this threat and the actions she had witnessed the Respondent take against former employees in a similar position, she, on or about 24th May, 2023, gave the Respondent a three (3) months' resignation notice as required under her employment letter through a letter dated 24th May, 2023, and which resignation was to take effect on 31st August, 2023.

13. The Claimant avers that after tendering the resignation letter, the Respondent requested her to amend her resignation notice to give a shorter period and leave employment by the end of June 2023, rather than on 31st August 2023, as stated in her resignation letter, a request she declined and indicated that she would serve the notice period as provided in her employment letter.

14. It is the Claimant's case that when she declined the Respondent's request, the Respondent's management staff made her work environment worse by consistently insulting her, yelling at her, making unfounded claims against her, issuing threats to her, and giving her unrealistic tasks. It is her further case that the Respondent, in utter disregard of Employment Law, unlawfully withheld her salary for May 2023, which is yet to be remitted to her as at the date of the filing of the suit herein.

15. The Claimant avers that the Respondent's foregoing actions were taken to force the Claimant out of employment after she declined to amend her resignation notice as per the Respondent's demands. She contends that, owing to the unhealthy and toxic work environment set up by the Respondent and the Respondent's refusal to adhere to Employment law, the Claimant was forced to leave her employment position on 12th June 2023.

16. It is her position that the foregoing actions of the Respondent amount to constructive dismissal and constitute unfair and unlawful termination of her employment. The Claimant further avers that the Respondent constructively terminated her employment, which constitutes unfair and unlawful labour practices.

17. The Claimant argues that the Respondent's withholding of her salary is unlawful and amounts to unfair labour practice. She avers that the Respondent's act of withholding her salary and terminal dues under the obtaining circumstances is wrongful, unlawful, utterly unfair, and inhuman.

18. On cross-examination, the Claimant told this court that her salary was Kshs.320,000 and Kshs.5000 fuel allowance. She avers that her employment documents did not mention a house allowance.

19. It is her testimony that she does not have the Respondent Chief Executive Officer's emails instigating complaints

against her. She confirmed that she was neither terminated nor disciplined in relation to the complaints.

20. It is her testimony that she asked for better particulars of the complaints against her by email, but none were forthcoming. She confirmed that she responded to the issues raised by the HR consultant, but did not reach any agreement with her.

21. The Claimant confirmed that the Respondent had indicated the intention to pay her May 2023 salary on 22nd June, 2023, but she wanted her salary up to August 2023. She avers that she forwarded the Respondent's payroll to her email due to the allegations of Ksh. 6.2M made against her by the Respondent, and that there was no policy barring her from forwarding the payroll to her personal email.

22. The Claimant further avers that the information belongs to the Respondent and that she was subject to the confidentiality clause. She confirmed receiving a show cause on 9th June, 2023, and avers that it was meant to delay payment of her terminal dues.

23. The Claimant confirmed on cross-examination that she was being paid a consolidated salary and further confirmed that she was not entitled to overtime pay.

24. The Claimant further told the court that she cleared with the Respondent, but did not have the clearance form before the court. She stated that she did clear by email.

25. She confirmed that the Respondent does not owe her other salary arrears except for May 2023.

26. In re-examination, the Claimant told this court that she did not share the Respondent's information with a third party.

27. The Claimant prays that the court allows claim.

The Respondent's Case

28. The Respondent states that it employed the Claimant through a letter dated 4th January 2022, effective 6th January 2022, as a Group Human Resource Manager. It avers that the employment was on a permanent basis, subject to successful completion of a three month probation period.

29. The Respondent states that the Claimant initially earned a net salary of Kshs.320,000 per month, plus a monthly fuel allowance of Kshs.5,000, which were subject to statutory deductions. It avers that upon successful completion of probation, the employment was confirmed by a letter dated 20th July 2022, and the net salary was increased to Kshs.350,000 effective July 2022. The Respondent states that, as of May 2023, prior to her resignation, the Claimant was earning a monthly consolidated pay of Kshs.491,747, with the net salary being Kshs.348,146.91.

30. The Respondent states that during her employment, the Claimant received a letter dated 22nd May 2023 from the Respondent's Human Resource Consultant raising concerns

about her poor performance and advising her to strictly meet deadlines and properly perform her duties. It further avers that, in her response dated 24th May 2023, the Claimant acknowledged missing an email and stated that she had put measures in place to prevent a recurrence.

31. It is the Respondent's case that on 24th May 2023, the Claimant issued a resignation notice giving three months' notice, indicating that her last working day would be 24th August 2023, and undertook to facilitate a smooth handover and training of team members.

32. The Respondent states further that on 6th June 2023, it proposed to the Claimant reducing the notice period from three months to one month to achieve an amicable separation, but the Claimant declined and insisted on serving the full three month notice period.

33. The Respondent avers that it later discovered that the Claimant had forwarded work-related and sensitive emails from her official work email to her personal email, contrary to company policy, and a notice to show cause dated 9th June 2023 was issued, and the Claimant admitted to having sent the emails.

34. The Respondent further states that due to the Claimant's lapses in performance, it incurred losses exceeding Kshs. 6,200,000. It avers that in her email dated 12th June 2023, the Claimant acknowledged responsibility in relation to

failure to follow proper procedures for engaging casual workers at the Respondent's Awasi plant in Kisumu.

35. The Respondent states that the Claimant, in her email dated 12th June 2023, made allegations against colleagues and the Respondent that were described as false and unsupported, following which the Respondent issued a notice accepting her immediate resignation as of 12th June 2023. The Respondent avers that the Claimant did not report to work after that date, has not completed her handover, and has not collected her certificate of service.

36. It is the Respondent's position that in its letter dated 13th June 2023, it did clarify that the Claimant was not held responsible for the Awasi plant loss and that the notice to show cause was still under review, but despite this, the Claimant abandoned her duties, breaching her employment agreement and causing further losses.

37. The Respondent avers that all Heads of Departments, including the Claimant, were required to submit MIS reports before receiving their monthly salaries, a rule the Claimant did not comply with before her departure.

38. It is the Respondent's case that during her employment, the Claimant requested advance payment of expenses totaling USD 2,917 (approximately Ksh.436,800) for a U.S. conference, promising to repay it once reimbursed by the

relevant authority, and that this amount is to be deducted from her final dues.

39. The Respondent avers that the Claimant, through her lawyers, wrote a letter dated 19th June 2023 claiming unfair termination and demanding employment dues, despite having voluntarily resigned to avoid the notice to show cause. The Respondent avers that it clarified in a letter dated 22nd June 2023 that her salary for May and June 2023 was available, and that it included the corresponding pay slips.

40. The Respondent further avers that the Claimant's Advocates sent a follow up letter on 17th July 2023 reiterating their earlier demands, and in response, it instructed its current Advocates, who replied on 3rd August 2023, confirming that the Claimant's dues were available and advising her to visit the Respondent's offices to complete her handover and collect her certificate of service.

41. The Respondent avers that this advice was ignored, and instead, the Claimant proceeded to file a Memorandum of Claim despite the Respondent's attempts to reach an amicable settlement through its Advocates.

42. The Respondent denies the Claimant's allegations that she was entitled to a monthly fuel allowance of Ksh.7,000 and that her employment was unfairly or unlawfully terminated. The Respondent further denies liability for the payments

claimed in the Memorandum of Claim, totaling Ksh 11,970,983.29, describing them as baseless and far fetched. The Respondent, instead, demands from the Claimant a refund of Ksh 436,800 paid for her conference in the United States, three months' salary in lieu of notice totaling Ksh 1,475,241, and general damages for breach of the Letter of Employment and HR manual by the Claimant.

43. On cross-examination, RW1, the Respondent's Chief Finance Officer, told the court that the termination notice period per the Claimant's contract was three months.

44. It is his testimony that the Claimant was issued with a show cause letter dated 6th June, 2023, and a reply was required the following day. He avers that the notice was for 7 hours and that 7 hours was sufficient time to reply.

45. He stated that checking into work was through biometrics whose information is in the custody of the Respondent. He avers that the reason the Claimant was not paid her May 2023 salary is because she had not submitted reports. He further stated that nothing shows that payment of salary was subject to the submission of reports.

46. The Respondent prays that the suit be dismissed with costs.

Analysis and Determination

47. From the pleadings, the evidence adduced, the witnesses' testimonies, and the rival submissions, the following issues fall for determination: -

- i. Whether the Claimant was constructively dismissed.
- ii. Whether she is entitled to the reliefs sought.
- iii. Whether the Respondent's counter demands are merited.

Whether the Claimant was constructively dismissed

48. The law on constructive dismissal is now settled. In ***Coca Cola East & Central Africa Limited v Maria Kagai Ligaga (2015] KECA 394 (KLR)***, the Court of Appeal adopted the objective test and held that constructive dismissal occurs where the employer is in fundamental breach of the contract of employment, which breach is sufficiently serious that the employee resigns in response to the breach with or without notice.

49. The Court in the foregoing case emphasized that the employer's conduct must demonstrate an intention to no longer be bound by the employment contract.

50. Further in the case of ***Catherine Wanjiku Ndirangu v. TSC [2014) eKLR***, the court applied a three part test in determining constructive dismissal, one being that the employer's conduct must be so intolerable that the employee cannot reasonably continue working, secondly that the employer must have intended or could reasonably be seen to intend to repudiate the contract and thirdly, that the employee must resign soon after the intolerable conduct occurs.

51. Further guidance was drawn from the English authority of ***Western Excavating (Ecc) Ltd V Sharp [1978] ICR 221,*** which established that the breach must go to the root of the contract.

52. It is not disputed that the Claimant resigned from the service of the Respondent on 24th May 2023, giving three months' notice to the Respondent as per her contract, which was to lapse on 31st August 2023.

53. The record confirms that at the point of resignation, the Claimant had received a performance concern letter dated 22nd May 2023, which she further confirmed having responded to. It is also not disputed that no disciplinary sanction had been imposed against her at the time of her resignation, having admitted on cross-examination that she was neither terminated nor disciplined.

54. The evidence before court shows that the Claimant's resignation preceded the notice to show cause dated 9th June 2023, which, in my view, is confirmation that her allegations of a hostile environment and threats are not supported by documentary evidence. She, for instance, did not tender in evidence the emails from the CEO instigating complaints against her.

55. The Court, in my view, must be cautious not to construe ordinary workplace disagreements, performance management issues, or investigations into constructive

dismissal. In ***Kenya Airways Limited v Aviation & Allied Workers Union Kenya & 3 others (2014) KECA 404 (KLR)***, it was held that an employer retains managerial prerogative to question performance and enforce internal policies.

56. It is evident that after the Claimant declined the proposal to shorten her notice period, the Respondent accepted what it termed her “immediate resignation” on 12th June 2023, following her email communication.

57. In my considered view, constructive dismissal cannot be inferred merely because an employee feels uncomfortable or anticipates disciplinary action. There must be proof of a fundamental breach of contract.

58. On the totality of the evidence adduced, I find and hold that the threshold in the case of ***Maria Kagai Ligaga*** (supra) has not been met, and it follows that the Claimant has failed to prove constructive dismissal.

Whether she is entitled to the reliefs sought

59. The Court having held that the Claimant has not proved a case of constructive dismissal, her claim for 12 months’ salary as compensation pay fails since compensation under Section 49 of the Employment Act is only available upon proof of unfair termination.

May 2023 Salary and 12 Days in June 2023

60. The Respondent admitted that the Claimant's salary for May 2023 was not paid on the basis that she had not submitted reports. RW1 conceded that there was no contractual provision linking salary payment to the submission of reports.

61. Section 18 of the Employment Act requires that wages be paid when due; withholding salary without lawful justification is therefore unlawful.

62. Further, the Respondent's own correspondence (22nd June 2023) acknowledged that the Claimant's May and June salaries were available for collection.

63. It is also not disputed that the Claimant worked until 12th June 2023, and the Respondent similarly admitted that her dues were available.

64. The Claimant is therefore entitled to payment of the May 2023 salary and for the days worked in June 2023.

Leave Pay

65. The Respondent did not produce leave records to rebut the Claimant's claim in respect of leave as required under Section 74 of the Employment Act, which places the burden on the employer of keeping leave records.

66. The Claimant is thus entitled to payment in lieu of leave not taken.

House Allowance

67.The Claimant admitted on cross-examination that she was paid a consolidated salary. Further, the pay slips produced in evidence indicate that the Claimant's salary was indeed consolidated, which is interpreted to include house allowance pursuant to Section 31 of the Employment Act.

68.This claim is therefore unfounded, and it fails.

Overtime

69.The Claimant admitted on cross-examination that she was not entitled to overtime pay. The claim thus equally fails.

Notice Pay

70.The Claimant resigned voluntarily, and although she gave three months' notice per her contract and indicated her intention to serve to the end of the notice, she did not serve the full notice period, having elected to leave on 12th June 2023 instead of 24th August 2023.

71.She is therefore not entitled to notice pay.

72.In conclusion, the Claimant's claim partly succeeds in terms of the following orders: -

- a) A declaration that the Claimant has not proved a case of constructive dismissal.
- b) An order compelling the Respondent to pay the Claimant:-
 - i. Withheld Salary for May 2023 at Kshs.498,747.00/-
 - ii. Salary for 12 days worked in June 2023 at Kshs.213,748.71/-

- iii. Outstanding leave days at Kshs.302,810.68/-
- iv. Costs of the suit and interests from the date of the judgment until payment in full.

73. Judgment accordingly.

SIGNED, DATED, AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS 5TH DAY OF MARCH, 2026.

**C. N. BAARI
JUDGE**

Appearance:

Mr. Otieno David present for the Claimant

Mr. Olando present for the Respondent

Ms. Esther s- C/A