



**Mogaka v Urban Art Household and Antiques Ltd & another (Cause E338 of 2025) [2026] KEELRC 588 (KLR) (27 February 2026) (Judgment)**

Neutral citation: [2026] KEELRC 588 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E338 OF 2025  
SC RUTTO, J  
FEBRUARY 27, 2026**

**BETWEEN**

**WINNIE GESARE MOGAKA ..... CLAIMANT**

**AND**

**URBAN ART HOUSEHOLD AND ANTIQUES LTD ..... 1<sup>ST</sup> RESPONDENT**

**WILFRED KINYUA WAWERU ALIAS DANIEL WAWERU .. 2<sup>ND</sup> RESPONDENT**

**JUDGMENT**

1. The Claimant instituted the present suit by way of a Statement of Claim dated 17<sup>th</sup> April 2025, in which she avers that she was engaged by the Respondents as a General Manager on or about 5<sup>th</sup> November 2024, and that from 11<sup>th</sup> November 2024, she served the Respondents with loyalty and diligence.
2. The Claimant states that she continued to work for the Respondents until 10<sup>th</sup> January 2025, when she resigned due to frustration arising from the Respondent's Director, Mr. Daniel Waweru, failing to pay her salary for November 2024.
3. She avers that she persistently followed up on the arrears, and although the Respondents promised payment and urged patience, the 2<sup>nd</sup> Respondent additionally demanded the return of company property before releasing her salary.
4. The Claimant avers that on 3<sup>rd</sup> March 2025, she issued a demand letter seeking payment of her salary. The 2<sup>nd</sup> Respondent responded on 5<sup>th</sup> March 2025, indicating that the 1<sup>st</sup> Respondent's Human Resource Manager would contact her.
5. The Claimant contends that working without a salary was intolerable, as she could no longer meet her personal and family needs, despite diligently reporting for work from 11<sup>th</sup> November 2024, a situation she characterizes as unfair labour practice.



6. Consequently, the Claimant seeks a declaratory order that she was constructively dismissed. She further seeks to be awarded Kshs 1,200,000.00, being notice pay, salary arrears, and compensation. Additionally, the Claimant prays for the costs of the suit and interest.
7. The Respondents neither entered appearance nor filed a Defence, despite being duly served with the Notice of Summons and Statement of Claim. In this regard, the Claimant filed an Affidavit of Service sworn by Eunitter Wairimu on 20<sup>th</sup> May 2025, confirming physical service. Annexed to the Affidavit was a copy of the summons and Statement of Claim, both bearing the 1<sup>st</sup> Respondent's receiving stamp.
8. Satisfied with the proof of service, the Court directed that the matter proceeds as an undefended suit and consequently, scheduled it for formal proof hearing on 18<sup>th</sup> November 2025.
9. During the formal proof hearing, the Claimant testified in support of her case. She reiterated the averments in her witness statement, which she adopted as her evidence-in-chief. She further produced the list and bundle of documents filed on her behalf as exhibits before the Court.

### **Submissions**

10. Upon close of the hearing, the Claimant filed written submissions, which the Court has duly considered. She submitted that her resignation was not voluntary but a response to the Respondents' unreasonable conduct in failing to pay her salary. The Claimant contended that this amounted to a fundamental breach of her employment contract, effectively forcing her into unfair and wrongful termination by constructive dismissal. In support of this position, reliance was placed on the case of Coca-Cola East & Central Africa Limited v Maria Kagai Ligaga [2015] eKLR.
11. The Claimant further submitted that the Respondents' withholding of her salary constituted an unfair labour practice and, in doing so, violated Article 41(1) of *the Constitution* of Kenya, 2010.

### **Analysis and Determination**

12. Flowing from the record, the issues identified for determination are as follows:
  - i. Whether the Claimant was constructively terminated; and
  - ii. Whether the Claimant is entitled to the reliefs sought.

### **Constructive termination?**

13. It is the Claimant's case that the Respondents withheld her salary for November 2024, effectively creating conditions that compelled her to resign from employment.
14. To substantiate her claim, the Claimant submitted a series of WhatsApp messages exchanged with the 2<sup>nd</sup> Respondent, in which he acknowledged the outstanding salary arrears and undertook to effect payment.
15. Additionally, the Claimant exhibited an email dated 5<sup>th</sup> March 2025 from the 2<sup>nd</sup> Respondent to her Advocates, in which he assured that the 1<sup>st</sup> Respondent's Human Resource team would contact the Claimant to resolve the matter.
16. As stated herein, the Respondents neither filed a defence nor participated in these proceedings. Consequently, the Claimant's assertions remain unchallenged. As such, there is no reason for the Court to doubt that her salary for November 2024 remained unpaid.



17. It is also notable that in her resignation letter dated 10<sup>th</sup> January 2025, the Claimant stated that she was resigning from the 1<sup>st</sup> Respondent's employment due to the non-payment of her November salary. In the letter, she explained that continuing employment had become financially untenable.
18. According to the Black's Law Dictionary (10<sup>th</sup> Edition, p.561), constructive discharge/termination is defined as "an employer's creation of working conditions that leave a particular employee or group of employees little or no choice but to resign, as by fundamentally changing the working conditions or terms of employment; an employer's course of action that, being detrimental to an employee, leaves the employee almost no option but to quit."
19. In the celebrated case of Coca-Cola East & Central Africa Limited v Maria Kagai Ligaga [2015] eKLR, the Court of Appeal outlined the principles governing constructive dismissal. Central to these principles is that an employer's conduct must constitute a fundamental or significant breach that goes to the root of the employment contract, or indicate that the employer no longer intends to be bound by one or more essential terms of the contract.
20. Applying the definition of constructive dismissal to the present case, and guided by the principles in Coca-Cola East & Central Africa Limited v Maria Kagai Ligaga (supra), it is evident that the Respondents' failure to pay the Claimant her salary as contractually agreed constituted a fundamental breach, going to the root of the employment contract.
21. Indeed, it is not in doubt that the Respondents' conduct plainly reflected an intention not to be bound by a fundamental term of the contract, specifically, the obligation to pay wages.
22. In these circumstances, the Claimant was justified in regarding herself as constructively terminated and was entitled to resign, with or without notice.
23. Accordingly, the Court finds that the Respondents' actions amounted to constructive termination, demonstrating a clear intention not to be bound by the employment contract. The Claimant's termination was therefore unfair and unlawful.

### **Reliefs?**

24. As the Court has found that the Claimant's termination amounted to constructive dismissal, it follows that she is entitled to compensatory damages under Section 49(1) of the *Employment Act*. To this end, the Claimant is awarded compensatory damages equivalent to two (2) months' gross salary. In arriving at this amount, the Court has taken into account the relatively short duration of the employment relationship and the fact that the Respondents' conduct subjected the Claimant to unfair labour practices in contravention of Article 41(1) of *the Constitution*.
25. In addition, the Claimant is awarded one (1) month's salary in lieu of notice on account of the constructive termination.
26. The Claimant's claim for the unpaid salary for November 2024 also succeeds, as there is no evidence that the Respondents have made any payment to date.

### **Orders**

27. In sum, judgment is entered in favour of the Claimant against the Respondent as follows: -
  - a. A declaration that the Claimant was constructively terminated.
  - b. The Claimant is awarded Kshs 150,000.00 as unpaid salary for November 2024, with interest accruing at court rates from the date of filing the suit until full payment.



- c. The Claimant is awarded Kshs 150,000.00 as one month's salary in lieu of notice.
- d. The Claimant is awarded compensatory damages amounting to Kshs 300,000.00, being equivalent to two (2) months' gross salary.
- e. Interest shall accrue on the amounts in paragraphs (c) and (d) at court rates from the date of this judgment until full payment.
- f. The total award is Kshs 600,000.00.
- g. The Respondents shall bear the costs of the suit.
- h. The Respondents shall issue the Claimant with a certificate of service within fourteen (14) days from the date of this judgment.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 27<sup>TH</sup> DAY OF FEBRUARY 2026.**

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**STELLA RUTTO**

**JUDGE**

In the presence of:

For the Claimant Ms. Wairimu

For the Respondent No appearance

Court assistant Mohammed

**ORDER**

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15<sup>th</sup> March 2020 and subsequent directions of 21<sup>st</sup> April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court had been guided by Article 159(2)(d) of *the Constitution* which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of *the Constitution* and the provisions of Section 1B of the *Civil Procedure Act* (Chapter 21 of the Laws of Kenya) which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

**STELLA RUTTO**

**JUDGE**

