

- i. A declaration that the Claimant's termination of employment was unlawful. Compensation for unfair termination of the Claimant of Kenya shillings One Million, Eight-Hundred Thousand Only. (Kshs.1,800,000) equivalent of twelve (12) months gross salary and any other financial losses incurred as a result of the constructive dismissal.*
- ii. Benefits and severance pay of Kenya Shillings One Hundred and Fifty Thousand Only (Kshs 150,000).*
- iii. Costs and Interest of the suit.*
- iv. Any such orders and directions as this Honourable Court may deem fit to meet the ends of justice.*

3. In response, the Respondent denies the Claimant's assertion that he performed his duties faithfully and diligently, contending that he was negligent in executing his responsibilities. Specifically, the Respondent avers that the Claimant submitted the payroll inputs for July 2021 after the stipulated deadline and sent them directly to the accountant rather than following the prescribed payroll process.

4. The Respondent further asserts that the Claimant voluntarily resigned from employment, expressing gratitude for the opportunity to serve the organization and without indicating any adverse reasons for his resignation. Accordingly, the Respondent prays that the Claimant's suit be dismissed with costs.
5. The matter proceeded for hearing on 15th October 2025, during which both parties called oral evidence in support of their respective cases.

Claimant's Case

6. The Claimant testified in support of his case and, at the outset, adopted his witness statement as his evidence-in-chief. He further produced the list and bundle of documents alongside the Memorandum of Claim as exhibits before the Court.
7. The Claimant testified that he was taken aback when he received a show cause letter on 4th August 2021, requiring him to attend a disciplinary hearing on 6th August 2021. The letter raised allegations, including sending payroll inputs directly to the Payroll Accountant contrary to established procedures, late submission of payroll inputs, and delayed head-count submissions.

8. He stated that he responded to the issues raised in a letter dated 6th August 2021, explaining that the alleged problems arose due to non-compliance by other employees with the company's timelines, and were not his fault.
9. On 6th August 2021, he attended the scheduled disciplinary hearing and addressed the matters raised in the show cause letter. In his view, he fully explained his position to the committee, but the issues were never raised again, and the minutes of the hearing were never provided.
10. The Claimant further testified that he continued to face harassment from other department heads, particularly Ms. Amanda, the Human Resources in-charge, despite his dedication and conscientious performance.
11. He sought the intervention of a director, Ali Abass, who advised him to submit a letter to the HR in charge/management explaining why the company's business was not performing optimally, which he did.
12. Despite following this advice, the Claimant received an unsolicited response from Ms. Amanda threatening to take any measures necessary to ensure his exit from the company.

13. According to the Claimant, his response, which highlighted the employees responsible for company losses, was ignored by the director, whose only remark was that nothing new had been raised. Subsequently, the situation worsened for him.

14. The Claimant further testified that the HR in charge was condescending and failed to address the issues he raised, continuing with threats, leaving him with no option but to submit his resignation reluctantly on 23rd September 2021.

15. He stated that he was deeply affected by what he described as a malicious plot and a targeted witch-hunt, which left him emotionally drained and in a working environment that was no longer conducive to performing his duties effectively.

16. The Claimant averred that he signed the Respondent's letter of acceptance of resignation under protest, clearly stating that his resignation was forced and the result of threats.

17. He further testified that he has since suffered severe mental and emotional distress, as well as financial loss and anguish.

Respondent's Case

18. The Respondent presented oral evidence through **Rosemary Mwikali**, who testified as RW1. Ms. Mwikali identified herself as the Respondent's Human Resources Business Partner and adopted her witness statement as her evidence-in-chief. She further produced the Respondent's list and bundle of documents as exhibits before the Court.

19. RW1 testified that in July 2021, the Claimant negligently performed his duties by submitting payroll inputs after the stipulated deadline and sending them directly to the accountant instead of following the prescribed payroll process. Consequently, he was issued a show-cause letter requiring him to explain why disciplinary action should not be taken.

20. The Claimant responded to the show cause letter in a letter dated 6th August 2021, implicitly admitting to the allegations. He continued to work for the Respondent until 23rd September 2021, when he submitted a resignation letter.

21. RW1 stated that the Claimant did not indicate any adverse reasons for his resignation, nor did he raise concerns about a hostile work environment or

mistreatment. She added that his resignation letter contained no mention of harassment or other grievances.

22. She added that the Respondent, with regret, accepted the Claimant's resignation by a letter dated 23rd September 2021, confirming that his resignation would take effect on 30th September 2021, as outlined in the resignation letter.

23. RW1 further testified that the Claimant was paid his terminal dues, subject to statutory and other allowable deductions.

24. She stated that approximately one month after the resignation was accepted and the acceptance letter shared, the Claimant alleged that his resignation had been forced. In RW1's view, these claims were raised belatedly and amounted to an afterthought.

25. RW1 contended that prior to his resignation, the Claimant had not raised any concerns regarding harassment by department heads, an unfavorable working environment, or condescending treatment. She maintained that his alleged communications with the director regarding these issues were unsubstantiated.

26.RW1 was categorical that the Claimant's resignation was entirely voluntary, and the assertion that it was forced only emerged a month after the Respondent had accepted his resignation.

Submissions

27.The Claimant submitted that his contract of service was unfairly and unlawfully terminated, asserting that the Respondent failed to follow due process, lacked just cause, and denied him a fair hearing and an opportunity to defend himself. In support of these submissions, reliance was placed on the cases of ***Gichuru v Package Insurance Brokers Ltd (Petition 36 of 2019) [2021] KESC 12 (KLR)*** and ***Jane Samba Mukala v Ol Tukai Lodge Limited [2013] eKLR***.

28.Citing the case of ***Alex Wainaina Mbugua v Kenya Airways Limited, Cause No.430 of 2016***, the Claimant argued that the Respondent failed to make reasonable efforts to support him in improving his performance before termination. He contended that the Respondent instead engaged in a malicious scheme and witch hunt intended to frustrate him, causing emotional distress and rendering the working environment intolerable, leaving him with no option but to involuntarily tender his resignation.

29. The Respondent, on the other hand, submitted that the Claimant had not demonstrated that the fiduciary relationship between the parties had irretrievably broken down prior to his resignation. It was contended that nothing in the resignation letter suggested conduct by the Respondent that could have undermined the relationship of trust and confidence.

30. The Respondent further posited that in his resignation letter, the Claimant expressed gratitude to the management for the opportunity to serve the company. In the Respondent's view, the tone and import of the letter confirm that the resignation was voluntary and free of undue influence. To this end, the Respondent made reference to the cases of *Nyambunga v Catholic University of Eastern Africa [2025] KEELRC 2716 (KLR)* and *Kiprop v Mediheal Group of Hospitals [2025] KEELRC 2726 (KLR)* in support of this position.

31. The Respondent maintained that the Claimant had failed to substantiate his allegation that he was coerced into resigning.

32. It was further submitted that the burden rested on the Claimant to show that the Respondent created intolerable working conditions that made continued employment untenable, leaving resignation as the only option. On this score,

the Respondent sought to rely on the case of *Mariana Onica and Another v Sky Aero Limited, Cause No. 1815 of 2014*.

33. The Respondent further submitted that the Claimant failed to prove the existence of a hostile work environment, nor did he produce any evidence to show he was subjected to harassment by the Respondent's management. The Respondent reiterated its position that the Claimant voluntarily resigned. In this regard, reliance was placed on the case of *Ayonga v Falcon Signs Limited [2023] KEELRC 300 (KLR)*.

Analysis and Determination

34. Flowing from the pleading filed by both parties, the evidence on record, as well as the rival submissions, the following issues emerge for determination:

- i. Whether the Claimant's resignation was involuntary; and**
- ii. Whether the Claimant is entitled to the reliefs he seeks;**

Involuntary resignation?

35. It is the Claimant's case that his resignation was involuntary, made under duress, and the result of threats. He alleges that he was subjected to severe harassment by the Respondent's management, particularly Ms. Amanda, the Human Resources in-charge. According to the Claimant, he was emotionally

drained, the working environment became uncondusive, and he was unable to perform his duties effectively.

36.The Respondent holds otherwise and has consistently maintained that the Claimant voluntarily resigned and did not indicate any adverse reasons for his resignation, nor did he raise concerns about a hostile work environment or mistreatment.

37.In light of the rival positions advanced by both parties, the key question that begs for an answer is whether the Claimant’s resignation was involuntary.

38.The record bears that the Claimant submitted his resignation from the Respondent’s employment by way of a handwritten letter dated 23rd September 2021, the contents of which are reproduced below for contextual purposes:

“I hereby wish to resign from Proto Energy Ltd as a HRBP effective 30th September 2021.

I extend my gratitude to the management for the opportunity they gave me to serve this company in the HR department for the last two years since 2019.

All the best for the proto as a whole.

*N/B having agreed with the management to pay me two months' notice pay
(Amanda)*

Your sincerely”

39. The Claimant's resignation was accepted by Amanda Donahue in a letter dated 23rd September 2021, in which she informed the Claimant that his last working day would be 30th September 2021. The letter also stated that he would be paid salary for the days worked up to 30th September 2021, any accrued leave, and two months' salary in lieu of notice, less statutory deductions.

40. On the face of the acceptance letter, the Claimant wrote by hand: *'This is a forced resignation from the company by the management (Amanda) the undersigned, through threats.'*

41. In support of his case, the Claimant exhibited a copy of a report he had submitted to **Ali Ahmed**, a director at the Respondent company. The report, titled *'Areas of Concern Where We Are Failing and Losing Revenue That Need Your Intervention,'* outlined issues that, in the Claimant's view, were adversely affecting the Respondent company.

42. Notably, the report attributed most of these problems, including the creation of a *'toxic work environment,'* to Amanda. The Claimant urged Mr. Ali to help restore the good work environment that existed before Amanda assumed her role. He further alleged that Amanda favored certain individuals, specifically *'Indians'* and people within her inner circle. He further accused Amanda of colluding with other department heads to get rid of good staff.

43. It is also noteworthy that, in forwarding the report via email, the Claimant addressed Mr. Ali as follows:

"Hope this mail finds you well. As we agreed, kindly find the attached report for your kind perusal. Again I beg you to retain my job as promised, for I really need it. Your consideration is highly appreciated".

44. In response to the Claimant's email forwarding the report, Mr. Ali, in his email dated 21st September 2021, stated: *'You've not told me anything new. Please go see Amanda.'*

45. Two days after receiving Mr. Ali's email, the Claimant submitted his resignation.

46. The sequence of events leading to the Claimant's resignation indicates that it is highly probable that his resignation was involuntary. Here is why. First, the

resignation followed a report in which the Claimant accused his superior, Amanda, of being responsible for issues adversely affecting the Respondent company. Second, in his email to Mr. Ali, the Claimant was begging to retain his job while he had not yet tendered his resignation. Third, Mr. Ali, to whom the report was submitted, responded dismissively, instructing the Claimant to see with the very Amanda against whom he had leveled serious allegations.

47. Fourth, the Claimant's resignation letter noted that management had agreed to pay him two months' salary in lieu of notice, specifically referencing Amanda. Fifth, on the face of the resignation letter, the Claimant explicitly stated that his resignation was forced by Amanda.

48. Coupled with the foregoing, it is questionable why the Respondent would pay the Claimant two months' salary in lieu of notice when his notice period as per his resignation letter was only one week, while his contract required a one-month notice. If anything, the Respondent could have filed a counterclaim against the Claimant for providing a shorter notice period than required. Instead, it appears as though he was being rewarded for his resignation.

49. It is, indeed, paradoxical that in his email of 20th September 2021, the Claimant was requesting Mr. Ali to allow him to retain his job, yet just two days later, on 23rd September 2021, he resigned from the same position.

50. Therefore, even though the Claimant did not specify any adverse reasons in his resignation letter, the circumstances leading to his resignation exhibit the characteristics of an involuntary resignation.

51. All things considered, the Court finds that the Claimant did not submit his resignation letter entirely of his own free will.

52. Having found that the Claimant's resignation was involuntary, the next issue to consider is whether this resignation constitutes constructive dismissal.

53. Constructive dismissal occurs when an employee resigns because the employer's conduct has created such an intolerable or difficult work environment that the employee has no real choice but to resign. Although the resignation is formally tendered by the employee, it is, in effect, a termination.

54. In the landmark case of *Coca-Cola East & Central Africa Limited v Maria Kagai Ligaga [2015] eKLR*, the Court of Appeal stated as follows with regard to constructive dismissal: -

“What is the key element and test to determine if constructive dismissal has taken place? The factual circumstances giving rise to constructive dismissal are varied. The key element in the definition of constructive dismissal is that the employee must have been

entitled or have the right to leave without notice because of the employer's conduct. Entitled to leave has two interpretations which gives rise to the test to be applied. The first interpretation is that the employee could leave when the employer's behavior towards him was so unreasonable that he could not be expected to stay - this is the unreasonable test. The second interpretation is that the employer's conduct is so grave that it constituted a repudiatory breach of the contract of employment - this is the contractual test." Underlined for emphasis

55. Applying the above precedent to the present case, the Court finds that the Claimant was entitled to treat himself as constructively dismissed due to the Respondent's conduct, particularly following the submission of his report to Mr. Ali, highlighting issues affecting the company. As stated herein, Mr. Ali dismissed the concerns raised by the Claimant without any resolution.

56. To top it off, Mr. Ali referred the Claimant to Amanda, the very person against whom he had made serious allegations in the report. Needless to say, the Respondent's response to the concerns raised by the Claimant was unreasonable. Therefore, it was unrealistic to expect the Claimant to continue

working under Amanda in the same environment. In this regard, the Respondent fails the unreasonable test as highlighted in *Coca-Cola East & Central Africa Limited v Maria Kagai Ligaga [supra]*.

57. In the Court's view, the Claimant was effectively cornered and had no viable option but to leave employment. From the way I see it, the Claimant's choices were limited.

58. In sum, the Court finds that the Respondent's conduct amounted to constructive dismissal, leaving the Claimant with no option but to resign.

Reliefs?

59. Having found that the Claimant was constructively dismissed, the Court holds that he is entitled to compensatory damages under **Section 49(1) of the Employment Act**. Consequently, the Claimant is awarded compensation equivalent to four (4) months' gross salary. In assessing this award, the Court has considered the length of the employment relationship and the circumstances leading to its termination.

60.The claim for severance pay fails, as severance is only payable under **Section 40(1)(g) of the Employment Act** in cases of redundancy, which is not applicable in the present matter.

Orders

61.In the final analysis, judgment is entered in favour of the Claimant against the Respondent as follows: -

- (a) A declaration that the Claimant was constructively dismissed.**
- (b) The Claimant is awarded compensatory damages of Kshs 600,000.00, equivalent to four (4) months' gross salary.**
- (c) Interest on the amount in (b) shall accrue at the court rate from the date of judgment until full payment.**
- (d) The Respondent shall also bear the costs of the suit.**

DATED, SIGNED and DELIVERED at NYERI this 17th day of February 2026.

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STELLA RUTTO

JUDGE

In the presence of:

For the Claimant

No appearance

For the Respondent

Ms. Koko

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 15th March 2020 and subsequent directions of 21st 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**