



Makanga v Gearbox Limited & 4 others (Employment and Labour Relations Cause E756 of 2023) [2026] KEELRC 755 (KLR) (16 March 2026) (Judgment)

Neutral citation: [2026] KEELRC 755 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS CAUSE E756 OF 2023**

BOM MANANI, J

MARCH 16, 2026

BETWEEN

JOSEPH GATERI MAKANGA CLAIMANT

AND

GEARBOX LIMITED 1ST RESPONDENT

GEARBOX PANAFRICAN NETWORK LIMITED 2ND RESPONDENT

GEARBOX EUROOPLACER LIMITED 3RD RESPONDENT

MACHINE AFRICA NETWORK LIMITED 4TH RESPONDENT

DR. KAMAU GICHANGI 5TH RESPONDENT

JUDGMENT

1. The Claimant avers that the 1st Respondent retained him as an Intern in June 2018 before it offered him employment as a Mechanical Engineer in November 2019. He contends that he worked for the 1st Respondent until 4th November 2020 when he was notified of changes in the said Respondent and the fact that he was henceforth to be absorbed by the 2nd Respondent in the same capacity.
2. The Claimant contends that the 1st to 4th Respondents are sister companies in which the 5th Respondent serves as a common director. He further avers that his contract of service obligated him to serve all the sister companies during the term of his service.
3. The Claimant avers that his salary was agreed at Ksh. 110,000.00. He avers that throughout the term of his service, the salary used to be remitted by the 1st Respondent.
4. The Claimant contends that the Respondents delayed to pay his salary for November 2022 without explanation. He contends that when he made inquiries about the delay, the Respondents made a partial payment of the outstanding salary.



5. The Claimant contends that when he reported to work on 16th January 2023 after the Christmas break, the Respondents' guards denied him access to the workplace. He contends that the guards informed him that they were acting on the instructions of the 5th Respondent.
6. The Claimant avers that he called the 5th Respondent over this development but the latter did not pick his call. He contends that on 19th January 2023, he was issued with a letter of notice to show cause in which the Respondents accused him of having engaged with their business competitor and having stolen company property and taken it to their competitor.
7. The Claimant contends that he responded to the show cause letter through email. He avers that he informed the Respondents that he communicated with the competitor on official matters regarding business which was beneficial to the 2nd Respondent. He denied that he engaged the competitor for personal gain.
8. The Claimant contends that he further denied stealing the Respondents' property and taking it to their competitor. He says he indicated that he took the items he is accused of having stolen on the instructions of the 5th Respondent in order to go and complete the Biltong project in Karen and thereafter returned them to the workshop.
9. The Claimant avers that the Respondents sent him a letter dated 31st January 2023 inviting him to a disciplinary hearing on 5th February 2023. He says that he protested the invite since the proposed meeting fell on a Sunday which was his day of worship. He further contends that he requested that the disciplinary session be conducted virtually for the convenience of his witnesses. He also asserts that he requested for several documents to enable him to prepare his defense.
10. The Claimant avers that the Respondents agreed to adjourn the hearing to 28th February 2023. However, he contends that they did not respond to his request for a virtual session and documents.
11. The Claimant contends that because of the Respondents' failure to accord him the option of a virtual hearing, he presented himself at their premises on the appointed date together with his witnesses. However, he avers that the 5th Respondent informed him that he was not ready for the meeting and that he was going to be informed about the new date for the hearing.
12. The Claimant contends that despite this assurance, the Respondents did not convene a fresh disciplinary hearing session after the one of 28th February 2023 aborted. He contends that on 2nd March 2023, he sent them (the Respondents) an email to inquire about the fate of the disciplinary process but did not get a response.
13. The Claimant avers that it is at this moment that he realized that the Respondents were unwilling to address the matter in order for him to resume duty. He contends that it became apparent to him that the relationship between him and the Respondent had been irretrievably damaged.
14. The Claimant contends that he did not think that the Respondents were going to allow him to resume duty. As such, he avers that he considered himself as having been constructively dismissed from service and thus tendered his resignation on 12th April 2023.
15. The Claimant contends that the Respondents did not pay him salary from January 2023 until the time he resigned from employment. He contends that this was contrary to the terms of the contract between the parties.



16. The Claimant avers that the Respondents' decision: not to process the disciplinary case against him; to withhold his salary; and to lock him out of the workplace amounted to a fundamental breach of the contract between the parties which entitled him to resign and plead constructive dismissal from service.
17. The Claimant contends that after he resigned from employment, he realized that the Respondents had not remitted his contributions to the National Social Security Fund (NSSF) and the National Health Insurance Fund (NHIF) from May 2022. He further avers that the Respondents did not issue him with a Certificate of Service thus making it difficult for him to secure a new job. Consequently, he prays for the various reliefs in the Statement of Claim.
18. The Respondents have opposed the claim. The 3rd and 4th Respondents assert that they were wrongly sued as they are strangers to the dispute. However, the 1st and 2nd Respondents admit being the Claimant's employers at the material time.
19. The Respondents contend that the Claimant's contract prohibited him from engaging with their competitors. They contend that the Claimant contravened this requirement by engaging a competitor through an email dated 24th November 2022. The Respondents also accuse the Claimant of illegally carting away company property in December 2022.
20. The Respondents aver that because of the Claimant's misconduct, he was issued with a letter of show cause in January 2023. They further aver that they invited him for a disciplinary hearing in compliance with the law.
21. The Respondents aver that the Claimant asked for a virtual hearing for the convenience of his witnesses. However, they contend that this was not acceptable to them since disciplinary hearings are ordinarily conducted through physical sessions.
22. The 5th Respondent contends that before the disciplinary hearing was conducted, the Claimant tendered his resignation from service. Further, he contends that the Claimant did not issue the requisite notice to terminate the contract of service between the parties.
23. The Respondents aver that they do not dispute the claim for salary arrears. They aver that the salary delays were occasioned by challenges in securing donor funding. However, they contend that they have partially settled the arrears leaving a balance of Ksh. 129,707.00 which the 1st and 2nd Respondents undertake to pay.
24. The Respondents do not deny the Claimant's contention that they did not remit statutory deductions on his behalf at some point. However, they contend that the matter is being mediated with the respective statutory bodies and that the Claimant has no role in pursuing the payments.
25. The Respondents assert that the Claimant's resignation was voluntary. As such, they deny that he was constructively dismissed from service.

Issues for Determination

26. After evaluating the pleadings, evidence and submissions on record, the following issues arise for determination:-
 - a. Who was the Claimant's employer?
 - b. Whether the Claimant was constructively dismissed from employment.
 - c. Whether the Claimant is entitled to the reliefs which he seeks in the action.



Analysis and Determination

27. The record shows that the 5th Respondent wrote to the Claimant on 4th November 2022 informing him that there had been a change in the legal status of the 1st Respondent. The 5th Respondent informed the Claimant that these change had necessitated the transfer of his (the Claimant's) services from the 1st to the 2nd Respondent. The 5th Respondent further informed the Claimant that the transfer was not going to affect his vested rights and that his employment was going to be considered as continuous.
28. The record shows that the 2nd Respondent then issued the Claimant with a contract of even date appointing him as Mechanical Engineer. Clause XI of the contract informed the Claimant that he may be called upon to work for any of the 2nd Respondent's affiliates.
29. The record shows that the 5th Respondent was a common director of the 1st to 4th Respondents. The 5th Respondent does not deny the Claimant's assertion that the 1st to 4th Respondents were sister companies. Based on this evidence, I find that the 1st to 4th Respondents were affiliate companies and that by virtue of clause XI in the Claimant's contract, he was obligated to work for either of them.
30. As such, whilst the 2nd Respondent was the Claimant's primary employer, the 1st, 3rd and 4th Respondents stood in the position of his secondary employers by virtue of the obligation that was imposed on him by clause XI of his contract. It is so declared.
31. The record shows that the 5th Respondent issued the Claimant with a notice to show cause letter dated 19th January 2023 in which he raised two accusations against him. He accused the Claimant of engaging with a competitor in contravention of his contract of service and of unlawfully taking the Respondents' equipment to a competitor.
32. The evidence that was tendered in court shows that the Claimant gave a comprehensive response to the aforesaid letter denying the two accusations. Logically, the next thing that was expected in the process was for the Respondents to either accept the Claimant's response and clear him of the accusations or reject the explanation and invite him for a disciplinary hearing.
33. It is apparent that the Respondents did not accept the Claimant's explanation. As such, the 5th Respondent wrote to him on 31st January 2023 inviting him for a hearing on 5th February 2023.
34. It would appear that the aforesaid date was not convenient to the Claimant since it was his worship day. As such, the hearing was rescheduled to 28th February 2023.
35. The record shows that the Claimant asked for the session to be virtual. He also asked for a plethora of documents in order to prepare for his defense. There is no indication that the Respondents responded to the request.
36. The Claimant contends that he attended the proposed session on 28th February 2023 in the company of his witnesses. However, the 5th Respondent informed him that he was busy and was not ready for the hearing. He contends that the 5th Respondent adjourned the session without fixing a new date for it.
37. The evidence on record shows that the Claimant wrote to the 5th Respondent on 2nd March 2023 inquiring about the fate of the disciplinary hearing. There is no indication that the Respondents responded to the inquiry. As a matter of fact, during the trial, the 5th Respondent stated that he does not recall responding to the Claimant's aforesaid inquiry.



38. Despite the Claimant raising concerns about the disciplinary proceedings having been put in a state of limbo, the Respondents were unmoved. For more than a month, they did not bother to inform him regarding the fate of his employment until he resigned on 12th April 2023.
39. The 5th Respondent alleges that he was constrained of time and was still putting together the information which the Claimant had asked for. However, there was nothing to back this claim.
40. Nothing stopped the 5th Respondent from informing the Claimant that the disciplinary process had been delayed by the reasons he alludes to above. Nothing stopped him from setting a date for the hearing even as he allegedly assembled the documents.
41. The conduct of the 5th Respondent leaves no doubt in the court's mind that he was unwilling to finalize the disciplinary case against the Claimant. Otherwise, it is difficult to explain why he adjourned the disciplinary session of 28th February 2023 indefinitely.
42. The evidence on record shows that the Claimant was not paid salary from January 2023. As a matter of fact, the Respondents admit this fact.
43. Although the 5th Respondent alleged that the failure to pay the Claimant's salary was occasioned by financial constraints, he did not present any data to back this claim. Consequently, the court finds that there was no justifiable reason for the Claimant's salary to have been withheld.
44. The Claimant stated that when he attempted to resume duty on 16th January 2023, he was blocked by the Respondents' guards on the instructions of the 5th Respondent. He contended that the Respondents did not allocate him any work from January 2023 in breach of the contract between the parties.
45. The Respondents did not expressly deny the Claimant's assertion that he was blocked from accessing his work station and was not allocated work after 16th January 2023. At the same time, there is no evidence that the Claimant was formally suspended from duty pending the proposed disciplinary action against him. In effect, he was entitled to be at work and to be allocated tasks unless he was formally suspended.
46. The law on constructive dismissal is now settled. An employee will be deemed to have been constructively dismissed if he resigns from work because of breach of his contract by the employer (*Coca Cola East & Central Africa Limited v Maria Kagai Ligaga* [2015] KECA 394 (KLR)).
47. In the instant case, the Respondents breached the Claimant's contract of service when they unjustifiably withheld his salary for more than three months and failed to allow him to be on duty without having formally suspended him from duty. Although the Respondents were entitled to conduct disciplinary proceedings against the Claimant, they were not entitled to place him in a state of limbo by holding the disciplinary process in abeyance for an indefinite period.
48. In the court's view, the Respondents' conduct entitled the Claimant to resign from service and plead constructive dismissal. As such, I find and declare that the Claimant's contract was terminated through constructive dismissal from employment.
49. The Claimant has prayed for salary arrears from January 2023 to the time he resigned from service. The Respondents did not oppose this claim. The 5th Respondent indicated that the arrears had in fact been paid save for a balance of Ksh. 129,707.00 which the 1st and 2nd Respondents were willing to pay. Consequently, I enter judgment for the Claimant for the balance of his salary arrears in the sum of Ksh.129,707.00.



50. The Claimant has prayed for payment of the statutory deductions payable to the NSSF and NHIF. Whilst not contesting the obligation to remit the deductions, the Respondents contend that the amounts can only be paid to the relevant agencies.
51. The court is in agreement with the Respondents' contention in this respect. The Claimant is not entitled to pursue the statutory deductions directly since the agencies to which the deductions are to be paid are empowered by law to pursue the payments directly. As such, the claim for payment of outstanding statutory deductions fails.
52. The Claimant has prayed for severance pay. However, this relief is only available in situations of redundancy. As such, the claim fails.
53. The Claimant prayed for 83 accrued leave days. However, during the trial, he was at pains to justify the claim. He did not specify the period the leave claim related to. Besides, the leave days claimed appeared to have overshoot the duration he was in the Respondents' service.
54. The court is aware that the employer is obligated to maintain employee records and to provide evidence on any disputed aspect of the employment relation. However, the employee must provide some preliminary pointers to contextualize the claim to enable the employer's explanation.
55. The Claimant did not do so in respect of the leave claim. As such, the court is not able to come to his aid in this respect particularly when it appears that the leave days he has claimed overshoot the period he was in the Respondent's service.
56. The Claimant has prayed for compensation for unfair termination of his contract of service. Having regard to the fact that he had served the Respondents for a considerable duration of time, the court awards him compensation which is equivalent to his gross salary for five months, that is to say, Ksh. 550,000.00.
57. The amount awarded to the Claimant attracts interest at court rates from the date of this decision.
58. The award to the Claimant is subject to the statutory deductions which were applicable at the time his contract was terminated.
59. The Respondents to issue the Claimant with a Certificate of Service.
60. The Claimant is awarded costs of the case.
61. Any other relief which was sought by the Claimant but which has not been expressly granted is deemed as having been declined.

Summary of Findings and Orders

62. After evaluating the evidence on record and the applicable law, the court makes the following findings and attendant orders:
 - a. The 2nd Respondent was the primary employer of the Claimant. The 1st, 3rd and 4th Respondents were the Claimant's secondary employers.
 - b. The Claimant's contract of service was terminated through constructive dismissal from employment.
 - c. The Claimant is awarded Ksh. 129,707.00 being his salary arrears.
 - d. The court declines the claim for accrued leave pay.



- e. The court declines the claim for unremitted NSSF and NHIF dues.
- f. The Claimant is awarded Ksh.550,000.00 as compensation for unfair termination of his contract.
- g. The award to the Claimant is subject to the statutory deductions that were applicable when his contract was terminated.
- h. The Claimant is awarded interest on the aforesaid amounts at court rates from the date of this decision.
- i. The Claimant is awarded costs of the case.
- j. The Respondents to issue the Claimant with a Certificate of Service.
- k. Any other relief which was sought by the Claimant but which has not been expressly granted is deemed to have been declined.

DATED, SIGNED AND DELIVERED ON THE 16TH DAY OF MARCH, 2026

B. O. M. MANANI

JUDGE

In the presence of:

.....for the Claimant

.....for the Respondents

ORDER

In light of the directions issued on 12th July 2022 by her Ladyship, the Chief Justice with respect to online court proceedings, this decision has been delivered to the parties online with their consent, the parties having waived compliance with Rule 28 (3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

B. O. M MANANI

