

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT MOMBASA

(Before Hon. Lady Justice Monica Mbarũ)

CAUSE NO. E094 OF 2025

WILLIAM ONYANGO AGENGA.....CLAIMANT

VERSUS

GOLD CROWN BEVERAGES (KENYA) LIMITED.....RESPONDENT

JUDGMENT

The claim proceeded by way of formal proof. The Respondent was served, an Affidavit of Service was filed, and no appearance or response was filed.

The claim is based on the Respondent employing the Claimant on 6th January 2014 as a store controller, in charge of logistics/dispatch for all company orders, earning Ksh. 45,000 per month. The salary was reviewed over time to Ksh. 90,822 per month, as per a letter dated 17th January 2024.

The claim is that, despite the Claimant working diligently over the years for the Respondent, the Respondent engaged in unfair labour practices to his detriment. The line manager failed to provide the Claimant with a job description and was tossed from one job to another without regard to his role. The Claimant was forced to work in an area for which he had not been hired or had any expertise.

Despite being employed as a store controller, he was assigned secretary duties, personal assistant and translator to the line manager, who was a non-English speaker. The Claimant was constantly forced to work with outsourced transporters for the personal benefit of the line manager, which conflicted with the Respondent's business. He was constantly threatened with dismissal if he failed to cooperate.

The claim is that the Claimant suffered unlawful salary deductions, and for 4 leave days, he was not paid.

The claim is that the Claimant was placed in intolerable working conditions and a harsh working environment, and on 4th September 2024, was forced to tender his resignation. The human resources accepted the resignation notice and directed the Claimant to clear and leave the company premises immediately.

The claim is that there was an unlawful and unfair termination of employment to warrant the summary dismissal. This resulted from coercion and constructive dismissal arising from the Respondent's conduct as the employer. The Respondent failed in the following areas:

- a) *Failure to provide the Claimant with a job description as required under section 10 of the Employment Act (the Act).*
- b) *The Respondent forced the Claimant to work in areas where he had no expertise, contrary to Article 30 of the Constitution.*

- c) *The lie manager forcing the Claimant to take part in actions of outsourced transporters for his personal benefit, which were in conflict with the company's business and hence unfair labour practices contrary to Article 41 of the Constitution.*
- d) *The acts of forced labour were contrary to Article 27 of the Constitution.*
- e) *Failing to pay terminal dues or as required under the Labour Institutions Act.*
- f) *Withholding salaries and causing the clamant loss of employment out of malice contrary to Article 41 of the Constitution.*

The Respondent's conduct forced the Claimant to tender his resignation. The conduct was grave and unreasonable and repudiated the employment contract. The Respondent failed to provide the Claimant with a Certificate of Service, and despite demands and efforts to seek payment for leave days, the Respondent did not comply.

The Claimant is seeking a declaration that his employment was terminated unfairly through constructive dismissal and is entitled to the following dues:

- a) 12 months competition Ksh. 1,089,864.
- b) Refund of Ksh. 92,865 deductions.
- c) 4 days unpaid leave Ksh. 12,109.
- d) Costs of the suit.

The Claimant testified in support of his case that he worked diligently for the Respondent from 2014 to 2024, but his line manager forced him to resign. Despite issuing notice of resignation, the line manager directed him to hand over and leave the company immediately. He did not address his concerns. He had a clean record, and despite being forced to work under intolerable working conditions, the Respondent failed to adhere to fair labour practices, forcing the Claimant to tender his resignation. He claims constructive dismissal.

The Claimant filed his written submissions. These are analysed in the findings.

Determination

The Respondent was served but failed to enter an appearance or file a response. This denied the court crucial evidence and records with regard to the employment relationship. The claims will thus be assessed based on the information, the evidence and written submissions by the Claimant.

Constructive dismissal is a concept accepted in employment and labour relations. It arises where the employee is placed under an intolerable and hostile working environment, effectively being forced to resign. The employer's conduct effectively repudiates the employment contract, forcing the employee to leave. This is defined in **Coca-Cola East Africa & Central Africa Limited v Maria Kagai Ligaga [2015] eKLR** as conduct that amounts to a repudiatory breach of the employment contract. Where the employer's conduct is such that they no longer wish to be bound by the terms and conditions of employment,

the employee's resignation is therefore constructive dismissal. In **Leena Apparels (EPZ) Limited v Nyevu Juma Ndokolani [2018] eKLR**, the court held the employer breached the employment contract, hence the employee was justified in tendering his resignation.

In this case, the Claimant asserts that he had no job description as required under section 10 of the Act. The Respondent continued to assign him duties that conflicted with his interests. And fundamentally, he suffered unlawful deductions from his salary contrary to sections 17 and 19 of the Act. The employer was in breach of contract. The resignation was justified, and the constructive dismissal claim has merit.

Employment was terminated due to the conduct of the employer. There was an unlawful and unfair termination of employment. This is contrary to sections 43 and 45 of the Act.

The Claimant is seeking compensation. He had worked for the Respondent for 10 years without any record. There is no response to contradict the claim.

A compensation of 10 months is hereby found justified. Based on the last salary of Ksh. 92,685, the Claimant is awarded Ksh. 926,850.

The Claimant is seeking a refund of Ksh. 92,685 unlawful deduction noted as an absent deduction. There is no response to support the reasons for the deduction.

The Claimant tendered his resignation on 4th September 2024, and the Respondent accepted it, directing him to clear and leave the company premises.

There is nothing to justify the deductions.

The sum of Ksh. 92,685 is hereby awarded.

On the claim for 4 leave days, under section 28 of the Act, leave days are a right under the Act. There are no work records indicating that the Claimant took his full earned days at the end of employment. The claim for 4 days at Ksh. 12,109 is justified.

A certificate of service is due at the end of employment under section 51 of the Act. This should be issued unconditionally.

On costs, the claim is found justified, and these are awarded.

Accordingly, judgment is entered for the Claimant against the Respondent in the following terms:

- a) A declaration that employment was terminated through constructive dismissal, which is unlawful and unfair.**
- b) Compensation Ksh. 926,850.**
- c) Unlawful deductions Ksh. 92,685.**
- d) 4 leave days Ksh, 12,109.**
- e) Certificate of service shall be issued pursuant to section 51 of the Employment Act.**

f) Costs of the suit.

Delivered in open court at Nairobi, this 23rd day of April 2026

M. MBARŪ

JUDGE

In the presence of:

Court Assistant: Catherine and Omar

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