

**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT & LABOUR RELATIONS COURT AT**  
**NAIROBI**

**CAUSE NO. E917 OF 2023**

**JOSEPH PASKARI NABWANA.....**  
**.....CLAIMANT**

**VERSUS**

**MWANANCHI CREDIT LTD.....**  
**RESPONDENT**

**JUDGMENT**

**Introduction**

1. Before Court is the Claimant's Statement of Claim dated 9<sup>th</sup> November, 2023, wherein the Claimant seeks the following reliefs as against the Respondent: -
  - i. General damages for breach of the Claimant's right to fair labour practices.
  - ii. Aggravated damages for the pain, suffering, mental anguish, and anxiety that arose due to a hostile working environment.
  - iii. A declaration that the Respondent's management move to verbally direct the Claimant to proceed on leave for rejuvenation and after that compel him to prepare a full handover report, and withhold his September salary unilaterally without consultation, explanation, and fair hearing amount to unfair labour practice and constructive termination.
  - iv. An order directing the Respondent to pay the Claimant Kshs. 130,000/= (less deductions) being the salary for September 2023, with interest at court rates with effect from 6th October 2023.

- v. An order directing the Respondent to pay the Claimant one month's salary in lieu of notice Kshs.130, 000 (less statutory deductions).
  - vi. An order directing the Respondent to compensate the Claimant's 16 days' annual leave earned as of 6<sup>th</sup> October 2023.
  - vii. An order directing the Respondent to provide the Claimant with copies of his payslips from the commencement of his employment on 17th November 2022 up to 30th September 2023.
  - viii. An order directing the Respondent to provide the Claimant with employment records held by the Respondent in respect of the Claimant, including his appraisals, internal memos, as well as any complaints/allegations made against him or by him.
  - ix. A Certificate of Service.
  - x. Costs of this suit plus interest thereon.
2. The Respondent filed a Response to the Memorandum of Claim and Counterclaim dated 4<sup>th</sup> December 2023, in response to the Claimant's claim.
  3. The Respondent in the Counterclaim seeks the following reliefs as against the Claimant:-
    - i. That the Respondent in the Counterclaim pay to the Claimant in the Counterclaim the equivalent of 1 month's salary, being payment in lieu of notice, in the sum of Kshs. 130,000.00.
    - ii. Interest at court rates on i) above from the date of termination (6<sup>th</sup> October, 2023) until payment in full.

- iii. Costs of this suit (against the Claimant in the Counterclaim) and the Counterclaim herein, together with interest thereon;
4. The Claimant's case was heard on 3<sup>rd</sup> December, 2024, when the Claimant (CW1) testified in support of his case. He adopted his witness statement dated 9<sup>th</sup> November, 2023, and produced his list and bundle of documents of even date, and the Supplementary list of documents dated 18th March, 2024, as exhibits in the matter, which were marked as Claimant's exhibits Nos. 1-20 and 21-26, respectively.
5. The Respondent's case was heard on 24<sup>th</sup> March, 2025, and further on 13th October, 2025, when the Respondent's witness (RW1), Ms. Cedella Aketch, testified in support of the Respondent's case. She adopted her witness statement dated 9<sup>th</sup> October, 2024, and produced her list and bundle of documents dated 13th March, 2024, as exhibits in the matter and were marked as Respondent's exhibits Nos. 1-5.
6. Submissions were received from both parties.

### **The Claimant's case**

7. The Claimant's case is that he was lawfully employed by the Respondent initially as a Legal Officer on 17<sup>th</sup> November 2022 under a probationary contract at a monthly salary of Kshs. 80,000/=, and upon successful completion of probation, he was confirmed in employment on 13th March 2023.
8. The Claimant avers that on 20<sup>th</sup> May 2023, he was promoted to the position of Senior Legal Officer with effect from 1st May

2023, with an enhanced gross salary of Kshs.130,000/= together with other benefits.

9. The Claimant contends that he diligently discharged his duties until June 2023, when the Head of Legal, one Sylvia Njoroge, began subjecting him to a hostile working environment characterized by verbal threats, intimidation, and false accusations, including allegations of forgery and intent to defraud the Respondent, which were never subjected to any disciplinary process despite his response.
10. He further avers that he was overburdened with additional duties, including preparation of departmental reports contrary to established protocol, which resulted in work overload and further hostility when he declined to continue undertaking those tasks.
11. It is the Claimant's case that on 27<sup>th</sup> September 2023, he was issued with a show cause email alleging negligence in handling a matter, to which he responded and also raised concerns regarding the hostile work environment.
12. He states that he was subsequently summoned to a meeting on 29<sup>th</sup> September 2023, where he was questioned, advised to take leave, and verbally directed to prepare and submit a handover report, which he complied with on 2<sup>nd</sup> October 2023.
13. The Claimant further states that his salary for September 2023 was withheld without explanation while his colleagues were paid, and despite making inquiries, he received no response.

14. The Claimant further avers that on 6th October 2023, he tendered his resignation citing the hostile working environment and non-payment of his September salary, and further requested payment of his outstanding dues. It is his case that upon doing so, he was informed that he was facing disciplinary action and was placed on forced leave without being accorded a fair hearing.

15. It is the Claimant's further case that the Respondent's actions amounted to unfair labour practices and constructive dismissal, particularizing the same to include persistent harassment, unlawful withholding of salary, failure to follow due disciplinary process, denial of a fair hearing, failure to provide employment records and benefits, and issuing contradictory directives regarding leave and handover.

16. He further states that efforts to resolve the dispute amicably, including a demand letter dated 11<sup>th</sup> October 2023 and subsequent negotiations, were unsuccessful as the Respondent failed to pay his September 2023 salary and other entitlements, thereby necessitating the filing of the present suit.

17. It is the Claimant's prayer that the Court grant the relief sought under his Claim.

18. On cross-examination, the Claimant stated that he did not file the report of the alleged threats of the Respondent's head of Legal in court to substantiate his claim.

19. The Claimant avers that he was forced to respond to the Notice to show cause letter within 10 minutes, which he protested against verbally. He states that in his response, he expressed his frustration with the Head of Legal, who was also his line manager, regarding the threats and intimidation he faced at work.
20. On re-examination, the Claimant stated that he filed in court the daily reports prepared by himself shared on the WhatsApp platform and the Head of legal duty was to compile the reports.
21. The Claimant testified that he was overworked by being made to undertake roles that were for the head of legal. He confirmed that he had not produced the job description for the head of legal before the court. It is his evidence that he left work at 9 pm, but had no proof of this time.
22. It is his testimony that he raised issues of workload verbally with the Human Resources department. The Claimant stated that he was forced to admit that he had signed an affidavit subject to the show cause letter.
23. It is the Claimant's testimony that during the meeting with the Respondent, no discussion was led on the issue indicated in the Notice to Show Cause, but instead the discussions bordered on his outward appearances.

### **The Respondent's Case**

24. The Respondent's case is that it employed the Claimant as a Legal Officer under a contract dated 17<sup>th</sup> November 2022 and

was bound by the terms of employment, including a confidentiality and non-disclosure agreement and the company's code of conduct. It denies that the Claimant served diligently and maintains that it at all times acted lawfully and accorded the Claimant due process.

25. The Respondent avers that the Claimant was issued with notices to show cause on 20th June 2023 and 27th September 2023 on various allegations, including forgery and negligence, to which he responded and was granted an opportunity to be heard. It avers that following consideration of his responses, he was issued a warning and placed on one week's leave to allow him to rejuvenate, during which period he was required to prepare a handover report.

26. The Respondent contends that while it awaited the Claimant's return from leave, the Claimant instead issued the resignation email dated 6th October 2023, terminating his employment on account of an alleged breakdown in the working relationship. The Claimant further indicated that the termination would take effect immediately, and thereafter failed to return to work or clear with the company.

27. The Respondent further avers that in the said email, the Claimant only demanded payment of his September salary and a certificate of service, and having resigned without notice, he is liable to pay one month's salary in lieu of notice.

28. The Respondent denies the Claimant's claim of unfair termination, and argues that it is the Claimant who brought the

contract to an end, and did so without issuing the requisite notice.

29. The Respondent further denies allegations of harassment and misconduct against its Head of Legal, terming them as unfounded, malicious, and defamatory. It also contends that as an Advocate of the High Court, the Claimant was aware of his rights and remedies and cannot now shift blame to others for his actions.

30. In addition, the Respondent maintains that the Claimant has failed and refused to clear with the company and that it owes him nothing as alleged. On the contrary, by reason of the Claimant's resignation without notice, the Respondent seeks payment of Kshs. 130,000/= being one month's salary in lieu of notice, which it asserts is due under the law governing termination of employment contracts.

31. In summation, the Respondent urges the Court to dismiss the Claimant's claim with costs and to allow the counterclaim as prayed.

32. On cross-examination, RW1 stated that the verifying Affidavit to the response was signed by Sylvia Njoroge; however, RW1 has not tabled resolutions by the Respondent authorizing her to testify on behalf of the Respondent.

33. Further, RW1 indicated that she was not certain whether a disciplinary hearing occurred between the Respondent and the Claimant, and the minutes of the meeting between the Claimant and the Respondent are not filed.

34. On the issue of forgery allegations, RWI indicated that the same was not reported to the police, but a warning letter was issued to the Claimant to that effect, but has not been filed in Court.
35. RWI admitted that the Claimant was sent on compulsory leave vide an email of 7<sup>th</sup> October, 2023, following the meeting held between the Claimant and the Respondent, but no official communication was made on his return date.
36. During re-examination, RWI told the court that the decision to place the Claimant on compulsory leave was made at the disciplinary hearing and was based on the Claimant's demeanor.
37. She further indicated that the Claimant voluntarily resigned from work and handed over. It is her testimony that his September salary was not paid because the Claimant had not yet cleared with the Respondent.
38. RW1 further stated that the affidavit subject of the show cause was not attached to the said show cause letter. She averred that the Claimant was sent an invitation for a disciplinary hearing, but the same is not before the court.
39. RW1 told the court that she does not think the disciplinary hearing took place. She avers that the Claimant admitted forging the Respondent's Director's signature, but did not herself attend the meeting and did not see the minutes of the hearing.

40. RW1 confirmed that she was not aware of the verdict of the disciplinary hearing, but is aware that a warning letter was issued to the Claimant pursuant to the hearing.

41. On further cross-examination, RW1 told this court that no document has been produced before court sending the Claimant on compulsory leave. She further states that the warning letter issued is not before the court. It is her evidence that no official communication was made on the Claimant's return date, but that during the hearing, he was told to resume work on 9<sup>th</sup> October, 2023.

### **The Claimant's Submissions**

42. It is the Claimant's submission that the Respondent subjected him to unfair labour practices contrary to Sections 10(5), 13 and 45 of the Employment Act, which prohibit unilateral variation of contractual terms.

43. He submits further that the Respondent's conduct, including withholding his September 2023 salary, failing to accord him a fair disciplinary hearing, denying him access to employment records, imposing unreasonable duties, and placing him under constant suspicion, amounted to a repudiatory breach of contract. He relied **on *Coca Cola East & Central Africa Limited v Maria Kagai Ligaga [2015] KECA 394 (KLR)*** and ***Gatuma v Kenya Breweries Ltd & 3 others [2024] KESC 52 (KLR)*** to submit that such conduct constitutes unfair labour practice and may amount to constructive dismissal. He further invoked Article 47 of the Constitution, asserting that he was denied fair administrative action and procedural fairness.

44. The Claimant submits that the circumstances of the case meet the legal threshold for constructive dismissal. He contends that the Respondent engaged in a continuous pattern of hostile conduct, including false allegations of forgery and negligence, flawed and irregular disciplinary processes, selective and unfair treatment, and unilateral decisions affecting his remuneration and role.

45. The Claimant further challenged the validity of the alleged forgery accusations, arguing that they were unsupported by evidence and any purported confession was inadmissible under the Evidence (Out of Court Confession) Rules, 2009, as explained in *Ahamad Abolfathi Mohammed & another v Republic*. The Claimant also relied on *Postal Corporation of Kenya v Tanui* to argue that failure to accord him a proper disciplinary hearing rendered the process unfair.

46. The Claimant additionally submitted that the directive to hand over his entire portfolio, coupled with the unilateral withholding of salary and placement on indefinite leave, demonstrated an intention to remove him from his role and constituted a fundamental breach of contract. He relied on ***Khaemba v Chief Justice and President of the Supreme Court of Kenya & another and Joseph Ndungu v Mastermind Tobacco (K) Ltd [2014] eKLR*** to argue that indefinite suspension or leave without due process amounts to constructive dismissal.

47. On the issue of reliefs, the Claimant submitted that, having established unfair labour practices and constructive dismissal, he is entitled to remedies under Section 49 of the Employment

Act. He relied on ***Singh v Aluken Trading Limited [2025] KEELRC 1602 (KLR)*** to support his claim for compensation and unpaid salary, particularly where salary is withheld unlawfully.

48. The Claimant finally urged the Court to find that his termination was unfair and unlawful, and to grant the reliefs sought.

### **The Respondent's submissions**

49. The Respondent submits that the Claimant was never terminated, but he instead voluntarily resigned through an email dated 6th October 2023. It argues that the Claimant cannot now recast a voluntary resignation as constructive dismissal.

50. The Respondent further contends that the resignation was unilateral and immediate, and was issued while the Claimant was on a one-week disciplinary leave granted after a disciplinary hearing.

51. According to the Respondent, this timing demonstrates that the resignation was not triggered by any breach of contract or hostile conduct by the employer, but rather was a calculated attempt to evade an ongoing disciplinary process being conducted lawfully under the Employment Act. In support of this position, the Respondent relies on the ***Court of Appeal decision in Chege v Timsales Limited (Civil Appeal No. 29 of 2020) [2025] KECA 1660 (KLR)***.

52. It is the Respondent's submission that the doctrine of constructive dismissal cannot be invoked by an employee who

engineers their own exit to escape accountability, and that the Claimant should not be allowed to benefit from such conduct.

53. On the burden of proof, the Respondent relies on Section 47(5) of the Employment Act and the decision in ***Pius Machafu Isindu v Lavington Security Guards Ltd [2017] eKLR***, which places the burden on the employee to prove unfair termination. The Respondent submits further that the Claimant has failed to discharge this burden as his pleadings and evidence contain no proof of harassment, discrimination, intimidation, procedural irregularity, or breach of contract by the Respondent. It points out that there are no internal complaints, grievances, medical evidence, or correspondence indicating a hostile work environment.

54. On the contrary, the Respondent maintains that it complied fully with the law by conducting a lawful disciplinary process in accordance with Sections 41, 43, and 45 of the Employment Act. It reiterates that the Claimant was served with notices to show cause, responded to them, was heard at a disciplinary meeting, and was placed on leave as part of a structured and fair process. The Respondent argues that these steps demonstrate procedural fairness and compliance with statutory safeguards.

55. The Respondent submits that the Claimant's reliefs are not merited. It reiterates that, since no termination occurred, the Claimant is not entitled to remedies arising from the termination of employment. That his resignation was self-engineered, unilateral, and procedurally defective, and therefore, he cannot rely on statutory protections applicable to employer-initiated termination.

56. The Respondent argues that claims for aggravated or exemplary damages are unsubstantiated and unsupported by evidence. It points out that the Claimant has not produced any medical reports, psychiatric evaluations, grievance records, HR complaints, or correspondence demonstrating victimization, harassment, or oppressive conduct. It submits that such damages are only awarded in exceptional cases involving malice or gross misconduct, none of which has been established.

57. On the counterclaim, the Respondent submits that it is entitled to one month's salary in lieu of notice pursuant to Sections 35 and 36 of the Employment Act. It argues that the Claimant failed to give any notice when resigning.

58. The Respondent submits that the Claimant's failure to give notice constitutes a breach of his statutory obligations, thereby entitling the Respondent to compensation of Kshs.130,000/= being one month's salary in lieu of notice.

### **Analysis and Determination**

59. I have considered the pleadings, the witnesses' oral testimonies, and the rival submissions. The issue that presents for determination is whether the Claimant's resignation of 6th October 2023 amounts to constructive dismissal, or whether it was a voluntary resignation disentitling him to the remedies sought and exposing him to the counterclaim.

### **Whether the Claimant's resignation of 6th October 2023 amounts to constructive dismissal**

60. The Claimant's position is that he tendered his resignation on 6th October 2023, from the service of the Respondent, citing a hostile working environment and non-payment of his September salary. It is his assertion that the Respondent's actions amounted to unfair labour practices and constructive dismissal, arguing that he faced persistent harassment, unlawful withholding of salary, failure to follow due disciplinary process, denial of a fair hearing, failure to be provided with employment records, and issuing contradictory directives regarding leave and handover.

61. The Respondent, on its part, denies the Claimant's claim of unfair termination, and argues that it is the Claimant who brought the contract to an end, and did so without issuing the requisite notice. The Respondent further denies allegations of harassment and misconduct against its Head of Legal, terming them as unfounded, malicious, and defamatory.

62. In **Coca Cola East & Central Africa Limited v Maria Kagai Ligaga [2015] KECA 394 (KLR)**, the Court of Appeal set out the test for constructive dismissal, stating that the employer must be in fundamental breach of contract, that the breach must be repudiatory, the employee must resign in response to that breach and the employee must not have waived the breach.

63. This position was affirmed by the Supreme Court in **Gatuma v Kenya Breweries Ltd & 3 others [2024] KESC 52 (KLR)**, where it emphasized that constructive dismissal arises where the employer's conduct makes continued employment intolerable.

64. The Claimant alleges harassment, intimidation, overwork, and a generally hostile working environment. He, however, did not produce documentary complaints of the harassment and intimidation, and no independent evidence, such as emails, written complaints to human resources, or medical reports, was provided to support the allegations of psychological harm.

65. The evidence before the court, however, shows that the Claimant was verbally directed to proceed on leave, which was later described as “disciplinary leave” without any written communication on the duration and the terms of the leave or his return date. RW1 further admitted that no formal documentation exists on the conditions of the compulsory/forced leave. In ***Joseph Ndungu v Mastermind Tobacco (K) Ltd and Khaemba v Chief Justice & President of the Supreme Court of Kenya***, it was held that indefinite or unexplained suspension/leave without due process may amount to constructive dismissal.

66. It is also not disputed that although the other employees of the Respondent were paid their September 2023 salaries, the Claimant was not. Salary is earned and cannot be withheld arbitrarily, and although the Respondent cites failure to clear as the reason the salary was not paid, clearance is not a lawful precondition for payment of earned wages.

67. In my considered view, withholding the Claimant’s salary without justification and placement on unclear/indefinite leave

with no clarity on his return date is not only an unfair labour practice, but also a fundamental breach of contract.

68. In light of the foregoing, I find and hold that the Claimant's resignation was a response to the employer's conduct, and not an attempt to evade disciplinary proceedings, which amounts to constructive dismissal.

**Whether the Claimant is entitled to the reliefs sought**

69. A finding that the Claimant was constructively dismissed and subjected to unfair labour practices entitles him to an award of damages pursuant to Section 49 of Employment Act, 2007.

70. In ***Alphonse Maghanga Mwachanya v Operation 680 Limited [2013] eKLR***, the Court held that in determining an award of compensation, the court is to consider the 13 factors set out under Section 49 (4) of the Employment Act.

71. The Claimant was in the service of the Respondent for less than one year. Considering his length of service, the opportunities available to him for securing comparable or suitable employment with another employer, and his contribution to the termination, I deem an award of five (5) months' salary sufficient compensation for the unfair constructive dismissal.

72. The Claimant's claim for an award of aggravated damages has not been proven. The claim fails and is dismissed.

73. The Claimant's Claim for September 2023 salary was not rebutted. It is found to have merit and is awarded as claimed.

74.The Claimant's termination, having been found to be unfair, entitles him to payment of one month's salary in lieu of notice, which is hereby awarded.

75.The Respondent did not rebut the claim of 16 days of unutilized leave, and the same is awarded.

### **The Counterclaim**

76.The Respondent's counterclaim relates to the Claimant's failure to issue a resignation notice pursuant to Sections 35 and 36 of the Employment Act, 2007.

77.With the finding that the Claimant's resignation amounted to a constructive dismissal, he is not by law required to have issued notice.

78.The Counterclaim is therefore found to be devoid of merit and is dismissed.

79.In conclusion, the Claimant's claim is found to have merit, and the following reliefs are granted:-

- i. A declaration that the Claimant was subjected to unfair labour practices and constructively dismissed.
- ii. That the Respondent shall pay the Claimant five (5) months' salary as damages for the constructive dismissal at Kshs. 650,000/-
- iii. That the Respondent shall pay the Claimant the withheld salary for September 2023 at Kshs. 130,000/-
- iv. That the Respondent shall pay the Claimant one month's salary in lieu of notice at Kshs. 130,000/-

- v. That the Respondent shall pay the Claimant on account of 16 unutilized leave days.
- vi. The Respondent shall issue the Claimant with a certificate of service and copies of all his pay slips within 14 days of this judgment.
- vii. Costs of the suit shall be borne by the Respondent.
- viii. Interest shall accrue at court rate from the date of this judgment until payment in full.
- ix. The Respondent's Counterclaim is dismissed.

80. It is so ordered.

**SIGNED, DATED, AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS 16<sup>TH</sup> DAY OF APRIL, 2026.**

**C. N. BAARI  
JUDGE**

**Appearance:**

Ms. Otimbo h/b for Mr. Wanyama for the Claimant

Mr. Irungu present for the Respondent

Ms. Esther S- C/A