



REPUBLIC OF KENYA

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT
NAIROBI**

(ON Makau J on 30th April, 2026)

CAUSE NO. E527 OF 2023

**SUSAN GACHOKA MAINA.....
....CLAIMANT**

-VERSUS-

**THE KENYA INSTITUTE OF MANAGEMENT.....
RESPONDENT**

JUDGMENT

Introduction

1. The Claimant sued the Respondent for alleged constructive dismissal and prayed for the following reliefs:-

- a) A declaration that the Claimant's employment termination was wrongful and unlawful. Claimant to be paid her terminal benefits as set 7 (Seven) hereinabove totaling to Kshs. 9,752,500.***

b) Compensation for unfair, illegal, unlawful and wrongful termination of employment.

c) An order directing the Respondent to issue the certificate of eservice in favour of the Claimant.

d) The Respondent to pay cost of this claim.

e) Interest on (a), (b) and (c) above at Court rate.

f) Any other relief Court may deem fit.

2. The Respondent filed Response to Claim denying the alleged constructive dismissal and discrimination, and averred that the Claimant voluntarily resigned.
3. The suit went to full hearing where both sides tendered evidence and thereafter filed written submissions.

Claimant's case

4. The Claimant averred that she was employed by the Respondent as Branch Manager, Machakos Campus on 10th April 2019. She was in charge of Machakos, Makueni and Kitui. Her salary was Kshs. 195,000 per month. In the year 2019, Business she reported the best revenue since the branch started. The business continued well until the government ordered closure of schools to curb spread of Covid-19.
5. As a result of the said closure classes were done online until physical classes resumed. In the meanwhile the Respondent stopped paying salaries and she could not afford house rent

forcing her to relocate to Nairobi. Staff were demotivated and they resigned leaving her with the Librarian only. Her effort to seek audience with the Chief Executive Officer were thwarted by the Human Resource office.

6. In May 2022 she went to Maternity leave and when she resumed work, things remained dim. In December 2022 the Machakos Branch was auctioned after the exams and everything in the office was taken away. She was forced to work from South C and classes went back to online. It was not easy to commute to the Head office in South C.
7. The students were not happy with what was happening and they became abusive calling her a Kikuyu. In February 2023 operations resumed and began preparation for graduation but it was hectic due to shortage of staff.
8. After the graduation she applied for leave to take her sister to India for cancer treatment but her supervisor decline. She then scheduled for online appraisal but the supervisor became harsh. She resigned and demanded payment of her dues including unpaid salary arrears for May 2022 to March 2023, and excess membership fee of 2000 per month.
9. She contended that she resigned because of lack of support from her supervisor and due to bullying by students for being a

Kikuyu. The management never took any action and she resigned because the work environment was not good for her.

10. The Respondent case was led by its Head of Shared Services Mr. Raymond Murangi. He contended that he was in charge of Human Resource. He admitted that the Claimant was employed by the Respondent until she voluntarily resigned. He contended that the Claimant was paid dues in full and his certificate of service issued.

11. He was in the Respondent when the Claimant resigned but he admitted that the resignation letter indicated certain concerns that had not been addressed. The resignation was with immediate effect. He admitted that there were arrears of her dues of Kshs. 1,837,272 before tax. He contended that the certificate of service was shared though email. He contended that the grievances by Claimant were baseless since all the staff had salary arrears due to Covid-19 effects. He denied the alleged discrimination and averred that the same was unfounded.

Submissions

12. It was submitted for the Claimant that his resignation amounted to constructive termination because she was forced to resign by the non payment of her salary and the intolerable working conditions created by the employer. Reliance was placed on several court cases including **Nathan Ogada**

Atigaga v. David Engineering Ltd [2015] eKLR and Gofrey Allan Tolo v. Tobias O. Otieno & Another [2022] eKLR.

13. It was further submitted that the Claimant is entitled to the unpaid salary, salary in lieu of notice plus salary arrears among other reliefs sought in the claim.
14. On the other hand, it was submitted for the Respondent that the Claimant acknowledged that Covid-19 harshly affected and led to closure of her branch leading to auctioning of the office property. It was further submitted that the Claimant did not provide evidence that the employer created conditions that left with no option but resign. Therefore it was urged that the Claim for compensation for constructive dismissal is not warranted.
15. It was further submitted that the Claimant was paid 50% of her salary during Covid-19 pandemic and the Respondent admits the sum of Kshs. 1,837,272 inclusive of travel allowances and leave allowance.
16. It was further submitted that the claim for excess membership fees has not been supported by evidence. Further, the claim for gratuity is not founded in the contract of employment.

Issues for determination

17. Having carefully considered the pleadings, evidence and the submissions above, the following issues fell for determination:-

- a) Whether the Claimant's resignation amounted to constructive dismissal.
- b) Whether the Claimant is entitled to the reliefs sought.

Constructive dismissal

18. The term constructive dismissal is not found in our statutes but the courts have developed it in a legion of decisions. In **Western Excavating ECC Ltd v. Sharp [1978] 2 WLC 344** Lord Denning held:-

“ If the employer is guilty of conduct which is significant breach going to the moot of the contract of employment, or which shows that the employer no longer intends to be bound by one or more of the essential terms of the contract, then the employee is entitled to treat himself as discharged from any further performance. If he does so then he terminates the contract by reason of the employer's conduct. He is constructively dismissed.”

19. **In Milton M. Isanya v. Aga Khan Hospital Kisumu [2017] eKLR** Onyango J held:-

“In constructive dismissal, the desire to resign is from the employee as a result of a hostile working environment or treatment by the employer. Constructive dismissal occurs where the employer does express the threat or desire to terminate employment but frustrates the employee to the extent that the employee tenders resignation.”

20. In the instant case, there is admission from the Respondent that there was delay in paying 50% of the Claimant’s salary and allowances. There is also evidence that the Claimant’s office in Machakos was auctioned rendering her officeless. Staff had also left work and no replacement. When she highly needed leave to take her sister to India for cancer treatment, permissions was denied. The foregoing work environment was indeed hostile. The failure to pay all the salary when it fell due violated a mandatory statutory obligation and also breached an essential term of the contract of employment that went to the root of the contract. Consequently, I find that the Claimant has proved that her resignation from employment amounted to constructive dismissal because it was due to the Respondents conduct.

Relief

21. Having found that the Claimant lost her job through constructive dismissal, I find that the Claimant is entitled to declaration that the employment was wrongfully and unlawfully terminated. Flowing from the foregoing conclusions, I further find that the Claimant is entitled to salary in lieu of notice and compensation for unfair termination under Section 49 of the Employment Act.

22. The contract provided for one month salary in lieu of notice and therefore I award him Kshs. 195,000. As regards compensation, the Claimant worked for the Respondent from April 2019, to 28th March 2023 when she left. The period of service was approximately four (4) years and she never contributed to the termination through misconduct. Consequently I award to her three (3) months gross salary as compensation for the unlawful termination being Kshs. 585,000.

23. As regards unpaid salary, traveling allowances, and leave, the Respondent admitted a total of Kshs. 2,017,272 less Kshs. 180,000 (salary in lieu of notice) leaving a net of Kshs. 1,837,272. The said computation factored 50% salary paid. The Claimant did not factor the partial payment of salary while computing her claim. She did not adduce evidence to rebut the Respondent's computation. Consequently, I award the Kshs. 2,017,272 for withheld salary, leave and travel allowances. The

termination was due to the Respondent's conduct and therefore it is not entitled to deduct salary in lieu of notice.

24. The claim for certificate of service is granted. She can go to collect the same from the Respondent's office.

Conclusion

25. I have found that the Claimant was constructively dismissed. I have further found that she is entitled to the reliefs sought. Consequently, I enter Judgment for the Claimant against the Respondent as follows:-

- a) Declaration that her employment was unlawfully terminated.
- b) Compensation Kshs. 585,000
- c) Notice Kshs. 195,000
- d) Salary arrears travel and leave Kshs. 2,017,272
- e) The award is subject to statutory deductions.
- f) Costs and interest at court rates from the date of filing suit considering that the large part is liquidated claim.

DATED, SIGNED AND DELIVERED VIRTUALLY IN OPEN COURT AT NAIROBI THIS 30TH DAY OF APRIL, 2026.

**ONESMUS MAKAU
JUDGE**

Appearance

Abalo for Claimant
Watiri for Respondent