



REPUBLIC OF KENYA



**KENYA LAW**  
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**Mwaura v Mediheal Hospital & Fertility Centre (Cause E024 of 2024)  
[2026] KEELRC 1096 (KLR) (23 April 2026) (Judgment)**

Neutral citation: [2026] KEELRC 1096 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT ELDORET  
CAUSE E024 OF 2024  
MA ONYANGO, J  
APRIL 23, 2026**

**BETWEEN**

**LOICE NJERI MWAURA ..... CLAIMANT**

**AND**

**MEDIHEAL HOSPITAL & FERTILITY CENTRE ..... RESPONDENT**

**JUDGMENT**

1. The Claimant filed the Memorandum of Claim dated 12<sup>th</sup> June 2024 which was amended on 20<sup>th</sup> March 2025 seeking the following orders:
  - i. A declaration that the Claimant's resignation was involuntary and amounted to constructive dismissal by the Respondent, which was unfair, procedurally flawed and unlawful and in the circumstance the Claimant is entitled to compensation as prayed for.
  - ii. A declaration that the Claimant was frustrated and harassed by the Respondent's management
  - iii. Aggravated damages and general damages for pain, suffering, mental anguish, anxiety and humiliation.
  - iv. A declaration that her dismissal from employment was unlawful, unprocedural and unfair and in the circumstances the Claimant is entitled to compensation as prayed
  - v. Costs of this suit and interest at court rates from time of filing this suit until payment in full
  - vi. A Certificate of service as per section 51 of the *Employment Act*
  - vii. Any other relief that this Honourable Court may deem fit and just to grant
2. The Claimant avers that she was employed by the Respondent on 8<sup>th</sup> February 2013 as a Nurse and was subsequently promoted, vide a letter dated 16<sup>th</sup> August 2021 to the position of Chief Nurse earning a monthly salary of Kshs 160,000 per month.



3. It is the Claimant's case that she served the Respondent with devotion, diligence and dedication. She avers that the Respondent failed to pay her duly earned salary for the months of August to December 2023, as well as other entitlements due for services rendered.
4. She avers that the continued non-payment of salaries made it intolerable for her to continue working as she was unable to sustain herself as a result of which she tendered her resignation vide a letter dated 29<sup>th</sup> December 2023 effective 30<sup>th</sup> December 2023.
5. The Claimant further states that in her resignation letter dated 29<sup>th</sup> December 2023, she indicated that the Respondent's failure to remunerate her despite her diligent service amounted to a fundamental breach of contract and violation of her rights, thereby creating an untenable working environment that compelled her resignation.
6. She contends that withholding her salary from August 2023 was intended to frustrate her, amounting to constructive dismissal.
7. The Claimant particularized her claim against the Respondent as follows: -
  - i. Unpaid salary arrears for the months of August to December 2023.....Kshs 1,102,225
  - ii. Unpaid leave days in 2023.....Kshs 110,222.50
  - iii. Service pay.....Kshs 1,102,225
  - iv. Compensation for unfair termination....Kshs 2,645,340
  - Total.....Kshs 4,960,012.50
8. The Respondent filed a Response to the Statement of Claim dated 15<sup>th</sup> November 2024 and contended that its failure to pay the Claimant her dues was due to financial difficulties.
9. The Respondent further averred that it explained its financial position to the Claimant, who agreed and continued working from August to December 2023.
10. The Respondent maintained that it did not unfairly terminate the Claimant's employment and that the Claimant voluntarily resigned by tendering her resignation letter.

### **The Evidence**

11. The Claimant testified on 18<sup>th</sup> June 2025 as CW1. She adopted her witness statements dated 12<sup>th</sup> June 2024 and 20<sup>th</sup> March 2025 as her evidence in chief. She also relied on the documents she filed in court in support of her claim.
12. The Claimant testified that she was employed by the Respondent in February 2013 and worked until she resigned on 30<sup>th</sup> December 2023 after the Respondent failed to pay her salary from August to December 2023. She urged the court to grant her the reliefs she sought in her Statement of Claim.
13. On cross-examination, the Claimant stated that she was not terminated from employment but resigned vide her resignation letter dated 29<sup>th</sup> December 2023 after her salary remained unpaid from August to December 2023. She further stated that she continued working without pay after she was assured by the Respondent that unpaid salaries would be made, but that to date, the salaries remain unpaid.



14. Despite proper service, the Respondent failed to attend court to prosecute its defence. Subsequently, the Respondent's case was closed and the Court directed that written submissions be filed. However, none of the parties complied.

### **Determination**

15. From the pleadings and the evidence adduced in court, the issues that fall for determination are:-
- i. Whether the Claimant was constructively dismissed by the Respondent.
  - ii. Whether the Claimant is entitled to the reliefs sought.

### **Whether the Claimant was constructively dismissed by the Respondent**

16. The Claimant contended that the circumstances under which she left employment amounted to constructive dismissal.

17. The Black's Law Dictionary (Tenth Edition) defines constructive dismissal or discharge as:

“An employer's creation of working conditions that leave a particular employee or group of employees little or no choice but to resign, as by fundamentally changing the working conditions or terms of employment; an employer's course of action that, being detrimental to an employee, leaves the employee almost no option but to quit.”

18. The Court of Appeal in the case of *Coca Cola East & Central Africa Limited v Maria Kagai Lugaga* [2015] eKLR while addressing itself to the issue of constructive dismissal observed as follows;

“The key element in the definition of constructive dismissal is that the employee must have been entitled to 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 behaviour 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 constitutes a repudiatory breach of the contract of employment- this is the contractual test.”

19. Based on the above authority, the question that this court ought to answer is whether the circumstances under which the Claimant left employment would constitute constructive dismissal.

20. In her testimony, the Claimant stated that her last salary was paid in June 2023 but she continued working until December 2023 without further pay.

21. This court in a similar case, *Monari v Mediheal Group of Hospitals* [2025] KEELRC 2745 (KLR) held that as follows:-

- “19. Withholding of salary strikes at the core of the employment relationship. Section 17(1) of the *Employment Act* obliges an employer to pay wages as and when they fall due, and subsection (10) criminalizes failure to do so. Further, Article 41 of *the Constitution* guarantees every worker the right to fair labour practices, which includes timely payment of wages.
20. Kenyan courts have consistently held that non-payment of salary amounts to a repudiatory breach.



22. In the present case, the Claimant testified that she tendered a resignation letter dated 29<sup>th</sup> December 2023 citing non-payment of salary as the reason for her resignation. The resignation letter is reproduced below:

Loice Njeri Mwaura,

Box 16426,

Nakuru

Email:loicenjerimwaura@gmail.com

29<sup>th</sup> December, 2023

Mrs Marylynn Limo

Vice President Operations

Mediheal Hospital And Fertility Centre-eldoret

Cc: Mr Shabbir Bharmal

Dgm-hr

Mediheal Hospital And Fertility Centre-eldoret

Ref:resignation Letter.

I am writing to formally tender my resignation from the position of Chief Nurse with Mediheal Hospital and fertility Centre-Eldoret. This is effective 30<sup>th</sup> December, 2023. I have reached this decision on account of non-payment of my monthly salary from the month of August 2023 to December 2023. This has made it impossible for me to continue running my life. I am grateful for having had the opportunity to work at Mediheal Hospital Eldoret for 10 years. Thank you so much for the support that you have provided during my tenure with the Hospital. I greatly appreciate your years of guidance and I offer my best wishes for the Hospital's continued success.

Sincerely,

Signed

Loice Njeri Mwaura

23. The resignation letter clearly states that the Claimant was compelled to resign due to non-payment of her salary from the month of August to December, 2023.
24. As this court held in Monari case (supra), for a claim of constructive dismissal to succeed, the employee must demonstrate that they resigned in response to a fundamental breach by the employer and must communicate such in the letter of resignation.
25. In the instant case the Claimant did not express frustration in her letter. She thanked the Respondent for its support and wished it continued success.
26. In the circumstances, the Court finds that the Claimant has not proved that her resignation was attributable to a repudiatory breach of the contract of employment by the Respondent. Consequently, the claim for constructive dismissal fails.

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

27. In her Amended Memorandum of Claim, the Claimant sought several reliefs which I will address in separate heads.



- i. A declaration that the Claimant's resignation was involuntary and amounted to constructive dismissal by the Respondent, which was unfair, procedurally flawed and unlawful and in the circumstance the Claimant is entitled to compensation as prayed for

The Claimant testified that the reason the Respondent failed to pay her salary was that it was suffering from financial constraints. The Claimant expressly stated during cross examination that this was the only reason she resigned. She stated that there were no cases of abuse or frustration other than the non-payment of her salary.

In the circumstances the Court finds that constructive dismissal was not proved. The prayer for a declaration that the Claimant's resignation was involuntary and amounted to constructive dismissal is therefore declined as there was no proof of conduct by the employer that was intended to frustrate the Claimant into resigning which is the prerequisite for constructive dismissal.

- ii. A declaration that the Claimant was frustrated and harassed by the Respondent's management

The Claimant pleaded that she was frustrated and harassed by the Respondent's management. However, during cross-examination, she stated that she was not frustrated, and no evidence was adduced to substantiate these allegations to the required standard. Accordingly, this claim fails.

- iii. Payment of Salary arrears for the months of August to December, 2023, leave pay, service pay

The Claimant attached pay slips for August to November, 2023. From the evidence on record, the only salary unpaid is for December, 2023 which I award the Claimant at Kshs. 220,455.

On the prayer for annual leave earned, the Claimant attached a leave schedule which shows that she took a total of 46 and a half days as annual leave/personal issue/emergency. The Claimant further took a number of sick-off days besides the leave. The Claimant did not explain how she arrived at the net figure of 12 days that she has claimed as leave due.

I find that the Claimant has not proved that she is entitled to any leave days earned but not taken. The prayer is declined.

The prayer of service pay is not warranted as the Claimant was a member of NSSF and is precluded by section 35(6) of the *Employment Act*.

- iv. Aggravated damages and general damages for pain, suffering, mental anguish, anxiety and humiliation

The claim for aggravated and general damages for pain, suffering, mental anguish, anxiety and humiliation was not specifically proved. In any event, such damages are not ordinarily payable in employment disputes absent exceptional circumstances, which were not demonstrated in this case. The claim is declined.

- v. A declaration that her dismissal from employment was unlawful, unprocedural and unfair and in the circumstances the Claimant is entitled to compensation as prayed

The Claimant testified that the reason for the delay in payment of her salary was that the Respondent was experiencing financial constraints. In the circumstances the Court finds no basis for the declaration that the termination of the Claimant's employment was unlawful, unprocedural, or unfair. This prayer therefore fails.

- vi. Certificate of service



The Claimant is entitled to be issued with a Certificate of Service pursuant to Section 51(1) of the *Employment Act* 2007.

28. In conclusion, the claim herein succeeds in only two prayers being the prayer for the salary for December, 2023 in the sum of Kshs. 220,455 and prayer that the Respondent issues a certificate of service to the Claimant, which I award the Claimant. The rest of the prayers fail.
29. Each party shall bear its costs of this suit.

**DATED, SIGNED AND DELIVERED VIRTUALLY ON THIS 23<sup>RD</sup> DAY OF APRIL, 2026**

**MAUREEN ONYANGO**

**JUDGE**

