

REPUBLIC OF KENYA
IN THE EMPLOYMENT & LABOUR RELATIONS COURT AT
NAIROBI
CAUSE NO. E451 OF 2024.

SIMON KIPLANGAT BETT.....

CLAIMANT

VERSUS

CHLORIDE EXIDE (K) LTD.....

RESPONDENT

JUDGMENT

Introduction

1. This Judgment relates to the Claimant's Statement of Claim dated 10th June, 2024, wherein the Claimant seeks the following reliefs as against the Respondent: -
 - a) A declaration that the Claimant was unfairly dismissed and his employment unlawfully and unfairly terminated.
 - b) An order for the payment of unpaid salaries, severance pay, and compensation for unlawful and unfair termination totaling Kshs. 2,233,810.80.
 - c) Costs of this suit.

- d) Interest on (b) and (c) at commercial and court rates respectively from date of filing the Claim until payment in full.
 - e) Certificate of Service.
2. The Respondent filed a Statement of Response and Counterclaim dated 25th July, 2024, and subsequently, the Claimant filed a Reply to the Response and Response to the Counterclaim dated 23rd September, 2024.
 3. The Respondent finally filed a Reply to Defence to Counterclaim dated 11th October, 2024.
 4. The Claimant's case was heard on 12th May, 2025, when the Claimant (CW1) testified in support of his case. He adopted his witness statement dated 10th June, 2024, and a further witness statement dated 23rd September, 2024, and produced his list and bundle of documents dated 10th June, 2024, as exhibits in the matter.
 5. The Respondent's case was heard on 3rd November, 2025. The Respondent's witness, Hannah Wanjiku Karuru (RW1), testified in support of the Respondent's case. She adopted her witness statements dated 25th July, 2024, and produced the Respondent's list and bundle of documents, and a further list, evenly dated, as exhibits in the matter.

6. Submissions were filed for both parties.

The Claimant's Case

7. The Claimant's case is that he was employed by the Respondent on 24th October, 2018, as an Accounts Assistant earning Kshs.30,000, which later rose through performance based increments to a gross monthly income of Kshs.143,193 as at the time of termination.
8. It is his case that he served diligently until 19th March 2024, when he was suspended without pay pending investigations. He avers that prior to the suspension, he had flagged discrepancies in the Respondent's accounts during the February 2024 reconciliation, and that instead of addressing the concerns, the Respondent caused his arrest on suspicion of theft.
9. The Claimant states that criminal proceedings were initiated against him, but which effectively collapsed on 11th April 2024 when the court declined the prosecution's request to continue detaining him due to lack of evidence and delay in the investigations.
10. It is his case that he was suspended on 19th March 2024 pending investigations linked to the criminal case, which was later dismissed, and that despite this, the Respondent

neither lifted the suspension nor reinstated him, but instead extended the suspension on 6th April 2024.

11. The Claimant states that he was subsequently issued with a show cause letter and invited to a disciplinary hearing on 7th May 2024. He avers that he challenged the fairness of the process, citing conflict of interest among members of the disciplinary panel, but the hearing proceeded regardless, and he was not informed of its outcome. He states further that following his complaint, the Respondent invited him to a fresh disciplinary hearing on 22nd May 2024.

12. The Claimant states that the Respondent withheld his salary for April and May 2024 without justification and failed to communicate on his return to work, payment, or assignment of duties, leaving him financially strained and distressed. The Claimant contends that these actions amounted to a breach of his employment contract and were intended to force his exit.

13. It is the Claimant's case that his working conditions became intolerable, constituting constructive dismissal, and the termination unlawful and unfair.

14. The Claimant alleges that the Respondent acted unlawfully and unfairly by constructively dismissing him without justification, placing him on unpaid and indefinite

suspension, and withholding his salary for April and May 2024. He further contends that the disciplinary process was flawed because it involved a committee with conflicts of interest and failed to communicate the outcome of the May 2024 hearing.

15. The Claimant states that he had been a diligent and hardworking employee with a clean disciplinary record prior to the allegations leading to his termination, which he considers malicious. He asserts that the abrupt termination was shocking and caused him significant suffering, particularly as he had a legitimate expectation of continued employment until retirement.

16. The Claimant denies the Respondent's assertions and maintains that he was continuously employed since 2018 under successive fixed-term contracts, which were renewed annually until April 2023, when he was confirmed as a permanent employee. He avers that his salary and duties were regularly reviewed based on performance.

17. The Claimant contends that he did not resign voluntarily but was forced to do so due to indefinite suspension from 19th March 2024, following a criminal case that was later dismissed for lack of evidence. He avers that despite assurances, the Respondent withheld his salary from April

2024 and failed to indicate when he would resume work, creating intolerable conditions.

18. The Claimant further denies responsibility for the alleged loss of goods, asserting that such duties were outside his role, and states that he had previously reported a loss of Kshs.6,000,000 as a whistle-blower before being falsely accused. He also disputes the circumstances of his arrest, clarifying that he was released on bail and not detained as alleged.

19. The Claimant contends that he challenges the fairness of the disciplinary process, citing bias and conflicts of interest within the panel, and notes that although feedback was issued, he declined to sign it due to inaccuracies. Overall, the Claimant reiterates that the Respondent's actions breached his employment contract, caused him mental anguish, and rendered his working conditions intolerable, amounting to constructive dismissal.

20. In his defence to the Counterclaim the Claimant maintains that he served diligently and acted in the Respondent's best interests by exposing suspected fraud, but was instead unjustly arrested and suspended without lawful cause. He contends that any discrepancies in procurement processes were attributable to the store assistant, who allegedly

interfered with company systems beyond their authorized role, making it impossible for him to detect inconsistencies.

21. The Claimant reiterates that he was forced to resign due to indefinite suspension without pay following a dismissed criminal case, and that the Respondent failed to conduct proper internal investigations before involving the police.

22. The Claimant further denies causing any financial loss, and disputes the alleged sum of Kshs.793,457, and notes the inconsistencies with the earlier claims of Kshs.15,000,000. Overall, the Claimant asserts that the Counterclaim is frivolous and an abuse of the court process, and that it is the Respondent's breach of the employment contract that gave rise to the suit.

23. On cross-examination, the Claimant told the court that he was a member of the Respondent's Staff Provident Fund, where both he and the Respondent contributed.

24. He confirmed that he was arrested on 14th March, 2024, and suspended from service on 19th March, 2024, on account of criminal investigations that were going on. He avers that the suspension was extended for an additional 14 days, but his March 2024 salary was paid.

25.The Claimant testified that his role was with regard to quantity items, prices, and the filing of invoices. He confirmed that invoices were supposed to tally with the goods received.

26.The Claimant confirmed that a sales invoice has an item code and unit of measure, unlike a purchase invoice, and further confirmed that in his response to the show cause letter, he had indicated that he did not know the difference between the two documents.

27.The Claimant confirmed that he resigned after reading the minutes of the disciplinary hearing.

28.In re-examination, the Claimant told the court that he assumed that he was still an employee of the Respondent in the suspension period and that he was not paid his April and May 2024 salary, but the related tax obligation was remitted.

29.The Claimant confirmed that he was re-arrested on 22nd November, 2024, and that he took plea and the case is still pending in court.

30. It is his prayer that the court allow his claim.

The Respondent's Case

31. The Respondent admits employing the Claimant as an Accounts Assistant, but asserts that the initial contract was a fixed-term engagement of five months ending on 31st March 2019. It further denies the Claimant's assertions on performance and salary increments, but acknowledges that under a contract dated 29th March 2023, the Claimant was employed on permanent terms effective 1st April 2023 with a basic salary of Kshs.63,984.
32. The Respondent states that the Claimant was enrolled in the Provident Fund and NSSF, with no entitlement to additional pension or gratuity. The Respondent further maintains that the employment terms were governed by the initial contract, including a requirement for one month's notice of termination, and that the Claimant was bound by its Code of Conduct and applicable employment regulations.
33. The Respondent states that in procuring and paying for batteries purchased from Associated Battery Manufacturers (E.A.) Limited (ABM), orders are supported by Local Purchase Orders (LPOs), Delivery Notes, and entries in the ERP system, which generate Goods Received Notes (GRNs), and that thereafter, ABM issues sales invoices based on delivered goods.

34. The Respondent avers that the Claimant, as Accounts Assistant, was responsible for verifying that the ABM sales invoices matched the LPOs and GRNs in terms of item codes, descriptions, quantities, units, and prices, upon which confirmation, he was to post the invoices in the ERP system for payment. It avers that, in the event of discrepancies, the Claimant was required to flag and escalate them and refrain from processing the related payment.

35. The Respondent states that the Claimant failed, and/or negligently and improperly performed his duty of reviewing an ABM sales invoice dated 29th December 2023 against the corresponding LPO and GRN. It contends that the Claimant failed to detect or flag discrepancies in item codes for N70MFR Powerlast batteries and proceeded to post the invoice for payment despite these inconsistencies.

36. The Respondent avers that it characterizes this conduct as gross negligence and fraudulent performance of duty, asserting that it resulted in a financial loss of Kshs.793,457.28 for goods that were neither delivered nor received.

37. The Respondent maintains that the Claimant performed his duties negligently, carelessly, improperly, and fraudulently, amounting to gross misconduct in breach of his contract,

the Code of Conduct, and the Employment Act. It further states that the fraud was reported to the Kenya Police, leading to investigations by the Directorate of Criminal Investigations and to the arrest of the Claimant and his colleagues. The Respondent emphasizes that these agencies act independently and that it did not influence their actions.

38. The Respondent further avers that the Claimant was lawfully suspended on 19th March 2024 for 14 days pending investigations, with a further 14-day extension issued on 6th April 2024. The Respondent asserts that upon lapse of the suspension on 22nd April 2024, the Claimant was issued with a Notice to Show Cause.

39. The Respondent contends that it had valid and lawful grounds to report the matter, investigate the alleged misconduct, and suspend the Claimant.

40. The Respondent states that following investigations and a forensic audit, it issued the Claimant with a Notice to Show Cause dated 22nd April 2024, on charges of negligence that led to the loss of batteries. It avers that, through the notice, the Claimant was informed that termination was being considered, that he was requested to provide a written explanation, and was invited to a disciplinary hearing on 30th April 2024, with the right to be accompanied by a colleague.

41. The Respondent further avers that in his response dated 24th April 2024, the Claimant admitted to failing in his duties and performing them negligently, carelessly, and improperly.
42. The Respondent states that the Claimant attended the disciplinary hearing on 7th May 2024 without a representative by his own choice. It avers that during the hearing, he admitted to being inattentive and having performed his duties negligently, carelessly, and improperly, as well as having financial dealings with a colleague.
43. The Respondent further avers that the Claimant declined the option of a fresh hearing despite raising concerns about conflict of interest and agreed to accept the decision to be made. It also states that the Claimant was informed that he would be paid all his salaries.
44. The Respondent states that on 22nd May 2024, it forwarded the Claimant the minutes of the disciplinary hearing along with a letter communicating the outcome. It states that in the letter, the Respondent acknowledged the Claimant's concerns regarding the lack of a witness and the composition of the disciplinary panel, and resolved to grant him a second hearing, and was accordingly invited to attend a fresh hearing on 28th May 2024 with the right to be accompanied by a colleague. The Respondent avers that

instead of attending the scheduled hearing, the Claimant resigned on 23rd May 2024.

45. The Respondent asserts that the Claimant's suspension was lawful, justified, and properly communicated, and that it lapsed on 22nd April 2024. It maintains that the Claimant was informed that his salary would be paid upon completion of the disciplinary process, which he accepted.

46. The Respondent further contends that the Claimant did not raise allegations of constructive dismissal, harassment, or intimidation during the disciplinary proceedings and that he voluntarily resigned after receiving the outcome. It argues that the resignation was intended to frustrate or sabotage the disciplinary process.

47. The Respondent maintains that the allegations against the Claimant were supported by evidence, including his own admissions, and that due process was followed. It denies any unlawful or unfair termination and states that upon resignation, the Claimant was offered his terminal dues and a certificate of service, but which he declined to collect.

48. The Respondent contends that the Claimant voluntarily resigned without serving notice or paying in lieu thereof, and is therefore not entitled to compensation for unfair termination or notice pay. It further asserts that the

Claimant is not entitled to gratuity, as this was excluded under his contract and that he was a member of the NSSF and their Provident Fund.

49. Under the Counterclaim, the Respondent asserts that the Claimant was employed on permanent terms from 1st April 2023 and was bound by his contract, company policies, and the law to perform his duties diligently.

50. It maintains that the Claimant breached these obligations through negligent, careless, and fraudulent conduct between December 2023 and March 2024, resulting in a loss of Kshs. 793,457.28 for undelivered batteries.

51. The Respondent further contends that this amounted to gross misconduct and conspiracy, entitling it to damages.

52. It further states that the Claimant resigned on 23rd May 2024 without giving the required one month notice or paying in lieu, thereby breaching his contract.

53. Consequently, the Respondent counterclaims against the Claimant for:-

- a) Kshs. 793,457.28 for the loss,
- b) Kshs. 143,193 as one month's salary in lieu of notice,
- c) General damages for negligence and fraud,
- d) Interest on the sums claimed, and

e) Costs of the suit.

54. The Respondent further asserts that despite demand, the Claimant has failed to pay the claimed amounts and prays for dismissal of the Claimant's suit with costs and judgment in its favour on the counterclaim.

55. On cross-examination, the Respondent's witness (RW1) told the court that the Claimant did not check the item code and that the show cause letter was issued on this basis. He further told the court that the theft was reported by the Finance and Supply Chain Manager, and he did not personally confirm that the batteries were physically missing.

56. It is RW1's evidence that part of the disciplinary panel were persons who had a conflict of interest. He further confirmed that the Claimant was not paid salary for the suspension period.

57. RW1 further confirmed that the Claimant resigned a day after being notified of the second hearing on account of his complaint on conflict of interest in the initial disciplinary hearing.

58. The Respondent asks the Court to dismiss the claim and allow its Counterclaim.

Analysis and Determination

59. From the pleadings, the evidence adduced, and the rival submissions, the Court distils the following issues for determination:

- i. Whether the Claimant was constructively dismissed or whether he voluntarily resigned.
- ii. Whether the Claimant is entitled to the remedies sought.
- iii. Whether the Respondent is entitled to the reliefs under the Counterclaim is merited.

Whether the Claimant was constructively dismissed or voluntarily resigned

60. The Claimant's position is that the Respondent acted unlawfully and unfairly by constructively dismissing him without justification, by placing him on unpaid and indefinite suspension, and withholding his salary for April and May 2024. He further contends that the disciplinary process was flawed because it involved a committee that was conflicted, and which failed to communicate the outcome of the May 2024 hearing.

61. The Claimant further denies that he voluntarily resigned, and asserts that he was forced to do so due to the indefinite suspension from 19th March 2024.

62. Constructive dismissal arises where an employer's conduct makes continued employment intolerable, thereby forcing an employee to resign. The Court of Appeal in ***Coca Cola East & Central Africa Limited v Maria Kagai Ligaga [2015] KECA 394 (KLR)***, set out the test for what amounts to constructive dismissal to be that the employer must be in fundamental breach of the employment contract, that the breach must be the reason for resignation, and the employee must not delay in resigning in response to that breach.

63. Similarly, in ***Western Excavating (ECC) Ltd V Sharp (1978) 2 WLR***, Lord Denning held that constructive dismissal occurs where the employer's conduct shows an intention not to be bound by the contract.

64. The Claimant herein was placed on suspension without pay, and his salary for April and May 2024 was withheld. RW1 admitted that the Claimant was not paid during the suspension period, and there was no clear communication on when he was required to resume duty or how long the suspension would last.

65. The Respondent further admitted that part of the disciplinary panel was confirmed to have had a conflict of

interest, which informed its decision to hold a second disciplinary hearing pursuant to the Claimant's complaint.

66. Non-payment of salary and indefinite or unclear suspension no doubt amounts to a fundamental breach of contract. Courts have consistently held that failure to pay salary constitutes a repudiatory breach of contract.

67. Lord Denning in ***Western Excavating (ECC) Ltd V Sharp (supra)*** held:-

“If the employer is guilty of conduct which is a significant breach going to the root 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. The employee is entitled in those circumstances to leave at the instant without giving any notice at all, or alternatively, he may give notice and say he is leaving at the end of the notice. But

the conduct must be in either case be sufficiently serious to entitle him to leave at once. Moreover, he must make up his mind after the conduct of which he complains, for, if he continues for any length of time without leaving, he will lose his right to treat himself as discharged. He will be regarded as having elected to affirm the contract.”

68. In light of the foregoing, I find and hold that the Respondent's conduct created intolerable working conditions entitling the Claimant to resign and consider himself constructively dismissed.

69. I further hold that the Claimant's subsequent resignation on 23rd May 2024 was not voluntary, but was in response to the breach, and therefore amounts to constructive dismissal.

Whether the Claimant is entitled to the remedies sought **Compensation**

70. The finding that the Claimant was constructively dismissed is a finding of an unfair and unlawful termination which entitles him to an award of compensation pursuant to Sections 49 and 50 of the Employment Act, 2007.

71. 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.

72. Considering the Claimant's length of service, the absence of prior misconduct, and his contribution to the termination through his partial admissions of negligence, and further considering the decision in ***Elizabeth Wakanyi Kibe v Telkom Kenya Ltd [2014] eKLR***, where the Court cited the case of ***D.K. Marete v Teachers Service Commission Cause No. 379 of 2009***, for the holding that remedies are not aimed at facilitating the unjust enrichment of aggrieved employees, but are meant to redress economic injuries in a proportionate way, I deem an award of four (4) months' salary sufficient compensation for the constructive dismissal.

Salary during suspension

73. The Black's Law Dictionary, 7th Edition, defines suspension as to temporarily keep a person from performing a function, occupying an office, holding a job, or exercising a right or privilege.

74. Suspension must be guided by the terms and conditions of employment, and should not be applied whimsically.

75. Suspension without pay is not automatic unless contractually provided. The Respondent did not lead evidence justifying non-payment of the Claimant's salary for the suspension period.

76. The claim for April and May salary is therefore merited and is awarded as prayed.

Notice pay

77. On the finding that the Claimant did not voluntarily resign, but was instead constructively dismissed, he is entitled to notice pay.

78. The claim similarly succeeds.

Gratuity

79. The Claimant confirmed that deductions in respect of NSSF and membership to the Respondent's Provident Fund were made, which disentitles him to payment of a gratuity. To allow his claim for gratuity will amount to unjustly enriching the Claimant.

80. The claim is dismissed.

Certificate of Service

81. Issuance of a certificate of service is mandatory under Section 51 of the Employment Act, irrespective of the reason for the separation.

The Counterclaim

82. The Respondent bore the burden of proof of the counterclaim. It did not lead conclusive evidence of the loss or that the same was attributable to the Claimant.

83. Further, there was no audit report or inventory confirmation of the alleged stolen batteries, and RW1 admitted a lack of personal verification.

84. The counterclaim for Kshs.793,457.28 and damages, therefore fail for lack of proof, and is hereby dismissed.

Notice pay counterclaim

85. Since the resignation has been held to amount to constructive dismissal, the claim for notice pay fails. The Claimant was entitled to leave with or without notice on account of constructive dismissal.

86. In the final analysis, the Claimant's claim succeeds as follows:-

a) A declaration is hereby issued that the Claimant was constructively dismissed.

b) The Respondent shall pay the Claimant:

- i. 4 months' salary as compensation for the constructive dismissal at Kshs. 572,772/-
 - ii. Salary for April and May, 2024 at Kshs. 286,386/-
 - iii. One month's salary for notice pay at Kshs. 143,193/-
 - iv. Costs of the suit.
- c) A certificate of service be issued within 14 days of this Judgment.
- d) The counterclaim is dismissed in its entirety with no orders on costs.

87. Judgment of the court.

SIGNED, DATED, AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS 7TH DAY OF MAY, 2026.

C. N. BAARI
JUDGE

Appearance:

Ms. Buyengo h/b for Ms. Walubengo for the Claimant

Mr. Waweru h/b for Mr. Lundi for the Respondent

Ms. Esther S- C/A