

REPUBLIC OF KENYA
IN THE EMPLOYMENT & LABOUR RELATIONS COURT AT
NAIROBI
CAUSE NO. E926 OF 2024

SYLVIA WAMBOGO MATI.....
CLAIMANT

VERSUS

PANACHE TECHNOHUB LTD.....
....RESPONDENT

JUDGMENT

Introduction

1. In a Statement dated 31st October, 2024, the Claimant sued the Respondent seeking payment of salary arrears, notice pay, house allowance, leave days, and compensation for unfair termination.
2. In a Statement of Response dated 24th March, 2025, the Respondent denied that it terminated the Claimant, arguing that she voluntarily resigned from their employment.
3. The Claimant's case was heard on 4th November, 2025, when she tendered her testimony in support of her case, adopted her witness statement, and produced her list and bundle of documents as exhibits in the matter.
4. The Respondent's case was heard on even date, where it presented the testimony of Mr. Amos Muthui its director in

support of its case. The witness adopted his witness statement and produced the Respondent's list and bundle of documents as exhibits in the matter.

5. Submissions were filed for both parties and have been duly considered.

The Claimant's Case

6. The Claimant states that she was employed by the Respondent as a Sales Executive in Nairobi on 8th January 2024, earning a monthly salary of Kshs.180,000, as evidenced by her employment letter.
7. The Claimant avers that she worked diligently for approximately six months before resigning on 8th July 2024, due to the Respondent's failure to pay her salary on time and accumulation of salary arrears, which made it difficult for her to sustain herself.
8. The Claimant states that she considers the circumstances leading to her resignation to amount to constructive termination on the basis that the Respondent has not provided any further communication regarding her employment or dues. It is her case that she reported the matter to the Labour Office, which formally requested the Respondent to settle her terminal dues, but the Respondent did not respond.
9. It is her case that she was not given notice of termination nor paid one month's salary in lieu of notice, and she hereby

claims. She avers that she did not take annual leave during her employment and was not compensated in cash, hence her claim for payment for the accrued leave days.

10. It is her case that the Respondent neither provided her with housing nor paid house allowance, and she seeks payment for the same. The Claimant further claims unpaid salary arrears, including salary for the month of August, 2024.
11. The Claimant contends that the termination amounted to unfair and unlawful summary dismissal, as it was harsh and procedurally improper, and seeks compensation equivalent to 12 months' salary.
12. The Claimant finally states that she suffered financial hardship due to loss of employment and seeks the court's intervention and the reliefs in her claim.
13. On cross-examination, the Claimant told the court that her claim for Kshs.167,000/- comprised of salary arrears for May 2024 and leave not taken after deduction of statutory remittances. She confirmed that the Respondent had admitted owing her Kshs.167,000/-.
14. The Claimant confirmed that she was earlier made aware of the Respondent's company financial headwinds when she joined their employ.

15.It is her position that she resigned on 8th July, 2024, on account of breach of contract due to delay in salary payment.

16.In re-examination, she told the court that she had 9.5 unutilized leave days.

17.It is her prayer that the court grant her the relief sought.

The Respondent's Case

18.The Respondent denies that the Claimant was dismissed, asserting instead that she voluntarily resigned, as confirmed by her email dated 5th July 2024 and her own admission in the Claim.

19.The Respondent further denies the allegations of non-payment of the Claimant and maintains that it only owes her Kshs.167,537, which she acknowledged in her emails. It contends that any delay in payment was due to financial challenges, which the Human Resource Department communicated to the Claimant.

20.The Respondent denies the claims relating to notice, leave, and house allowance, and reiterates its earlier position on the amount owed to the Claimant.

21.The Respondent denies the Claimant's allegations on salary arrears, and reiterates its earlier position that the Claimant voluntarily resigned and that only Kshs.167,537 is owed.

The Respondent asserts that the suit is filed in bad faith and is intended to gain an improper or collateral advantage.

22. The Respondent's witness, RW1, in his oral testimony, confirmed that the Claimant's salary for May 2024 was not paid, similar to leave days. He told the court that the delay in paying the Claimant's dues was on account of financial challenges, which the Claimant was aware of.

23. He contends that the Respondent committed to pay and even communicated to her. He further confirmed that the certificate of service was not issued and is available upon request.

24. The Respondent prays that the court dismiss the Claim.

Analysis and Determination

25. The issues that fall for determination are: -

- i. Whether the Claimant's resignation amounts to constructive dismissal.
- ii. Whether the Claimant is entitled to the reliefs sought

Whether the Claimant's resignation amounts to constructive dismissal.

26. The Claimant told this court that she resigned from the service of the Respondent, and which position, the Respondent confirmed. The question is whether the resignation was voluntary or whether it constitutes constructive dismissal.

27. The clearest articulation of constructive dismissal is the often-cited decision of Lord Denning in ***Western Excavating (ECC) Ltd V Sharp (1978) 2 WLR 344***, where he opined:-

“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.”

28. Closer home, in ***Coca Cola East & Central Africa Limited v Maria Kagai Ligaga [2015] KECA 394 (KLR)***, the Court of Appeal held that constructive dismissal occurs where the employer’s conduct amounts to a fundamental breach of contract, and the employee resigns in response to that breach.

29. The Claimant resigned due to what she terms persistent delay and non-payment of her salary. The Respondent’s witness (RW1) admitted on cross-examination that the salary for May 2024 was not paid on account of financial difficulties.

30. Salary, no doubt, is a core obligation of an employer under Section 17 of the Employment Act, and failure to pay salary when due has consistently been held to amount to a fundamental breach of the employment contract.

31. To meet the threshold set under the ***Maria Ligaga case (supra)***, an employee is required to show a serious breach of contract and that the breach is intolerable and warrants their immediate resignation with or without notice.

32. In her letter of resignation dated 8th July, 2024, the Claimant expressly stated the reason for her resignation to be non-payment of her May and June, 2024 salaries. She further stated that her salaries for January, February, March, and April 2024 were paid late, causing her financial strain and anxiety and making her continued employment untenable.

33. Although the Claimant, on cross-examination, admitted that she was made aware of the Respondent's financial challenges, she went on to confirm that the said challenge was only brought to her attention upon being hired.

34. In ***Mary Chemweno Kiptui v Kenya Pipeline Company Limited (2014) eKLR***, the Court held that conduct that makes continued employment intolerable entitles an employee to resign and claim constructive dismissal.

35. In my considered view, the Respondent's explanation of financial challenges does not excuse breach. I therefore find

and hold that the persistent non-payment and delay in salary constituted a fundamental breach, and the Claimant's resignation was not voluntary, but amounted to constructive dismissal.

Whether the Claimant is entitled to the reliefs sought

Salary Arrears

36. The Respondent admitted owing the Claimant Kshs.167,537, and RW1 further confirmed that her May 2024 salary was not paid.

37. I, in the circumstances, have no difficulty finding the claim merited, and the amount is allowed.

Notice Pay

38. Under Sections 35 and 36 of the Employment Act, an employee is entitled to notice or pay in lieu. Even in constructive dismissal cases, courts award notice pay on the basis that constructive dismissal/termination is treated as termination by the employer, and unfairly so.

39. I thus find the claim merited and the Claimant is awarded one month's salary in lieu of notice.

Leave Pay

40. The Claimant proved that she had 9.5 leave days not taken. The Respondent did not rebut this claim, and RW1 admitted that leave was outstanding.

41. Under Section 28 of the Employment Act, leave must either be granted or paid in lieu. I hold that the Claimant is entitled to payment for 9.5 accrued leave days.

House Allowance

42. Section 31 of the Employment Act provides for the provision of housing or a house allowance except where the salary is consolidated. There was no evidence that the salary of Kshs. 180,000 was consolidated.

43. In ***Grain Pro Kenya Inc. Ltd v Andrew Waithaka Kiragu [2019] KECA 563 (KLR)***, the Court held that house allowance is payable unless expressly included in salary.

44. In the premise, I hold that the Claimant is entitled to house allowance in the amount claimed, being 15% of her monthly salary for the period of six months worked.

Compensation for unfair termination

45. The Court has held that the Claimant was constructively terminated, which is an unfair termination. The finding entitles her to compensation pursuant to Sections 49 and 50 of the Employment Act, 2007.

46. Considering the Claimant's brief stint with the Respondent and the Respondent's financial challenges, which the Claimant confirmed, I deem a ward of 2 months' salary sufficient compensation for the unfair termination.

47. In whole, the Claimant's Claim succeeds and reliefs awarded as follows:-

- a) A declaration that the Claimant was constructively terminated.
- b) That the Respondent shall pay the Claimant:
 - i. Salary arrears at Kshs.167,537/-
 - ii. One month's notice pay at Kes.180,000/-
 - iii. Leave pay for 9.5 days at KES.81,428/-
 - iv. House allowance for the six months worked at Kshs.162,000/-
 - v. Two months' salary as compensation for the unfair termination at KES.360,000/-
- c) That a Certificate of Service be issued to the Claimant within 14 days of this judgment.
- d) The Respondent shall bear the costs of the suit.

48. Judgment accordingly.

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

C. N. BAARI
JUDGE

Appearance:

Ms. Kariuki present for the Claimant

Ms. Kimathi h/b for Mr. Kinoti for the Respondent

Ms. Esther S- C/A