



**Kiarie v UAP Holdings Limited (Cause 1091 of 2018)
[2026] KEELRC 1255 (KLR) (7 May 2026) (Judgment)**

Neutral citation: [2026] KEELRC 1255 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 1091 OF 2018**

K OCHARO, J

MAY 7, 2026

BETWEEN

DOMINIC KIARIE CLAIMANT

AND

UAP HOLDINGS LIMITED RESPONDENT

JUDGMENT

1. At all material times, the Claimant was an employee of the Respondent in the position of Group Managing Director until its merger with another entity, Old Mutual Kenya Ltd. Contending that the Respondent constructively and/or terminated his employment on account of redundancy, he sued them, seeking the following reliefs against them;
 - (a) A declaration that the termination of the Claimant's employment was wrongful, unfair and unlawful;
 - (b) The Claimant to be reinstated in his employment with the Respondent in the capacity of Group Managing Director, without loss of employment benefits, seniority or service;
 - (c) A declaration that the Claimant was discriminated against by the Respondent during the merger and reorganisation process, and in the appointment of the Group CEO;
 - (d) Payment to the Claimant of all salaries and allowances/bonuses which the Claimant has lost as a result of the unfair termination in full from the date of constructive dismissal [30th June 2015] to the date of judgment;
 - (e) Damages for unfair and unlawful termination of the Claimant's employment by constructive dismissal equivalent to 12 months' gross salary of the Claimant;
 - (f) Damages for discrimination and loss of career advancement opportunity;



- (g) In the alternative prayer (b) above, Gross salary for the remaining term of the Claimant's employment, i.e. until his statutory retirement age of 60 years;
 - (h) Redundancy pay equivalent to five (5) months' pay for every year worked;
 - (i) Locked-in performance bonus for the employment period 2013-2015;
 - (j) Ex gratia gratuity sum of 15% of annual pay;
 - (k) Pension and other unpaid terminal benefits due under the contract;
 - (l) Certificate of service;
 - (m) Interest on any sums awarded by the court at court rates of 12% p.a. from 30th June 2015 until payment in full;
 - (n) Cost of the suit; and
 - (o) Any other relief this Honourable court may deem fit.
2. The Respondent countered the Claimant's claim through a Reply to Statement of Response dated 2nd October 2018. The Respondent asserts that the Claimant voluntarily resigned subsequent to being offered an alternative role during the merger, and that no dismissal, redundancy, or discrimination occurred. It further maintains that all terminal dues were duly paid and that the Claimant signed a comprehensive settlement agreement, constituting a full and final settlement of his claims.
 3. At the hearing of this suit, the parties adopted their respective witness statements as their evidence in chief and produced as their documentary evidence those documents that they had filed under their respective lists of documents.

Claimant's case

4. The Claimant states that at all material times he was an employee of the Respondent, serving as Deputy Group Managing Director in 2011 and subsequently as Group Managing Director.
5. His appointment as Deputy Group Managing Director resulted from the Respondent's offer of 20 April 2011, which he accepted. Under his employment contract for this role, he was entitled, inter alia, to a gross monthly salary of KShs. 1,885,000.00 and an annual performance bonus based on the Respondent's and his individual performance.
6. Following his diligent and exemplary discharge of duties and responsibilities, he was promoted to the role of Group Managing Director pursuant to a letter dated 23rd April 2013, with an effective date of 1st January 2013. His monthly gross salary was increased to KShs. 2,700,000.00.
7. He continued to diligently and excellently perform his duties in the new position up to and including 30th June 2015, when a merger between the Respondent and an entity known as Old Mutual Kenya was completed and a reorganisation of the Respondent's leadership structure was undertaken.
8. He asserts that the Respondent intentionally excluded him from the merger and reorganisation process involving itself and Old Mutual Kenya, as he was denied any information and access concerning the proposed reorganisation, despite the fact that, given his position, he was a vital member of the Respondent's Board of Directors.



9. He only became aware of the Respondent's intention to abolish the position of Group Managing Director at a meeting of the Respondent's Board on 29th June 2015, held to discuss the role of Group CEO for the merged entity.
10. At the meeting, the Respondent's Board informed him of its decision not to offer him the role of Group Chief Executive Officer of the merged entity, but instead offered him the position of Group Managing Director, Marketing and Strategy, in the merged entity. The offer was stated as final and did not allow any deliberation on the possibility of his being given another role within the merged entity. Further, he was given 24 hours to sign and accept the letter of offer for the proposed new position.
11. He further states that he sought more time to review the offer before accepting it, but the request was not granted. On further reflection, he realised that the new role would be a considerable downgrade in terms of title, reputation, and responsibilities, and that it was not in line with his career interests and aspirations.
12. The Claimant further asserts that he was not at any time issued with a notice in writing regarding his position being rendered redundant and was not afforded an opportunity to discuss other viable options concerning his employment with the Respondent, who instead deliberately and completely disrespected and embarrassed him by offering a lesser position.
13. He asserts that he was duly qualified for the position of Group Chief Executive Officer of the merged entity, based on his track record as Group Managing Director and his previous eligibility for, and appointment as, Group Chief Executive Officer of Old Mutual Kenya in 2008, which he declined for personal reasons.
14. The proposed position was substantially and materially different from his previous role and had a diminished scope. Unlike the previous role, this role did not include revenue, profit, and loss responsibilities, a larger budget, or larger projects, including real estate projects and asset management, and it compromised his future job prospects.
15. His position having been declared redundant, and subsequently being offered a lesser position, he was left with no viable option but to resign. He did so through his letter dated 20th June 2015.
16. He alleged that he was openly discriminated against when the Respondent excluded him from the merger and re-organisation process, singled him out for a redundancy exercise, and bypassed him for the top-most position of Group Chief Executive Officer of the Merged entity.
17. In the circumstances surrounding his resignation, he was constructively dismissed.
18. By its letter dated 30th July 2015, the Respondent accepted his resignation with some terms. The Respondent deliberately failed to provide for any redundancy payment or the locked-in bonus earned as a Group Managing Director, and offered a dismal ex gratia gratuity of KShs. 600,000, among other terms.
19. On 3rd August 2015, he wrote in response to the terms set out in the Respondent's letter of acceptance of resignation, and demanded better terms, including better gratuity pay, redundancy pay, and the locked-in bonus earned during his tenure as Group Managing Director.
20. He contends that the termination of his employment was unlawful, as it did not comply with the requirements of Part VI of the *Employment Act*.
21. The constructive dismissal was unlawful, unfair, and without justification, contrary to the provisions of Section 43 of the Act. There was no justifiable, fair and valid reason accorded to him for the



- termination [by way of redundancy] of his employment; his employment was terminated without adherence to the dictates of procedural fairness.
22. He further asserted that the Respondent acted in utter disregard of the stipulations of section 40 of the *Employment Act* by failing to issue him notice in writing regarding his position that had been rendered redundant, failing to apply an objective selection criterion for employees to be declared redundant, failing to pay him severance pay, and failing to adhere to due process.
 23. The Respondent's actions caused his decision to resign from employment.
 24. The witness, Susan Githuku [CW2], stated that she served as Chairperson of the Respondent's Human Resource and Administration Committee from 2013 to June 2015 and was thus involved in a high-level advisory role during the merger process. She described the Claimant as an outstanding performer during his time as Group Managing Director, with no disciplinary issues. However, she clarified that the committee's role in the merger was limited to providing general advisory guidance rather than making executive decisions, and that the restructuring process was mainly overseen by external consultants.
 25. She stated that the committee's primary concern during the merger was to ensure fairness, equality, and humane treatment of employees, including minimising redundancies and ensuring compliance with statutory requirements in relation to any disengagements. However, she could not recall giving any specific advice regarding the Claimant's position as Group Managing Director and confirmed that their guidance was general rather than targeted at particular roles.
 26. The witness confirmed that the Claimant was offered a new role of Group Managing Director - New Markets and Strategy, which had been recommended by the Board. She acknowledged that the Claimant did not apply for the role and that the period given to consider the offer might have been short, but the circumstances of the matter might have influenced the period.
 27. She further testified that she was unaware of all events that occurred after 29 June 2015, as her tenure ended on that date. Regarding bonuses and redundancy policies, she confirmed that the Respondent had such policies, but their implementation and detailed administration were handled by management, not the board committee.

Respondent's case

28. In his witness statement, the Respondent's witness, Nkitore Njiru, set out the Respondent's case. The Claimant was lawfully employed as Deputy Group Managing Director from 2011 and was subsequently promoted to Group Managing Director in 2013, under terms that permitted role changes, restructuring, or termination by notice.
29. It asserts that following the 2015 acquisition by Old Mutual Kenya and the subsequent merger, a restructuring of the business was necessary, resulting in changes to roles across the organisation.
30. The Respondent contends that this process was conducted in a consultative manner and that the Claimant, in his capacity as a senior executive, was actively engaged in and cognizant of the merger and reorganization proceedings, including participation in communications and regulatory affairs.
31. The Respondent contends that the Claimant's role was not eliminated but instead evolved into the position of Group Managing Director - New Markets and Strategy, which they claim involved increased regional responsibilities, retained the same pay and benefits, and aligned with the needs of the merged organisation. It denies that the role constituted a demotion and asserts that the Claimant was given sufficient time to consider the offer. It also maintains that there was no redundancy, as



the Claimant's employment was not ended and their services continued to be required within the reorganised structure.

32. The Respondent maintains that the Claimant voluntarily resigned through his letter dated 30th June 2015, without raising any complaints of unfair treatment, a hostile environment, or constructive dismissal. It highlights that the resignation was amicable and that the Claimant was willing to assist during the transition. The Respondent accepted the resignation and offered an exit package, including notice pay, accrued leave, and an ex gratia payment, which was subsequently increased following the Claimant's request.
33. It is further the Respondent's case that the Claimant accepted the enhanced exit package and signed a binding agreement settling all claims arising from his employment, after which payment was made and received unconditionally. The Respondent therefore argues that the Claimant waived any further claims and that the present suit is an afterthought aimed at unjust enrichment.
34. The Respondent the Claimant's assertions of constructive dismissed, coercion, or duress, asserting that the Claimant, as a senior executive, could not have been compelled to resign. It also disputes the Claimant's entitlement to additional benefits, including bonuses, asserting that bonuses were paid in accordance with company policy and that any remaining bonus ceased to be payable upon resignation.
35. The Respondent asserts that there was no unfair dismissal, redundancy, or discrimination, that the Claimant resigned of his own accord. All his separation dues were settled.

Claimant's submissions

36. Regarding the nature of termination, the Claimant contends that the Respondent's conduct amounted to a repudiatory breach of contract, constituting constructive dismissal. He cites *Anthony Mkala Chitavi v Malindi Water & Sewerage Company Ltd* (Cause No. 64 of 2012), *Coca Cola East and Central Africa Ltd v Maria Kagai Ligaga* [2015] eKLR, and *Leena Apparels (EPZ) Ltd v Nyevu Juma Ndokolani* [2018] eKLR. He argues that the Respondent imposed intolerable working conditions through unilateral demotion, replacement without due process, lack of consultation, and coercive deadlines, leaving him with no choice but to resign.
37. The Claimant further argues that the termination was both substantively and procedurally unfair under Sections 43 and 45 of the *Employment Act*, as it was not shown to be for a valid or fair reason. Additionally, the Respondent failed to comply with its own HR policies and statutory requirements, including by failing to conduct a transparent recruitment process for the CEO position, failing to consult, and failing to justify the termination.
38. On the issue of redundancy, the Claimant contends alternatively that his departure constituted redundancy as defined under Section 2 of the *Employment Act*. In matters of redundancy, the *Employment Act* sets out mandatory requirements under Section 40 that an employer must fulfil when terminating an employee on account of redundancy. The requirements include an objective selection criterion, the issuance of the requisite notices, consultation between the employer and the affected employees, and payment of redundancy dues. To buttress this submission, reliance has been placed on *Jane I Khalechi v Oxford University Press (E.A.) Ltd* [2013] eKLR and *Adis v Style Industries Ltd & another* (Petition E036 of 2022) [2022] KEELRC 13475 (KLR).
39. The Claimant also asserts that he faced discrimination by being excluded from the merger process and denied the opportunity to compete for the CEO role. He cites *Mohammed Abduba Dida v Debate Media Limited & another* [2018] eKLR (citing *Kadar Nath v State of W.B* [1953] SCR 835) and urges the Court to find that he was discriminated against in breach of Section 46(g) of the *Employment Act*.



40. In response to the Respondent's reliance on his execution of the acceptance letter dated 10th September 2015, the Claimant submits that the same cannot be a bar to his pursuit of the reliefs sought. It was executed under duress. To buttress this submission, he cites *Thomas De La Rue (K) Ltd v David Opondo Omutelema* [2013] eKLR. He further contends that agreeing with the Respondent's position would be tantamount to allowing it to benefit from its own wrongdoing, contrary to the principle enunciated in *Chiaba Mohammed v Mohammed Bwana Bakari & 2 others* [2005] eKLR.

Respondent's submissions

41. The Respondent argues that the Claimant was not dismissed but voluntarily resigned after being offered the position of Group Managing Director-New Markets and Strategy in the merged entity. It refers to the Claimant's resignation letter, in which he expressed gratitude for his time at the company, stated that the merger prompted him to move on, and thanked the Chairman for his support. The Respondent maintains that this letter was polite, contained no complaints of mistreatment, constructive dismissal, or discrimination, and therefore weakens the later claim that the resignation was involuntary. It further asserts that the Claimant's subsequent allegations were made only after he became dissatisfied with the separation package.
42. The Respondent heavily relies on the Memorandum of Agreement dated 10th September 2015, which it claims conclusively settled all issues arising from the Claimant's employment and termination. It argues that by signing the agreement, the Claimant acknowledged that the separation was amicable, that the payments were made in full and final settlement of all claims, that the departure was described as the pursuit of outside opportunities, and that he had the right to seek independent legal advice.
43. The Respondent contends that the agreement was clear, binding, and barred any further claims. To support this position, it cites *Coastal Bottlers Limited v Kimathi Mithika* [2018] eKLR, *Joseph Chumba v Wells Fargo Limited (Cause E004 of 2021)* [2023] KEELRC 176 (KLR), *Ahmed Mohammed Noor v Abdi Aziz Osman* [2019] eKLR, *Thomas De La Rue v David Opondo Omutelema* [2013] eKLR, *Health & Water Foundation v Intervita Onlus* [2015] eKLR, and *Star Publications Ltd v Simiyu (Civil Appeal 23 of 2018)* [2023] KECA 23 (KLR). The Respondent also accuses the Claimant of dishonesty for failing to plead the agreement and the payments received under it.
44. Regarding the allegation of coercion or duress, the Respondent argues that the Claimant failed to provide any evidence demonstrating that he was compelled to sign the agreement, that his salary was withheld pending execution, or that he was prevented from seeking legal advice.
45. It highlights that the Claimant himself proposed settlement discussions, indicated that legal counsel would be involved, and signed the agreement shortly after it was drafted. In its view, no vitiating factors have been established, and the Claimant, as a senior executive, was fully aware of the legal implications of the document he signed and enjoyed its benefits for nearly three years before initiating legal action.
46. Regarding whether the Claimant's departure was due to redundancy, the Respondent denies that any redundancy occurred. It argues that the Claimant was not declared redundant because he was offered alternative employment within the merged entity and chose to resign instead. In its view, any potential redundancy was avoided by that offer, and the Claimant cannot refuse alternative employment and still claim a redundancy payment. On this point, it cites *Raphael Muchungu Mwangi v DHL Excel Supply Chain (K) Ltd* [2015] KEELRC 1049 (KLR).
47. The Respondent also denies the allegation of constructive dismissal. It argues that the Claimant has not demonstrated that intolerable conditions were created, that the Respondent's conduct was egregious



- or amounted to a repudiatory breach, or that he was left with no option but to resign. It references *Coca Cola East & Central Africa Limited v Maria Kagai Ligaga* [2015] eKLR and contends that the Claimant's claims of exclusion from the merger process are contradicted by documentary evidence showing he issued memos to staff and committees regarding the integration, attended town hall and board meetings, and actively engaged in the process. For this, it also cites *Josephine Mwikali Kikenye v Omar Abdalla Kombo & another* [2018] eKLR and *Kenya Airways Limited v Aviation & Allied Workers Union Kenya & 3 others* [2014] eKLR.
48. It further argues that the new role was not a demotion because the Claimant kept his rank as Group Managing Director, his pay and benefits stayed the same, and his duties were increased to match the merged regional structure. On the meaning of demotion, it references *Silvanus Lukoko Were v Ministry of Lands & Physical Planning & another* [2020] eKLR. It also cites *Edward Machuka Nyamora v Kenya Animal Genetic Resource Centre formerly Central Artificial Insemination Station* [2018] KEELRC 1909 (KLR) to support the claim that someone in the Claimant's senior position would have protested immediately if he had genuinely been forced out.
 49. The Respondent further argues that, once the Claimant resigned, the contract ended at his own instance and there was no obligation on the employer to take further steps to terminate his employment. In this regard, it cites *Edwin Beiti Kipchumba v National Bank of Kenya Limited* [2018] eKLR and *Ayonga v Falcon Signs Ltd* [2023] eKLR. It therefore contends that the claim for a declaration that the termination was wrongful, unfair, and unlawful has no foundation.
 50. Regarding the specific remedies sought, the Respondent argues that reinstatement and payment of salary up to retirement were abandoned by the Claimant during the evidence and, in any case, lack a legal basis. It cites *Engineer Francis Gachuri v Energy Regulatory Commission* [2013] eKLR, *James Omwoyo Nyanga'u v The Heritage Insurance Company Limited* [2014] eKLR, and *Kiptum Nyaoke v Kenya Post Office Savings Bank* [2022] eKLR to oppose the claim for anticipated salary up to retirement.
 51. Regarding discrimination, the Respondent argues that the claim was not substantiated because no comparator was identified and there was no evidence showing that the person appointed as Group Chief Executive Officer was equally or less qualified than the Claimant but received more favourable treatment. It contends that the Group CEO position existed within the acquiring entity, not the Respondent, and that the disparity in treatment under those circumstances does not constitute unlawful discrimination. The Respondent references *Ayako v Kenya Pipeline Company Ltd (Cause E008 of 2023)* [2024] KEELRC 1464 (KLR), *State of Kerala & another v N. M. Thomas & others* 1976 AIR 490, *Mohammed Abduba Dida v Debate Media Limited & another* [2018] eKLR, *Kedar Nath v State of W.B* [1953] SCR 835, and *Peter Gachenga Kimuhu v Kenol Kobil Ltd, Industrial Court Cause No. 628 of 2012* [2014] eKLR.
 52. The Respondent also opposes the monetary claims for salaries, allowances, bonuses, severance, gratuity, pension, and other terminal dues. It asserts that the Claimant was paid all sums owing under the Memorandum of Agreement, including notice pay up to 30th September 2015, and cannot claim salary for a period when he did not provide any service.
 53. It contests the claim for compensation due to unfair dismissal, arguing that there was no unfair termination, and alternatively states that the ex gratia payment already made would sufficiently cover any award the Court might issue. It rejects the claim for severance on the grounds that severance pay is only due in genuine redundancy cases, referencing *Josphat Kumenda Momanyi v Apparel (EPZ) Limited* [2017] eKLR.



54. It also dismisses the gratuity claim, stating that gratuity must be derived from a contract, statute, or collective agreement, citing *Pathfinder International Kenya Limited v Stephen Ndegwa Mwangi* [2019] eKLR. Regarding bonuses, it argues that only the final instalment of the 2014 bonus remains unpaid and that the bonus policy prohibited payment once the Claimant left employment. Concerning pension and other benefits, it claims that all due benefits have been settled and that claims not explicitly pleaded cannot be introduced through submissions. For support, it cites *Daniel Toroitich Arap Moi v Mwangi Stephen Muriithi & others* [2014] eKLR, *Daniel Otieno Migore v South Nyanza Sugar Co. Ltd* [2018] eKLR, and *Isaiah Ondiba Bitange & 3 others v Institute of Engineers of Kenya & others* [2017] eKLR.
55. Finally, the Respondent notes that the claim for a certificate of service has been overtaken by events, since one was issued, and submits that costs should follow the event. Its overall position is that the Claimant voluntarily resigned, executed a binding settlement agreement, and failed to prove constructive dismissal, redundancy, discrimination or any entitlement to the extensive reliefs sought. It therefore urges the Court to dismiss the claim with costs

Analysis and determination

56. After reviewing the pleadings, evidence, and submissions presented by both parties, the issues to be determined are as follows:
- i. Whether the separation of the Claimant from employment was by voluntary resignation.
 - ii. Whether the Claimant was constructively dismissed from employment.
 - iii. Whether the Claimant's exit was on account of redundancy and, if so, whether it was lawful and fair.
 - iv. Whether the Claimant is entitled to the reliefs sought.

Whether the separation was by voluntary resignation.

57. Before I delve into this issue, I am compelled to highlight a vital point. The Claimant's case, as pleaded and prosecuted, suffers from a fundamental legal inconsistency. He invites this Court to find, on the one hand, that he was constructively dismissed, and, on the other hand, that his employment was terminated on account of redundancy. In my view, the two causes of action are mutually exclusive and cannot, in law or logic, co-exist within the same factual matrix.
58. Constructive dismissal arises where an employee is compelled to leave their employment as a result of the employer's conduct that is fundamentally unbearable, unlawful, or repudiatory of the contract of employment, thereby rendering the continuation of the employment relationship intolerable. The gravamen of the claim for constructive dismissal is therefore that the employee elected to leave employment due to the employer's breach.
59. Redundancy, on the other hand, is a statutory mode of termination initiated by the employer. It arises where the employer abolishes or reduces positions due to operational requirements, restructuring, economic constraints, technological changes, or organisational realignment. In redundancy, the separation from employment is not triggered by the employee's resignation, but by the employer's decision to terminate the contract due to the employee's services being superfluous.
60. The legal and factual foundations underpinning the two claims are therefore distinctly different. One is predicated upon a resignation by the employee, allegedly induced by the employer's conduct; the other upon an express termination by the employer arising from operational reasons. An



employee cannot, in the same breath, maintain that he resigned because the employer made continued employment intolerable, and simultaneously assert that the employer terminated his employment through redundancy.

61. Where constructive dismissal is alleged, the Court interrogates whether the employee voluntarily exited the employment relationship due to a repudiatory breach by the employer. Conversely, where redundancy is alleged, the Court examines whether a genuine redundancy situation existed and whether the employer complied with the mandatory statutory requirements governing redundancy, including notice, consultation, selection criteria, and the payment of redundancy dues. The inquiries are separate, distinct, and incapable of being applied simultaneously to the same act of separation.
62. Courts have pronounced themselves elaborately on the doctrine of constructive dismissal and termination of employment on account of redundancy. A careful review of the landmark decisions on the realms of employment law, for instance, the *Coca Cola East & Central Africa Limited v Maria Kagai Ligaga* [2015] eKLR [on constructive dismissal] and *Kenya Airways Limited v Aviation & Allied Workers Union & 3 others* [2014] eKLR [on redundancy], would have revealed the foregoing premises, to the Claimant, to enable him avoid the perilous route he took.
63. This Court therefore finds that the Claimant cannot approbate and reprobate on the central question regarding the manner in which his employment came to an end. He was under a legal obligation to elect and consistently pursue one cause of action supported by facts. The attempt to maintain both claims concurrently renders the Claimant's case internally contradictory and legally untenable.
64. Section 47[5] of the *Employment Act*, 2007, establishes a burden of proof structure unique to employment disputes litigation. It establishes a reverse burden of proof system, placing distinct legal burdens on the employee and the employer that must be discharged sequentially. The employee bears the initial burden of demonstrating that an unlawful termination of employment or a wrongful summary dismissal occurred. It is upon satisfying this burden that the evidential burden shifts to the employer to justify the termination or summary dismissal.
65. Having found, as set out above, that the Claimant's approach defies the law and logic, I find no difficulty in concluding that the Claimant did not discharge his burden under the said provision. His claim should collapse at this point.
66. Even after concluding as I have done hereinabove, the Claimant's case would collapse on this other count. There is no dispute that, by a letter dated 30th June 2015, the Claimant resigned from his employment. He alleges that he was coerced into resigning. Further, the Respondent's conduct prompted him to resign involuntarily.
67. I have thoroughly examined the letter and the evidence presented on record in its entirety, and I am not persuaded that the resignation was involuntary. The letter does not indicate that the Claimant was leaving employment due to the Respondent's conduct, nor that he was compelled to resign under circumstances rendering his continued employment intolerable. This Court remains cognizant of the fact that the Claimant was a General Director and possessed a higher education, and that, from his other correspondence, he could articulate his positions clearly and confidently, as exemplified by his letter in response to the Respondent's initial acceptance of the resignation. If he was forced by circumstances created by the Respondent, he could, no doubt, have stated so in his resignation letter.
68. This Court observes that, subsequent to the issuance of the resignation letter, the parties participated in negotiations regarding the terms of separation for the Claimant. These negotiations concluded with the definitive approval of the resignation document, which the Claimant duly executed, thereby affirming his consent and contentment with the established terms. If indeed the Claimant was coerced



into resigning or was influenced by the Respondent's repudiatory breach or unacceptable conduct, it is unlikely that the Claimant would have engaged in such discussions and proceeded to execute the final document.

69. By reason of the foregoing premises, I am convinced that the Claimant's resignation was voluntary, and as such, the two claims for constructive dismissal and unfair termination on account of redundancy, which I say were improperly presented for determination by this Court, have no foundation. Consequently, I find it unnecessary to proceed to consider issues [b] and [c], as framed.

Of the Reliefs Sought.

70. In the final acceptance letter for the separation through resignation by the Claimant, which I have indicated hereinabove, the separation terms were the product of discussions; they were set out in detail and, in my view, without ambiguity. The Claimant executed the document, in essence, binding himself to those terms. As such, the document had a contractual effect on the parties. The Claimant would only unbind himself from the terms by establishing one, some, or all of those circumstances that would, in law, entitle a Court to set aside a contract. I must say that the Claimant did not present any evidence to demonstrate that any of those circumstances obtained.
71. From the document, the parties' intention is clearly set out. All the benefits and claims to which the Claimant would be entitled upon separation were those set out in the document. The Claimant therefore undertook not to pursue any other claims against the Respondent. It is not in dispute that the Respondent discharged its obligations under the document by paying all those benefits. The Claimant is therefore estopped from pursuing any benefits or claims other than those set out in the document.
72. In *Coastal Bottlers Limited vs Kimathi Mithika* [2018], the Court of Appeal stated;
- “In our minds, it is clear that the parties had agreed that the payment of the amount stated in the settlement agreement would absolve the appellant firm from any further claims under the contract of employment and even in relation to the respondent's termination. It is instructive to note that the respondent never denied signing the said agreement or questioned the veracity of the agreement. As it stood, the agreement was a binding contract between the parties.”
73. By reason of the foregoing, and without delving into other reasons, I find the Claimant not entitled to any of those reliefs he has sought.
74. In the upshot, I find the Claimant's suit lacking in merit. It is hereby dismissed with costs.

READ, SIGNED, AND DELIVERED THIS 7TH DAY OF MAY 2026.

OCHARO KEBIRA

JUDGE

