



Aoko v Egerton University (Employment and Labour Relations Cause E004 of 2024) [2025] KEELRC 539 (KLR) (26 February 2025) (Judgment)

Neutral citation: [2025] KEELRC 539 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU
EMPLOYMENT AND LABOUR RELATIONS CAUSE E004 OF 2024
AN MWAURE, J
FEBRUARY 26, 2025**

BETWEEN

JOAN AOKO CLAIMANT

AND

EGERTON UNIVERSITY RESPONDENT

JUDGMENT

Introduction

1. The Claimant filed a Statement of Claim dated 30th January, 2024.

Claimant’s case

2. The Claimant avers that she was employed by the Respondent as a Senior Technologist in the Agricultural Engineering Department.
3. The Claimant avers that she has worked for the Respondent from the year 1988 until sometime on or about 2023 when she was unfairly, unjustly or constructively dismissed from employment by the Respondent.
4. The Claimant avers that she had written a letter dated 6th April 2023 notifying the Respondent through the Deputy Vice-Chancellor (Administration, Planning & Development) of her intention of retiring early for what she considered to be a fundamental repudiatory breach of terms of contract.
5. The Claimant avers that the Registrar (Human Capital & Administrator) acknowledge receipt of her letter dated 6th April 2023 on 16th April 2023 accepting her early retirement from the Respondent’s services.
6. Subsequently, the Claimant avers that she became aware of the essential breach concerning pension matters being litigated in the ELRC by UASU, and as such, she retracted her early retirement notice.



7. The Claimant avers that on 28th April 2023, she wrote to the Deputy Vice-Chancellor (Administration, Planning & Development) through the Registrar, informing them of her decision to rescind her request for early retirement. She has taken into consideration her financial obligations and several other outstanding issues related to her duties.
8. The Claimant avers that her letter was acknowledged, and the Respondent wrote a formal letter dated 13th June 2023 reiterating its letter dated 16th April 2023, in which it accepted the Claimant's early retirement notice thus, she ceased to be the Respondent's employee on 5th July 2023.
9. The Claimant states that the Respondent did not remit her pension contribution, along with its contributions, to the Pension Scheme per the Egerton University Pension Deed from 2017 until mid-2021 amounting to Kshs. 1,364,076.
10. The Claimant avers that the Respondent had breached section 19(4) of the Employment, and section 53A of the Retirement Benefits Act.
11. The Claimant also avers that the Respondent failed to remit deductions pertaining to the Claimant's loans with KCB bank, leading to her adverse listing by Credit Reference Bureaus (CRB) and severe financial repercussions.
12. The Claimant avers that the ongoing disregard for legal and contractual duties by the Respondent undermined a fair and equitable working relationship and suggested a deliberate attempt to create a hostile and oppressive work environment, forcing her to choose early retirement.
13. The Claimant avers that the persistent disregard for statutory and contractual obligations reflected a work environment that was intolerable and amounted to constructive dismissal.
14. The Claimant avers that her dismissal was unjust, inequitable, illegal, and in violation of Article 41(1) and 41(2)(a) of the Constitution, section 5(1) of the Pension Act and section 10(5) of the Employment Act.
15. The Claimant prays that:
 - a. A declaration that the Respondent's actions, which included non-payment of the Claimant's salary, failure to remit loan deductions on her salary on account for her loans, and failure to remit owed pensions, resulted in the creation of a hostile work environment. This hostile environment led to the Claimant's early retirement notice and should be deemed as constructive dismissal, thereby entitling the Claimant to general damages for unlawful dismissal.
 - b. The Respondent is compelled to pay the Claimant:
 - i. Unremitted pension funds accruing from June 2017 to June 2023 in the sum of Kshs.1,364,076/=
 - ii. Deferred salary in the sum of Kshs.1,128,047.95/=
 - iii. Non-remitted loan deductions on her salary for her bank loans (KCB bank) in the sum of Kshs. 650,822.93/=.
 - c. Any other just and expeditious relief.
 - d. Costs and interest.



16. On 6th July 2024, interlocutory judgment was entered against the Respondent and the Respondent, through the office of the Attorney General, filed an application dated 9th July 2024 seeking orders to set aside the interlocutory judgment.
17. Both parties compromise the application by filing a consent dated 23rd September 2024 as follows:
 - a. The interlocutory judgment entered herein be set aside, and the memorandum of appearance and statement of defence dated 9th July 2024 be deemed as duly filed.
 - b. The Respondent's witness statement dated 9th September 2024 be duly admitted.
 - c. The claim herein be determined based on filed witness statements without calling witnesses.
 - d. The parties to exchange written submissions within twenty-one (21) days from the date of this consent.
 - e. The Honourable Court do give further directions

Respondent's response

18. In opposition to the Statement of Claim, the Respondent filed a Statement of Defence dated 9th July 2024.
19. The Respondent denies the contents of the Statement of Claim and avers that the Statement of Claim is bad in law, ambiguous and premature.
20. The Respondent avers that the prayers sought are untenable and will only amount to engaging this Honourable court in an academic exercise.
21. The Respondent prays this Honourable Court to dismiss the suit with costs.
22. The suit was canvassed by way of submissions but only by the Claimant.

Claimant's submissions

23. The Claimant submitted that the Respondent failed to pay her salary and remit her pension as well as loan deductions which were not deducted from her salary but at no time remitted to the pension scheme and bank respectively.
24. The Claimant submitted that she was constructively dismissed due to the hostile and toxic working conditions, resulting in sending a notice to the Respondent informing them about her early retirement. The Claimant also submitted that the working conditions caused her mental stress and embarrassment as she was listed by the CRB for defaulting to pay her loan despite the Respondent having deducted the money from her monthly salary but failed to remit the same and she could also not afford to financially sustain herself and her family.
25. The Claimant submitted that there was a case was filed in Universities Academic Staff Union (UASU) Egerton University Chapter V Egerton University & 2 Others (supra) challenging the issue of non-remittance of their pensions by the Respondent, resulting in her rescinding her early retirement, which was rejected. The Claimant argued that the Respondent's actions resulted in a hostile work environment leading to her resignation.
26. The Claimant relied on the case of Enid Nkirote Mukire V Kenya Yearbook Editorial Board (2022) eKLR the court defined constructive dismissal as when an employee resigns due to the employer's



actions, such as breaching fundamental contract terms or creating an unbearable work environment. However, in this case, the circumstances do not indicate constructive dismissal.

27. In *Milton M. Isanya V Aga Khan Hospital Kisumu* (2017) eKLR, the court stated that constructive dismissal occurs when an employee resigns due to a hostile work environment or treatment by the employer. It occurs when the employer does not explicitly threaten or express the desire to terminate employment but makes the situation unbearable, leading the employee to resign.
28. The ingredients for constructive dismissal were laid down in the Court of Appeal case of *Coca Cola East and Central Africa Limited V Maria Kagai Ligaga* (2015) eKLR as follows:
- a. What are the fundamental or essential terms of the contract of employment?
 - b. Is there a repudiatory breach of the fundamental terms of the contract through the conduct of the employer?
 - c. The conduct of the employer must be a fundamental or significant breach going to the effect that the employer no longer intends to be bound by one or more of the essential terms of the contract.
 - d. An objective test is to be applied in evaluating the employer's conduct.
 - e. There must be a causal link between the employer's conduct and the reason for the employee terminating the contract i.e. causation must be proved.
 - f. An employee may leave with or without notice so long the employer's conduct is the effective reason for termination.
 - g. The employee must not have accepted, waived, acquiesced or conducted himself to be estopped from asserting the repudiatory breach; the employee must, within a reasonable time terminate the employment relationship pursuant to the breach.
 - h. The burden to prove repudiatory breach or constructive dismissal is on the employee.
 - i. Facts giving rise to repudiatory breach or constructive dismissal are varied.
29. In *Universities Academic Staff Union (UASU) Egerton University Chapter V Egerton University & 2 others* [2022] KEELRC 13430 (KLR), the Respondent's unconstitutional actions were challenged, and the court stated as follows:
- “The Act provides for the minimum terms and conditions of the relationship between an employer and an employee favourable and or in contravention of the minimum terms set in the act is null and void. Full payment of the agreed wages by the employer to the employee for work done is a basic labour right. There is no way an employee shall work without receiving the full pay as agreed by and between the parties. In case of members of the Claimant herein the salaries are paid monthly and hence become due and payable at the end of each month. Further, section 19 of the Act outlaws deductions from wages of any amount other than what is authorized by the law. There is nothing in law called deferred pay; the Respondent herein is asserting that wages due and payable to the Claimant shall be paid at future date.”
30. The Claimant submitted that she is entitled to general damages for constructive dismissal amounting to Kshs. 998,920/=, which is equivalent to 12 months' pay. The Claimant also submitted that she is entitled to unremitted pension funds accrued from June 2017 to June 2023, amounting to Kshs.1,3634,076/=, deferred salary amounting to Kshs.1,128,047.95/=, non-remitted loan deductions



amounting to Kshs.340, 816/= and unremitted Egerton University Sacco contributions amounting to Kshs. 48,578.55/=.

31. The Claimant submitted that she is entitled to costs and relied on Judicial Hints on Civil Procedure 2nd Edition, (Nairobi) Law Africa 2011 at page 101, where Retired Justice Kuloba authoritatively stated as follows:

“The law of costs as it is understood by courts in Kenya, is this, that where a Plaintiff comes to enforce a legal right, and there has been no misconduct on his part-no omission or neglect, and no vexatious or oppressive conduct is attributed to him, which would induce the court to deprive him of his costs-the court has no discretion and cannot take away the Plaintiffs right to costs. If the Defendant, however innocently, has infringed a legal right of the Plaintiff is entitled to enforce his legal right and in the absence of any reason such misconduct, is entitled to the costs of the suit as a matter of course.”

32. The Respondent did not file any submissions as per the court’s records.

Analysis and determination

33. The court has considered the pleadings on records, and the issues of determination are as follows:

- a. Whether the claimant was constructively dismissed and
- b. If (a) above is in the affirmative, whether the claimant is entitled to reliefs sought
- c. Who should bear the costs of the suit?

34. The court reiterates the Court of Appeal case of Coca Cola East and Central Africa Limited V Maria Kagai Ligaga(supra) to the ingredients of constructive dismissal.

35. In this instant case, there is no evidence adduced how the Claimant was frustrated in the course of employment. She voluntarily gave the Respondent a letter dated 6th April 2023 for early retirement. Therefore, she could not rescind the same. The Claimant could not go against the written letter which she authored herself and delivered to the Respondent showing her intention that she wanted to retire.

36. In her early retirement letter dated 6th April 2023, there is no indication she was frustrated, forcing her to write the said letter she authored. Instead, the letter was full of praise and appreciation for the Respondent, stating that it was a pleasure working and being part of the Respondent’s University. The letter of resignation therefore do not satisfy the conditions of constructive dismissal set out in several precedents including the case of Coca Cola – Vs- Maria K Ligaga (Supra).

37. Further, she stated that she became aware of the case that was filed against the Respondent about the pension, which she could have followed up on since she had free time as she had retired. In the view of the foregoing, the court finds that the Claimant was not constructively dismissed, but she voluntarily resigned without mistreatment or coercion.

38. On the reliefs sought, the Claimant was seeking general damages for constructive dismissal, and the same was not proved, the court will decline to award the requested general damages.

39. The claimant has prayed for pension dues from June 2017 to June 2023.

The court finds no support of such dues where the claimant avers the same were not remitted.



The claimant should have raised her issues on unpaid pension from 2017 upto 2023. Even in her resignation letter she did not refer to unpaid pension dues. The trite law is that he who alleges must prove – as provided in Sections 107, 108 and 109 of the Evidence Act.

40. The claimant could have produced a statement or a letter from the Pension Fund to establish the dues were not remitted. The amount claimed being Kshs,1,364,076/= is a colossal amount and the court would not take such a figure in abstract and award the claimant.
41. The claimant produced a monthly payslip of June 2023 and it had a pension component of Kshs.2,734/60. As to whether the same was remitted or not it is not verified.
42. Generally, Employment and Labour Relations Court as set out in Section 12 of Employment and Labour Relations Court Act does not have jurisdiction to deal with Pension matters.

The case of Albert Chaurembo Mumba & 7 Others -vs- Maurice Munyao & 148 Others Supreme Court Petition 3 of 2016 the court held: -

“It is important to note that nowhere in the Employment and Labour Relations Court Act is there jurisdiction conferred on the Employment and Labour Relations Court Act to resolve issues between trustees of a Pension Scheme and members of the scheme (Pensioners).”

43. The court finds there is no legal basis to award pension moneys amounting to Kshs.1,346.075/= to the claimant. The claimant can follow the same direct with the pension Fund.
44. The claimant is also praying for deferred salary amounting to Kshs.1,128,047/95. The court notes that the claimant did not explain how this amount accrued.

There are no figures or the period of which she alleges the same was not paid. In her payslip however of June 2023 there is a deferred amount Kshs.42,454/10.

The court is interested to know what that was about. The claimant is to provide evidence of any differed salary with clear dates to enable the court to award her any legitimate dues owed to her (if any).

45. Otherwise the prayer for loan deduction to KCB bank is also not proved and cannot be supported as provided in Section 49 of the Employment Act.

The claim of Kshs.650,822/93 is not proved and is disallowed.

46. The court will mention this case on 21st May 2025 to receive the claimant’s accounts and decide if there is any entitlement due to her from the item referred as deferred salary.
47. In the meantime the court orders each party to meet their respective costs of the suit.

Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAKURU THIS 26TH DAY OF FEBRUARY, 2025.

ANNA NGIBUINI MWAURE

JUDGE

Order

In view of the declaration of measures restricting Court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They



have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open Court. In permitting this course, this Court has been guided by Article 159(2)(d) of the Constitution which requires the Court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of the Constitution and the provisions of Section 1B of the Procedure Act (Chapter 21 of the Laws of Kenya) which impose on this Court the duty of the Court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

A signed copy will be availed to each party upon payment of Court fees.

ANNA NGIBUINI MWAURE

JUDGE

