



**Kalenywa v Rivatex East Africa Ltd (Cause 399 of 2018)
[2025] KEELRC 508 (KLR) (20 February 2025) (Judgment)**

Neutral citation: [2025] KEELRC 508 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT ELDORET
CAUSE 399 OF 2018
MA ONYANGO, J
FEBRUARY 20, 2025**

BETWEEN

DICKSON KALENYWA CLAIMANT

AND

RIVATEX EAST AFRICA LTD RESPONDENT

(Before Hon. Lady Justice Maureen Onyango)

JUDGMENT

1. The Claimant instituted this suit vide a Statement of Claim dated 26th June 2015, seeking compensation from the Respondent on allegation that the Respondent unfairly and unlawfully terminated his employment.
2. It is the Claimant's case that he was employed by the Respondent as a trainee in its Production Department vide a contract dated 1st April 2008 at a basic salary of Kshs. 7,770 and a monthly house allowance of Kshs 2,250. He was subsequently confirmed into employment as a Machine Operator on permanent and pensionable terms.
3. The Claimant states that between 2011 and July 2013, he served the Respondent as a salesman at its shop in Narok and Kisumu at a monthly salary of Kshs. 16,100. That he was transferred back to Eldoret to his initial position of a Machine Operator at a reduced salary of Kshs 13,100.
4. The Claimant contends that on 22nd January 2015, he was instructed by his supervisor to burn waste at the Respondent's premises which was not a duty related to his position and terms of service. That in the process of executing the task, the fire escaped and spread but did not destroy the Respondent's property.
5. The Claimant avers that as a result of the fire incident, the Respondent proceeded to suspend him from employment on 23rd January 2015 for one month without pay. That after the expiry of the one month



- suspension, he returned to work and was told by the Human Resource Manager to serve another one month suspension. That he opted instead to resign.
6. The Claimant contends that the Respondent compelled him to involuntarily resign and consequently he was constructively dismissed from employment.
 7. According to the Claimant, his suspension and subsequent termination was unfair and unlawful on the following reasons:
 - i. He was not given notice of misconduct and an opportunity to show cause prior to the suspension.
 - ii. No prima-facie basis existed to warrant the Claimant to be placed on any suspension.
 - iii. The Claimant was not given an opportunity to be heard in the presence of a fellow employee of his choice.
 - iv. The Respondent was bent on terminating the Claimant by constructive dismissal by engaging in unfair labour practices to frustrate the Claimant and evoke his involuntary resignation.
 - v. The Respondent engaged in unfair labour practices inhuman and degrading treatment and slavery and servitude by suspending the Claimant without any salary.
 - vi. The Respondent failed to carry out fair administrative and lawful action as required by Article 48 of *the Constitution* of Kenya, 2010.
 - vii. No Certificate of Service was issued.
 8. It is the Claimant's case that owing to the unfair and unlawful suspension and the subsequent termination of his employment, he is entitled to the following reliefs:
 - a. A declaration that his rights and entitlement to fair remuneration, to fair labour practices and fair administrative action were breached by the acts of the Respondent during the employment relationship between the parties.
 - b. A declaration that the suspension and subsequent termination of the Claimant from employment was unfair and unlawful for breaching *the Constitution* of Kenya, 2010 and the *Employment Act*, 2007.
 - c. 6 years annual leave @ kshs.16,100 Kshs.96,600
 - d. Unpaid salaries for the months of January and February, 2015@Kshs. 16,100
..... Kshs. 32,200.00
 - e. 18 months unlawfully reduced salary Kshs. 54,000.00
 - f. Under payment of wages for 18 months Kshs. 16,413.30
 - g. 3 months' salary as notice pay @ Kshs. 16,100 Kshs.48,300.00
 - h. 12 months' salary as compensation Kshs.193,200.00
 - i. Service gratuity pay for 6 years @ Kshs. 16,100 Kshs. 96,600.00
 9. The Respondent filed a Reply to Statement of Claim dated 19th September 2016 denying the allegations made by the Claimant in his Statement of Claim.



10. In its defence, the Respondent contended that it employed the Claimant in its Production Department vide a contract signed on 30th March, 2009. That the Claimant officially started his employment on 1st April, 2009 and not 1st April 2008 as alleged by the Claimant.
11. It is the Respondent's case that upon employment, the Claimant was issued with the Respondent's Internal Rules and Regulations Handbook which the Claimant was directed to strictly follow.
12. The Respondent stated that on 30th November, 2011 the Claimant resigned from employment and on 15th March, 2012 he sought to be reinstated. That the Respondent considered the Claimant's application for re-employment and he was reinstated on 17th March, 2012 with the understanding that he would be employed on the terms and conditions of his letter of appointment dated 30th April, 2009.
13. The Respondent denied the Claimant's allegation that on 22nd January 2015 he was instructed by the Respondent to burn waste materials and averred that the action of the Claimant was unsanctioned, negligent and went against the terms and conditions of employment listed in his letter of appointment, the Rivatex East Africa Internal Rules and Regulations Handbook, section 13 and Section 16 of the Occupational Safety and Health Act No. 15 of 2007 Laws of Kenya and the Employment Act of 2007 Laws of Kenya.
14. The Respondent stated that its management carried out a thorough investigation on the cause of the fire and established that the Claimant was one of the employees involved in starting the fire without prior authorization or permission from the supervisors.
15. The Respondent stated that the Claimant was suspended on 23rd January 2015 for a period of one month without pay for his involvement in the fire outbreak and that he was informed in the letter of Suspension that his reporting day back to work was on 28th February, 2015. It is the Respondent's case that on 2nd March 2015 the Claimant wrote a resignation letter effective immediately which the Respondent acknowledged and accepted.
16. The Respondent avers that the resignation by the Claimant was voluntary as no one forced him to do so. That in the resignation letter the Claimant did not make any claims and complaints against the Respondent.
17. The Respondent maintained that the Claimant was afforded very fair labour practices as he was awarded leave, travel allowance and safety working apparels. That he took leave for the years 2010, 2011, 2013 and 2014.
18. The court was urged to dismiss the suit on the basis that the Claimant was not unfairly terminated as he alleged.

The Evidence

19. The Claimant testified on 25th October 2023 as CW1 and adopted his Statement of Claim and Verifying Affidavit as his evidence in chief. He also adopted and relied on the documents he filed in support of his case. In brief, the Claimant stated that upon his resignation on 30th October 2011, he re-applied for employment and was re-employed. That he was promoted vide a letter dated 17th March 2012. He stated that he was made a sales representative and posted to Kisumu and his salary was increased from Kshs. 10,020 to Kshs. 16,100. He further stated that he was deployed back to Eldoret in July 2013 and his salary was reduced to Kshs. 10,020.
20. The Claimant told the court that he worked for the Respondent until on 22nd January 2015 after the fire incident when he was suspended from employment by the Respondent. The Claimant testified



that on 22nd January 2015, he was instructed by Mr Cheruiyot, the processing manager to dispose of and burn the rubbish. That the fire from the burning rubbish spread to the field.

21. It was the Claimant's testimony that the Respondent held a meeting immediately after the fire incident but he was not invited. He testified that he was not invited to the disciplinary hearing regarding the fire incident. According to the Claimant, he was suspended on the 23rd January 2015 for one month without pay and after the lapse of the one month suspension, he reported to work but was told by the Respondent's Human Resource Manager that his suspension had been extended for another one month. It was the Claimant's testimony that having been suspended with no pay, he was unable to pay his bills and when he approached the Human Resource Manager, he was told to resign so that he could be paid. The Claimant asserted that he did not resign willingly but was forced to resign.
22. On being cross-examined by Counsel Wanjala regarding the fire incident, the Claimant stated that he was forced to dispose of and burn the rubbish by the processing manager and that he could not refuse to obey the said orders as it would be tantamount to insubordination.
23. The Claimant denied that he resigned before the suspension was extended. He stated that he was not given a letter by the Respondent extending the suspension. He conceded that he proceeded on leave but was not paid Kshs 1,500 leave allowance as stipulated in his employment contract.
24. The Respondent on its part called two witnesses in furtherance of its case. Stella Tum, the Respondent's Chief Legal Officer and Company Secretary testified as RW1. She adopted her witness statement recorded on 23rd July 2021 as her evidence in chief and relied on the documents filed by the Respondent in its defence. It was RW1's evidence that the Claimant caused the fire on 22nd January 2015 as a result of which the disciplinary committee sat on 22nd and 23rd January 2015 and resolved to suspend the Claimant.
25. It was RW1's evidence that the suspension of the Claimant was part of the disciplinary process and that it was resorted to by the Committee to deliberate on whether to put the Claimant on his defence or not. RW1 testified that the Claimant was recalled on 28th February 2015 but instead of reporting, he chose to resign on 2nd March 2015. RW1 stated that the disciplinary process had not been concluded as the Claimant had not been invited to give his evidence.
26. According to RW1, the Respondent's disciplinary process is initiated by internal investigations and if there is sufficient cause, an employee is suspended for one month. That after the one month suspension, the committee decides if the employee is to be issued with a notice to show cause; that once issued with a notice to show cause, the employee responds and if the response is sufficient to exonerate the employee, the disciplinary process ends; that if the employee is found culpable of the issues raised in the Notice to show cause, the employee is taken through a disciplinary hearing and thereafter the disciplinary committee sends its findings to the management for action.
27. RW1 maintained that in the instant case, the disciplinary process was not concluded because the Claimant resigned from employment. She contended that the Claimant was paid his pension dues as evidenced by the document dated 7th April 2016 in which the Respondent directed the Pensions manager to pay the Claimant his pension dues.
28. On cross examination by Counsel Mogambi, RW1 stated the Claimant was not invited to the disciplinary hearing held on 23rd January 2015 and that he was not given a notice to show cause to explain the events of 22nd January 2015. RW1 also stated that the Respondent had not tendered any evidence in court to show that the Claimant was paid his salary for January 2015. She confirmed that the Claimant's appointment letter provided for a leave allowance of Kshs 1,500 per annum.



29. On re-examination, RW1 asserted that the meetings held on 22nd and 23rd January 2015 were meant to deliberate on the fire incident and determine if there was a cause to discipline the employees who caused the fire.
30. RW2 was Joseph Kipketer Kurgat, the Respondent's Human Resource Manager. He adopted his witness statement recorded on 23rd July 2021 as his evidence in chief. In his testimony, RW2 accused the Claimant of collecting and burning waste which was not his duty in his scope of work. RW2 explained that before waste is burned, the health and safety department must authorize the same. RW2 stated that the Claimant was only instructed to collect the waste and was not told to burn it. The Respondent's witness stated that after the fire incident, the Claimant was suspended for one month and was to report to work on 28th February 2015. That he reported on 2nd March 2015 and tendered his resignation letter.
31. During cross examination, RW2 stated that the meeting of 22nd January 2015 was a management meeting which did not require the presence of the Claimant. He confirmed that the Respondent held a staff disciplinary meeting on 23rd January 2015 without inviting the Claimant. RW2 also confirmed that the Claimant was suspended on 23rd January 2015 without pay. He however denied that the Claimant's suspension was extended for another month.

The Claimant's submissions

32. The Claimant's submissions were filed on 15th January 2024 while the Respondent's submissions were filed on 23rd January 2024.
33. The Claimant submitted on the following four issues:
 - i. The legality of the suspension and breach of contract.
 - ii. Constructive dismissal
 - iii. Underpayment of wages.
 - iv. Unilateral change of employment terms and conditions of employment from Sales Executive to Machine Operator and reduced salary.
 - v. Gratuity
 - vi. Relief
34. The Claimant submitted that his suspension without pay was unfair and unlawful. He submitted that he was not given notice of misconduct and an opportunity to show cause prior to the suspension. He placed reliance in Nairobi Industrial Cause no. 747 of 2014-Fredrick Saundu Amolo suing through the Executive Secretary KUPPET Kajiado County Branch v The Principal Namanga Mixed Day Secondary School & 2 Others
35. While citing the case in Lake Victoria North Water Services Board & Another v Alfred Odongo Amombo, (2018) eKLR, the Claimant submitted that his suspension was in clear breach of the law. According to the Claimant, the Respondents witnesses did not give any evidence that the Claimant was accorded an opportunity to be heard in the presence of a fellow employee of his choice before the decision to suspend him without pay for one month was arrived at. He contended that the minutes dated the 23rd January, 2015 do not show that the Claimant was invited for the said meeting.
36. On the issue that the Respondent constructively dismissed the Claimant, it is submitted that the Respondent's unreasonable conduct of seeking to impose an indefinite suspension upon the Claimant forced the Claimant to resign.



37. With regard to the issue of underpayment of wages, the Claimant submitted that during the employment relationship, the Respondent failed to comply with the Regulations of Wages (General) (Amendment) Order, 2013 in force by under paying the Claimant. According to the Claimant, the regulation prescribed Kshs. 12,184.25 as basic monthly pay plus 15% house allowance of Kshs. 1,827.60 making a total of Kshs. 14,011.90 less the paid wage of Kshs. 13,100 the difference being Kshs. 911.85 from July, 2013 to December, 2014.
38. On the issue raised by the Claimant of unilateral change of employment terms and conditions of employment from Sales Executive to Machine Operator and reduced salary, the Claimant submitted that he was demoted without any notice and without giving him an opportunity to be heard. It is the Claimant's submission that he was promoted vide the letter dated the 28th November, 2012 to a Sales Executive - Kisumu Factory Outlet and later returned and demoted to the Production Department where he was given duties to collect and burn waste. The Claimant submitted that the reversed terms and conditions of his employment without being accorded an opportunity to be heard was contrary to the law.
39. As regards the prayer for payment of gratuity, the Claimant submitted that he is entitled to gratuity by virtue of clause 6(a) of the employment contract which provided for gratuity pay with the only exception to the payment being if the mode of separation was by way of gross misconduct or negligence which was not the case in the Claimant's case.
40. Lastly, as to whether the Claimant is entitled to the reliefs he is seeking, it is his submission that he proved that he was unfairly and unlawfully terminated from employment and thus entitled to the prayers he sought in his Statement of Claim.

The Respondent's submissions

41. The Respondent on its part submitted on the following issues:
 - i. The Burden of proof
 - ii. Whether the Claimant's suspension was wrongful, unreasonable and unfair
 - iii. Whether the Claimant's services was terminated
 - iv. Is the Claimant entitled to the reliefs sought
 - v. Who should pay costs of the cause
42. On the first issue, the Respondent submitted that the Claimant is enjoined by Section 107 of the *evidence Act* as read with Section 47(5) of the *Employment Act* to adduce prima facie evidence that he was dismissed from employment without a valid reason and only thereafter does the burden shift to the Respondent to justify the dismissal. The Respondent submitted that from the evidence as presented and the relevant laws, the Claimant did not discharge his burden of proof and as such, the claim should fail.
43. On the second issue, the Respondent submitted that as a result of the fire incident caused by the Claimant, there was a lot of damage to the Respondent's property and reputation. Further, that the fire put a lot of people's lives at risk. The Respondent submitted that the suspension of the Claimant was a necessary action as it gave it an opportunity to investigate the fire thoroughly and come up with a true picture of the scenario without interference.
44. On the third issue as to whether the Claimant was constructively dismissed, the Respondent submitted that the Claimant pleads constructive dismissal which is not the case as the Claimant voluntarily



resigned from employment on 2nd March 2015. According to the Respondent, the Claimant knowing that his actions would lead to summary dismissal as per the internal rules and regulations of the company, decided to resign to avoid disciplinary action against him.

45. On the issue whether the Claimant is entitled to the reliefs sought, the Respondent submitted that there was no infringement of his rights since he voluntarily resigned. That as such the Claimant is not entitled to the declarations he sought in paragraph 8 (a) and (b). On the claim for 6 years annual leave, it is the Respondent's submission that the Claimant is not entitled to this relief since he went on leave as evidenced by the leave application forms for the year 2010, 2011, 2013 and 2014 attached to the Respondent's list of documents. On the claim for unpaid salaries for the months of January and February 2015, the Respondent submitted that the Claimant is not entitled to the same as he did not prove that he was not paid. On the prayer for 18 months reduced salary and underpayment of wages for 18 months, it was submitted that the Claimant is not entitled as per Article 6 of the Company's internal rules and regulations.
46. On the claim for 3 months' salary as notice pay and 12 months' salary as compensation, the Respondent submitted that the Claimant is not entitled to the same as he voluntarily resigned. With regard to the prayer for service gratuity pay for 6 years, it is submitted that it is a discretionary pay and one cannot demand that it be paid.
47. In the end, the Respondent submitted that it had sufficiently demonstrated that the claim herein is without merit. The court was urged to dismiss the claim with costs to the Respondent.

Determination

48. Upon considering the pleadings, the evidence on record and the submissions of the parties, the issues that fall for this court's determination are:
 - i. Whether the Claimant's employment was constructively terminated or he voluntarily resigned from employment.
 - ii. Whether the Claimant is entitled to the reliefs sought

Whether the Claimant's employment was constructively terminated or he voluntarily resigned from employment.

49. The Claimant contended that he was constructively dismissed from employment by the Respondent. According to the Claimant, he was asked to resign by the Respondent's human resource manager so that he would be paid after his suspension was extended for another month. He averred that his resignation from employment was not voluntary.
50. The Respondent on the other hand maintained that the Claimant voluntarily resigned from employment after he was suspended following an incident in which he collected and burned waste without authorization leading to a fire that caused damage to the Respondent's property.
51. Constructive dismissal has been defined by Black's Law Dictionary 10th Edition as:-

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



52. The Court of Appeal had an opportunity to address the issue of constructive dismissal in the case of *Coca-Cola East & Central Africa Limited v Maria Kagai Lugaga* (2015) eKLR, where it held;

“29. What is the key element and test to determine if constructive dismissal has taken place? The factual circumstances giving rise to constructive dismissal are varied. The key element in the definition of constructive dismissal is that the employee must have been entitled 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 constituted a repudiatory breach of the contract of employment - this is the contractual test. The contractual test is narrower than the reasonable test. The dicta in *Western Excavating (ECC) Ltd. -v- Sharp* [1978] ICR 222 adopts the contractual approach test and we are persuaded that the test is narrow, precise and appropriate to prevent manipulation or overstretching the concept of constructive dismissal. For this reason, we affirm and adopt the contractual test approach. This means that whenever an employee alleges constructive dismissal, a court must evaluate if the conduct of the employer was such as to constitute a repudiatory breach of the contract of employment. Whether a particular breach of contract is repudiatory is one of mixed fact and law. (See *Pedersen -v- Camden London Borough Council* [1981] ICR 674). The criterion for evaluating the employers conduct is objective; the employer’s conduct does not have to be intentional or in bad faith before it can be repudiatory (See *Office -v- Roberts* (1980) IRLR 347). The employee must be able to show that he left in response to the employer’s conduct (i.e. causal link must be shown, i.e. the test is causation). In the case of *Jones -v- F. Sirl & son (Furnishers) Ltd.* [1997] IRLR 493, it was held that there can still be constructive dismissal if the employee waits to leave until he has found another job to go to. The employee must leave because of the breach but the breach need not be the sole cause so long as it is the effective cause. (See *Walker -v- Josiah Wedgwood & Sons. Ltd.* [1978] IRLR 105). The criterion to determine if constructive dismissal has taken place is repudiatory breach of contract through conduct of the employer. The burden of proof lies with the employee. The employer’s conduct must be such as when viewed objectively, it amounts to a repudiatory and fundamental breach of the contractual obligations. (See *Wooder -v- Wimpey* [1980] 1 WLR 277; see also *Malik and Mahmud -v- Bank of Credit and Commerce International* [1998] AC 20). If the employee makes it clear that he or she is working under protest, he/she is not to be taken to have waived the right to terminate the contract under constructive dismissal. We adopt the dicta in the above cited persuasive judicial decisions as establishing relevant principles in constructive dismissal.

30. The legal principles relevant to determining constructive dismissal include the following:

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 conduct of the employer?
- c. The conduct of the employer must be a fundamental or 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.
- 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 employee terminating the contract i.e. causation must be proved.
- f. An employee may leave with or without notice so long as 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."

53. In *Milton M. Isanya V Aga Khan Hospital Kisumu (2017) eKLR*, this court stated as follows:

"In constructive dismissal, the desire to resign is from the employee as a result of a hostile working environment or treatment by the employer. A constructive dismissal occurs where the employer does not express the threat or desire to terminate the employment but frustrates the employee to the extent that the employee tenders resignation."

54. The Claimant's letter of resignation reads as follows:

Rivatex E.A LTD
 Box 4744
 ELDORET
 2/03/2025
 Dickson Kalenywa
 Box 132
 KIANJAI
 2.3.2015
 Ref: Resigning From Work



Wish to resign from Rivatex E.A LTD from 02.03.2015 I therefore take this opportunity to thank the management of Rivatex for the duration I have worked with them. May the almighty God bless Rivatex.

Thanks

Yours faithfully

Dickson Kalenywa

Signed

02.03.2015

55. From the wording of the letter there is no indication that the Claimant was subjected to intolerable working conditions as to cause him to resign. Neither did the Claimant express a desire to resign due to the fact that he was suspended with no pay. There is further no evidence that the Claimant's suspension was extended for another month or that he was asked to resign so that he could be paid to enable him settle his debts as he alleged.
56. From the cited authorities, where an employee is pleading constructive dismissal, the court should evaluate if the conduct of the employer was such as to constitute a repudiatory breach of the contract of employment. This also means that it is not enough for an employee to plead constructive dismissal, that the employee must demonstrate through evidence that his resignation was compelled by the actions of the employer.
57. The non-payment of the Claimant's salary on disciplinary grounds is not a repudiation of the Claimant's contract and is not a valid reason for the Claimant to claim compulsion to resignation.
58. I therefore find and hold that the Claimant was not constructively dismissed by the Respondent. On the contrary, I find that he resigned voluntarily.

Whether the Claimant is entitled to the reliefs sought

59. In his Statement of Claim, the Claimant sought various reliefs which I address as hereunder in separate heads.
 - i. A declaration that his rights and entitlement to fair remuneration, to fair labour practices and fair administrative action were breached by the acts of the Respondent during the employment relationship between the parties.

I decline to make this declaration as the Claimant did not prove that his rights were breached.
 - ii. A declaration that the suspension and subsequent termination of the Claimant from employment was unfair and unlawful for breaching *the Constitution* of Kenya, 2010 and the *Employment Act*, 2007.

Having found that the Claimant resigned voluntarily from employment of the Respondent, he is not entitled to a declaration that his suspension from employment without pay was unfair and unlawful
 - iii. 6 years' annual leave

The Claimant in his testimony admitted that he proceeded on leave during the course of his employment with the Respondent. This was also confirmed by the leave application forms



attached to the Respondent's list of documents. The only issue that arose during trial is with regard to the leave travel allowance that the Claimant was entitled to.

Paragraph 5 of the Claimant's Offer of Employment provided that the Claimant was entitled to Kshs 1500 per annum as leave travelling allowance. However, from a perusal of the leave application forms filed in court, the Claimant was only paid Kshs 500 as evidenced by part III(vii) of the said leave forms. The Claimant is therefore entitled to the difference of what he was paid which amounts to Kshs 5,000 which I hereby award for the five years he was in employment with the Respondent.

iv. Unpaid salaries for the months of January and February, 2015

The Claimant was sent on suspension without pay by letter dated 23rd January, 2015 to take effect from 24th January, 2015. There is no evidence that the Claimant was paid for the days worked before suspension up to January 23rd 2015. The Respondent further did not adduce any evidence to prove that its terms and conditions of service permitted suspension without pay. Under the Regulation of Wages (General)(Amendment) Order 2013, as a machine operator the Claimant was entitled to Kshs 12,184.25 as basic pay plus 15% house allowance making a total of Kshs 14,011.90. The Claimant is therefore awarded Kshs. 28,024 as salary for January and February 2015.

v. 18 months unlawfully reduced salary

The Claimant adduced no evidence of the particulars of the alleged unlawful reduction of salary. I decline to make any awards under this head.

vi. Underpayment of wages for 18 months

The Claimant in his pleadings and evidence contended that from July 2013 to December 2015, he was paid a salary of Kshs. 13,100 instead of Kshs. 14,011.89 provided for under the Regulation of Wages (General)(Amendment) Order 2013. This evidence was not rebutted by the Respondent. I therefore award the Claimant Kshs. 16,413.20 under this head.

vii. 3 months' salary as notice pay

The Claimant having resigned from employment without giving notice, he is not entitled to pay in lieu of notice. Indeed he was the one who should have paid the Respondent in lieu of notice which the Respondent did not demand.

viii. 12 months' salary as compensation

The Claimant sought a maximum compensation of 12 months' salary. Having found that he was not constructively dismissed from employment, he is not entitled to compensation.

ix. Service gratuity pay for 6 years

Clause 6 of the Employment contract provided for gratuity as follows:

6. a. Upon termination of employment with the company, the employee will be entitled to gratuity payment as provided in the current employer/employee agreement.

In the absence of such an agreement, the prayer is declined.

60. Consequently, judgment is entered for the Claimant in the following terms:

- i. It is hereby declared that the Claimant resigned voluntarily from the Respondent's employment.



- ii. The Claimant is awarded the following:
 - a. Leave travelling allowance Kshs. 5,000
 - b. Unpaid salaries for January 2015 and
February 2015 Kshs. 28,024.00
 - c. Underpayments Kshs. 16,413.20
- iii. The Respondent is directed to issue the Claimant with a certificate of service.
- iv. The Respondent shall meet 50% of the Claimant's costs of this suit as he has been only partly successful.

61. Orders accordingly.

DATED, SIGNED AND VIRTUALLY AT ELDORET *ON THIS 20TH DAY OF FEBRUARY 2025

MAUREEN ONYANGO

JUDGE

