



**Muriu v Njuca Consolidated Limited (Employment and Labour Relations Cause E025 of 2024) [2025] KEELRC 363 (KLR) (13 February 2025) (Judgment)**

Neutral citation: [2025] KEELRC 363 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NYERI  
EMPLOYMENT AND LABOUR RELATIONS CAUSE E025 OF 2024  
ON MAKAU, J  
FEBRUARY 13, 2025**

**BETWEEN**

**MAINA MURIU ..... CLAIMANT**

**AND**

**NJUCA CONSOLIDATED LIMITED ..... RESPONDENT**

**JUDGMENT**

1. By a statement of claim dated 30<sup>th</sup> May 2024, the claimant sued the respondent seeking the following reliefs: -
  - a. A declaration that the claimant was constructively dismissed from his employment.
  - b. Compensation pursuant to the provisions of section 49 (1) (c of the *Employment Act* to an extent of 12 months gross salary at .....Kshs.1,146,000/=
  - c. NSSF unremitted dues at.....Kshs.19,440/=
  - d. NHIF unremitted dues at .....Kshs.24,000/=
  - e. Salary arrears at.....Kshs.198,627/=
  - f. Leave arrears at.....Kshs.190,000/=
  - g. Costs of this suit with interest at court rates.
  - h. Any other or further relief as this court may deem fit to grant.
2. The Respondent filed a response dated 19<sup>th</sup> July 2024 denying the claimant’s claim and accused him of absconding work after the lapse of thirty (30) days compulsory leave contrary to the Company’s HR Policy Manual. It further averred that the claimant is not entitled to the reliefs sought since the claim is statute barred. Therefore, it prayed for the suit to be dismissed with costs.



## **Facts of the case**

3. The facts of the case are fairly straight forward. The claimant was employed by the respondent as Security Manager from 15<sup>th</sup> June 2001. On 10<sup>th</sup> August 2023 he was sent on compulsory leave for 30 days during which he was to receive half salary. This decision was taken to pave way for investigations into his alleged misconduct in the company.
4. After the lapse of the 30 days leave, he reported to the respondent's offices severally but he was not given the outcome of the investigations. He was also not paid any salary from August to December 2023 which, in his view, amounted to fundamental breach of the contract of employment.
5. As a result of the foregoing matters coupled with previous action of payment of salary in small instalments, the claimant felt frustrated enough and he wrote a resignation letter. He averred that the resignation was not voluntary but purely occasioned by the respondent's conduct of breaching the contract of employment, hence amounting to constructive dismissal.
6. As at the time of the exit, his monthly salary was Kshs.95,000 and he had salary arrears of Kshs.198,627. The employer had failed to remit NSSF and NHIF deductions amounting to Kshs.19,440 and 24,000 respectively. He also had outstanding leave for two years equaling to Kshs.190,000.
7. During the hearing, the claimant testified as CW1 and basically adopted the above facts in his evidence in chief and prayed for judgment in terms of the prayers in his claim.
8. On cross-examination, he stated that his salary started coming in bits from 2018 and he protested in writing. He further stated that he cannot return to the company because of the frustrations he suffered including repossession of a car he had been gifted with. He clarified that he resigned due to frustrations and not to avoid investigations. Finally, he stated that the reason for the resignation were indicated in the resignation letter.
9. As at 7<sup>th</sup> October 2024 when the claimant gave evidence and closed his case, the respondent had not filed any witness statements. It was given adjournment till 30<sup>th</sup> October 2024 for defence hearing but neither it nor its counsel attended court to prosecute its defence. Consequently, the hearing was declared closed and both parties directed to file written submissions.

## **Submissions**

10. Only the claimant filed submissions as at 14<sup>th</sup> January 2025 when the court reserved the suit for judgment. In brief, the claimant submitted that he has proved a case of constructive dismissal and cited the legal principles of constructive dismissal as per the Court of Appeal in Coca Cola East & Central Limited v Maria Kagai Ligaga (2015) eKLR.
11. He contended that he has produced as exhibit, his Bank Account statement to prove that his salary was being paid in small bits sometimes of Kshs.500 or Kshs.1,500. Further, he has produced a letter dated 10<sup>th</sup> August 2023 which sent him on compulsory leave on a half salary pending investigations.
12. No result of the investigations was given to him despite reporting to the office severally. Besides, he was never paid the half salary during the said leave but small bits of as little as Kshs.2000. Finally, the claimant contended that he had produced the resignation letter dated 1<sup>st</sup> December 2023 by which he expressed his frustrations. He maintained that the resignation was indeed constructive dismissal since it was due to the employer's conduct amounting to fundamental breach of the contract and also a repudiation of the same. Consequently, he prayed for the reliefs set out in his claim.



## Determination

13. There is no dispute that the claimant was employed by the respondent as its Security Manager from 15<sup>th</sup> June 2001 until 1<sup>st</sup> December 2023 when he served one-month resignation notice. The issues for determination are:
- a. Whether the resignation amounted to constructive dismissal.
  - (b) Whether the claimant is entitled to the reliefs sought.

## Constructive dismissal

14. Constructive dismissal is not defined in our law books. It is a term developed by the courts in relation to circumstances where an employee involuntarily resigns from employment due to his/her employer's conduct. It follows that in constructive dismissal, the issue to consider is the conduct of the employer and not that of the employee.
15. In *Coca Cola East & Central Limited v Maria Kagai Ligaga*, supra, the Court of Appeal held that: -
- “ 30. The legal principles relevant to determining constructive dismissal include the following
- a. 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.
  - b. An objective test is to be applied in evaluating the employers conduct.”
16. In the instant case, the claimant wrote a resignation letter dated 1<sup>st</sup> December 2023 citing five (5) reasons including strained employment relationship due to unending compulsory leave without any chance to explain himself, repossession of his car and payment of salary in small bits. The letter concluded as follows: -
- “ As I exit I'm very proud for working very hard, honestly, a lot of dedication and trustworthy to make the company achieve its target and achievements for the last 22 years. Throughout my service I have worked day and odd hours in the night without overtime. Hence awarded with very many yearly recommendation certificates for making the company one of the biggest construction company in Kenya, but I have left the company with a lot of frustrations and demoralized.”
17. There is no doubt that there was a link between the resignation of the claimant and the employers conduct. He was sent on compulsory leave and his car repossessed. He reported back to work after the 30 days leave but he was not allowed back to work and he was not given any report of the investigations. He was also not informed of the misconduct under investigation and he was not given any chance to explain himself. Further, he was not paid half salary during the compulsory leave but small bits, which mode of payment had started even before he was sent on the compulsory leave.
18. The above facts have not been controverted since despite the respondent having filed a response to the claim alleging that the claimant absconded duties after the lapse of his 30 days compulsory leave, it never tendered any evidence to substantiate the said defence. It is now trite that where a respondent files a defence to a claim but fails to adduce evidence during the hearing, the defence remains a mere



statement of unsubstantiated facts and the evidence adduced by the claimant against the respondent is uncontroverted and unrebutted.

19. I gather support from *Linus Ng'ang'a Kiongo & 3 others v Town Council Kikuyu* (2012) eKLR where it was held as follows: -

“Again, in the case of *Trust Bank Limited v Paramount Universal Bank Ltd & 2 others Nairobi (Milimani) HCCC No.1243 of 2001* the learned Judge citing the same decision stated that it is trite that where a party fails to call evidence in support of its case, that party's pleadings remain mere statements of fact since in so doing the party fails to substantiate its pleadings. In the same vein the failure to adduce any evidence means that the evidence adduced by the plaintiff against them is not controverted and therefore unchallenged.”

20. In view of the above matters, I find and hold that the claimant has laid before this court unrebutted evidence that proves on a balance of probability that his resignation vide the letter dated 1<sup>st</sup> December 2023 was not voluntary and it amounted to constructive dismissal.

### **Reliefs sought**

21. The claimant has proved on a balance of probability that his resignation was involuntary and caused by the conduct of his employer. Consequently, he is entitled to declaration that he was constructively dismissed from employment by the respondent.
22. Constructive dismissal by its very nature is unfair and unlawful as it is not grounded on the employee's conduct but the conduct of the employer. Secondly, the employee is never taken through any fair procedure but rather exposed to unbearable working condition that leaves him/her with no option but to leave employment with or without notice. Consequently, I find that the claimant is entitled to compensation under section 49 (1) (c) of the *Employment Act*.
23. He worked for 22 years without any warning. He has produced a Certificate of Appreciation for his sixteen (16) years of outstanding and dedicated service to the respondent. It is dated 14<sup>th</sup> July 2018. Although he was sent on compulsory leave in August 2023 to allow investigation into his conduct, the alleged misconduct was never communicated to him and no report of the investigations was given.
24. Having taken in account the claimant's long service of 22 years and that he did not contribute to the termination through misconduct, I find that an award of twelve (12) months gross salary to be reasonable. Hence Kshs.95,000 x 12 =Kshs.1,140,000.
25. As regards the claim for the unremitted NSSF and NHIF deductions, there is no evidence tendered to prove that the said dues were deducted by the respondent from the claimant's salary and not remitted to the relevant destination.
26. The claimant claimed leave for the 2019 and 2020 equaling to Kshs.190,000. No particulars of the number of days leave was pleaded but going by the amount of money sought, I believe it is 60 days. The appointment letter dated 15<sup>th</sup> June 2001 indeed provided for annual leave of 30 days with full pay. However, only one-week leave could be accumulated every year.
27. It is also worth noting that, upon termination of the contract, the claimant was only entitled to payment of any accumulated leave during the current calendar year. In this case, the claimant is claiming leave for 2019 and 2020, not for 2023 the year he exited. It follows that the claim is not merited because the leave had been forfeited.



**\*Salary arrears**

28. As regards the claim of unpaid salary for the month of August to December 2023 totaling to Kshs.198,627, I find that it is well particularized and proved by evidence (see the bank statement filed).

**Conclusion**

29. I have found that the claimant has proved a case of constructive dismissal on a balance of probability. I have also found that he is entitled to payment of compensation for unfair dismissal and salary arrears for the month of August to December 2023. Consequently, I enter judgment for the claimant as follows:

- a. Compensation..... Kshs.1,140,000.00
- b. Salary arrears.....Kshs.198,627.00  
Total Kshs.1,338,627.00
- c. The award is subject to statutory deductions but in addition to costs and interest at court rate from the date of this judgment.

**DATED, SIGNED AND DELIVERED AT NYERI THIS 13<sup>TH</sup> DAY OF FEBRUARY, 2025.**

**ONESMUS N MAKAU**

**JUDGE**

**Order**

This judgment has been delivered to the parties via Teams video conferencing with their consent, having waived compliance with Rule 28 (3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

**ONESMUS N MAKAU**

**JUDGE**

