



**Singh v Aluken Trading Limited (Cause E863 of 2023)
[2025] KEELRC 1602 (KLR) (30 May 2025) (Judgment)**

Neutral citation: [2025] KEELRC 1602 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E863 OF 2023**

SC RUTTO, J

MAY 30, 2025

BETWEEN

JASPAL SINGH CLAIMANT

AND

ALUKEN TRADING LIMITED RESPONDENT

JUDGMENT

1. Through a Memorandum of Claim dated 16th October 2023, the Claimant avers that he was employed by the Respondent as a Manager with effect from 2nd May 2014 until 31st May 2023 when he opted to resign from employment. According to the Claimant, he did not receive his salary from October 2020 to May 2023, as the Respondent alleged that the vagaries of Covid-19 had affected its revenue streams.
2. The Claimant further states that the unpaid salary arrears occasioned him financial distress and liquidity setbacks that led him to resign. On the basis of the foregoing, the Claimant seeks the following reliefs against the Respondent:
 - a. A declaration that the conduct of the Respondent in nonpayment was unlawful, malicious, and an infringement on his Constitutional rights.
 - b. A declaration that the Respondent's failure to issue the Claimant an employment contract is in contravention of sections 10(1), 10(2), 10(3), of the *Employment Act* as read with Sections 16(1) and 16(4).
 - c. Upon allowing prayer (b), the court to proceed and penalize the Respondent pursuant to sections 16(2) and (4) of the *Employment Act*.
 - d. Punitive damages for unfair labour practices.
 - e. Maximum compensation for wrongful dismissal.



- f. Certificate of Service.
 - g. Special damages.
 - h. Payment of 32 months' salary in lieu of notice being 6,400,000/=.
 - i. Costs of this suit.
 - j. Any other relief that the Court will deem fit to grant.
3. The Respondent filed a Statement of defence dated 28th November 2023, in which it has denied the Claimant's assertions and put him to strict proof.
 4. The matter proceeded for hearing on 8th May 2024 and 12th February 2025, during which both parties called oral evidence.

Claimant's Case

5. The Claimant testified in support of his case. At the outset, he adopted his witness statement to constitute his evidence in chief. He proceeded to produce the documents filed alongside his Claim as exhibits before Court.
6. It was the Claimant's testimony that the Respondent has failed and/or neglected to make good his payments despite the goodwill extended in diligently serving him.
7. That he acquired loan facilities during the period that remain unpaid due to the conduct of the Respondent in paying his dues.
8. The Claimant further averred that the Respondent's actions were accentuated by malice and an urgent need to constructively dismiss him.
9. He further stated that the Respondent refused to issue him with a Certificate of Service and has ostensibly frustrated his efforts to secure other employment opportunities by continuously impugning his character for no substantive or lawful reason.
10. According to the Claimant, he has been a diligent and faithful employee for the duration he worked for the Respondent. That he continually served with passion and dedication without any disciplinary or performance issues despite surviving on the paltry allowances issued by the Respondent.

Respondent's Case

11. The Respondent called oral evidence through its Director, Mr. Dev Bij, who testified as RW1. Similarly, RW1 adopted his witness statement as well as the documents filed on behalf of the Respondent to constitute his evidence in chief.
12. It was RW1's evidence that the Claimant resigned from his position at the Respondent company but failed to provide a formal resignation letter or conduct a proper handover of his responsibilities. Instead, he left abruptly, leaving behind the keys and disappearing without any notice, deserting his employment.
13. RW1 averred that the Claimant's primary responsibilities at the company included the maintenance of all stores and facilities.
14. That following the Claimant's departure, it was discovered that the company's stores were emptied of their inventory. The last recorded inventory contained essential tools, parts, motors, etc. Subsequently, the company conducted an inventory and reported the theft to the relevant authorities.



15. RW1 further averred that the Claimant was paid his full monthly salary up to the date of his desertion.
16. It was RW1's further testimony that the Claimant received personal financial assistance from him, as well as through mutual friends, to assist with fees for his son studying in Canada. That although this assistance is a separate matter, it needs to be acknowledged.
17. RW1 further testified that in response to prevailing economic challenges, the company, through its executive team, made the difficult decision to adjust the Claimant's gross salary to Kshs.100,000/=. That this decision was communicated to the Claimant via a letter dated 9th March 2020, during the onset of the COVID-19 pandemic.
18. In closing, RW1 denied the Claimant's assertions that he did not receive salary payments from October 2020 to May 2023.

Submissions

19. It was submitted by the Claimant that the Respondent failed to refute the core allegation of non-payment. Citing the case of *Agatha Bugosi Said v Vegpro Kenya Limited (2014) eKLR*, the Claimant submitted that the Respondent's inability to provide employment records coupled with their inconsistent testimony, corroborates his assertion that non-payment of salary led to his departure.
20. It was further submitted by the Claimant that failure to receive wages for months worked is enough to justify his resignation.
21. On the part of the Respondent, it was submitted that the Claimant resigned without any notice and is not entitled to one month's pay in lieu of notice.
22. It was the Respondent's further submission that if the Claimant was dissatisfied with the decision to review his salary downwards, he should have resigned from his position and sought alternative employment.
23. Referencing the case of *Capital Fish Kenya Ltd v Kenya Power and Lighting Company Limited (2016) eKLR*, the Respondent posited that the Claimant's claim for payment of 32 months' salary in lieu of notice must fail as special damages must be specifically pleaded and proved.

Analysis and Determination

24. Flowing from the pleadings by both parties, the evidentiary material before Court and the rival submissions, it is apparent that the issues falling for the Court's determination are:
 - a. Whether the Claimant was constructively dismissed from employment; and
 - b. Whether he is entitled to the reliefs sought.

Constructive dismissal?

25. It is the Claimant's case that he opted to resign from the Respondent's employment due to the Respondent's failure to pay his salary from October 2020 to May 2023. As such, the Claimant avers that the Respondent's action was accentuated by malice and an urgent need to constructively dismiss him.
26. Refuting the Claimant's assertions, the Respondent has averred that it paid the Claimant's salary in full and that he is the one who deserted duty without providing a formal resignation.



27. Constructive dismissal arises when an employee is forced to leave his or her employment not on their own accord, but because of the employer's conduct.
28. Thus, the question is whether the Claimant in this case was entitled to treat himself as constructively dismissed on account of the Respondent's alleged failure to pay his salary.
29. In support of his case, the Claimant exhibited a copy of his salary statement of account, which indicates that the Respondent was remitting his salary up to 3rd September 2020. Thereafter, there is no evidence of salary remittance from the Respondent.
30. It is also notable that despite the Respondent's assertion that it remitted the Claimant's salary in full, it did not lead any evidence to prove as much. This is more so bearing in mind that the Respondent, being the employer in this case, was under a duty under Section 74 of the *Employment Act* to maintain employment records. As such, it was not a tall order for the Respondent to produce evidence that it paid the Claimant's salary in full. As it is, this was evidence within the Respondent's disposal.
31. This being the case, it may very well be said that the Claimant's claim was not controverted by the Respondent through evidence adduced in whatever form or manner.
32. Further, I must say that the document which the Respondent exhibited and termed as proof of payment of salary after statutory deductions was not sufficient to support its position that it paid the Claimant's salary in full. I say so noting that the said document was a write-up of what the Respondent considered the Claimant's unpaid salary as of April 2023. In addition, the said write-up did not in any way confirm that the Respondent remitted the Claimant's statutory dues.
33. For the foregoing reasons, the Court has no reason to doubt the Claimant's assertions that the Respondent failed to pay his salary in full from October 2020 to May 2023.
34. In the leading case of *Coca-Cola East & Central Africa Limited v Maria Kagai Ligaga* [2015] eKLR the Court of Appeal formulated guiding principles in respect of claims of constructive dismissal key among them being that, 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.
35. As stated herein, the Respondent did not tender evidence before this Court to contradict the Claimant's position that he did not receive his salary as claimed or prove that the Claimant was paid his salary in full.
36. The duty of the employer to compensate an employee for services rendered is a cardinal rule in any employment relationship. This position is aptly captured under Section 17(1) of the *Employment Act* and reads as follows;
- [17]
- (1) Subject to this Act, an employer shall pay the entire amount of the wages earned by or payable to an employee in respect of work done by the employee in pursuance of a contract of service....
37. Applying the guiding principles set out in the case of *Coca-Cola East & Central Africa Limited v Maria Kagai Ligaga* (supra), it goes without saying that the Respondent's action of not paying the Claimant's salary as and when the same fell due amounted to a fundamental breach going to the root of the contract of employment.



38. In this regard, the Respondent's actions demonstrated that it no longer intended to be bound by one or more of the essential terms of the contract.
39. In view of the foregoing, the Claimant was entitled to treat himself as constructively dismissed hence reserved the right to leave the employment of the Respondent with or without notice.
40. Therefore, the Respondent's assertion that the Claimant deserted duty and did not resign formally does not hold. Indeed, in cases of constructive dismissal, an employee may leave employment with or without notice.
41. In any event, if the Respondent was of the view that the Claimant deserted duty, one wonders why it did not put him on notice that it was contemplating termination of his employment on that account. This is bearing in mind that desertion is one of the grounds for summary dismissal under Section 44(4) of the *Employment Act*.
42. In sum, the Court finds that the Respondent's actions amounted to constructive dismissal, hence the Claimant was unfairly and unlawfully terminated from employment.

Reliefs?

Unpaid Salary

43. As the Court has found that the Respondent did not discount the Claimant's assertions that it paid his salary as and when the same fell due, the relief under this head succeeds.
44. For the avoidance of doubt, the salary award shall be at the rate of Kshs 200,000/=. This is for the primary reason that the Claimant's salary reduction was not undertaken in tandem with the provisions of Section 10(5) of the *Employment Act* which provides as follows:

[10](5) Where any matter stipulated in subsection (1) changes, the employer shall, in consultation with the employee, revise the contract to reflect the change and notify the employee of the change in writing.
45. In line with the above statutory provision, the Respondent was duty-bound to obtain the Claimant's prior approval in writing before reviewing his salary downwards.
46. As can be discerned from the wording of the letters exhibited by the Respondent in this respect, the salary review was undertaken unilaterally and the Claimant was only notified of the same after the Respondent had made the decision to review his salary downwards.
47. In so finding, the Court does not doubt that the Respondent's business was negatively impacted by the onset of the COVID-19 global pandemic. Be that as it may, this was not a through pass for the Respondent to review the Claimant's salary in total disregard of the provisions of Section 10(5) of the *Employment Act*.

Compensation for unfair termination

48. As the Court has found that the Respondent's actions amounted to constructive dismissal, hence the Claimant was unfairly and unlawfully terminated from employment, he is entitled to compensatory damages under Section 49(1) of the *Employment Act*, 2007. Accordingly, he is awarded compensatory damages equivalent to five (5) months of his salary.
49. This award has taken into account the length of the employment relationship as well as the circumstances leading to the termination of employment. In this regard, the Court finds that the



Respondent's act of withholding the Claimant's salary constituted an unfair labour practice and was in essence, a violation of Article 41(1) of *the Constitution*.

Orders

50. It is against this background that I enter Judgment in favour of the Claimant against the Respondent as follows:
 - a. The Claimant is awarded damages as compensation for unfair termination in the sum of Kshs 1,000,000.00, which sum is equivalent to five (5) months of his salary.
 - b. The Claimant is awarded the sum of Kshs 6,400,000.00 being unpaid salary from October 2020 to May 2023.
 - c. The total award is Kshs 7,400,000.00.
 - d. Interest on the amount in (d) at Court rates from the date of Judgment until payment in full.
51. The Claimant shall also be entitled to a Certificate of Service in line with Section 51(1) of the *Employment Act*. This shall be issued within 30 days from the date of this Judgment.
52. The Respondent shall also bear the costs of this claim.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 30TH DAY OF MAY 2025

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STELLA RUTTO

JUDGE

In the presence of:

For the Claimant Mr. Lutukai instructed by Mr. Wamunyolo

For the Respondent Ms. Murugi instructed by Mr. Okullo

Court Assistant Millicent

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 had 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 *Civil 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.

STELLA RUTTO

JUDGE

