



**Mwangi v Newbold Garage Limited (Cause E857 of 2022)  
[2025] KEELRC 1604 (KLR) (27 May 2025) (Judgment)**

Neutral citation: [2025] KEELRC 1604 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E857 OF 2022**

**HS WASILWA, J  
MAY 27, 2025**

**BETWEEN**

**CHRISTINE WAMBUI MWANGI ..... CLAIMANT**

**AND**

**NEWBOLD GARAGE LIMITED ..... RESPONDENT**

**JUDGMENT**

1. The Claimant instituted this claim vide a Memorandum of Claim dated 21<sup>st</sup> November 2022 on grounds that Respondent constructively terminated his employment. She prays for judgment against the Respondent for: -
  - a. A declaration that the employment of the Claimant was constructively terminated on 10<sup>th</sup> August 2022.
  - b. A declaration that the withholding of the plaintiffs motor vehicle was illegal and unlawful.
  - c. Twelve months equivalent salary for constructive termination without fair hearing being Kshs. 300,000.
  - d. Salary in lieu of Notice Kshs. 25,000.
  - e. Car hire expenses of Kshs. 112,500 for the period 10<sup>th</sup> August to 8<sup>th</sup> September 2022 when motor vehicle KBC 213D was released.
  - f. A declaration that the claimant is entitled to dividends from the company.
  - g. Immediate release of motor vehicle KBF 764E to the claimant.
  - h. Commissions due and outstanding to the Claimant.



## Claimant's Case

2. The Claimant avers that she is a Director Shareholder of the Respondent company and holds 10 shares. Previously, the parties traded under a company called Parties Direct in which she held 40% shareholding and the other co-director John Newbold has 60% shareholding.
3. The Claimant avers that as the Respondent's director shareholder, she did not receive any dividends or a share in the profits of the company. However, she was paid Kshs. 21,000 per month as retainer and allowed her to earn commission from the motor vehicle repair jobs she undertook.
4. The Claimant avers that on 10<sup>th</sup> August 2022, the Respondent issued her a letter requiring her to hand over all assets of the company and after clearing with the account's office, she would be allowed to pick any of her assets. She was also asked to provide: Mpesa statements for the period between September 2021 to August 2022; her Equity Bank Statements for the last one year; and a schedule of the expenses paid on behalf of the company for the period September 2021 to date.
5. The Claimant avers that vide a letter dated 17<sup>th</sup> August 2022, the Respondent invited her for a disciplinary hearing scheduled for 26<sup>th</sup> August 2022 on her absence and missing company funds.
6. The Claimant responded vide a letter dated 19<sup>th</sup> August 2022 and requested for documents and demanded for her two motor vehicles which the Respondent illegally detained registered under KBF 764E and KBC 213D.
7. The Claimant avers that she attended the disciplinary meeting on 8<sup>th</sup> September 2022 and the Respondent released motor vehicle KBC 213D but refused to release the other one.
8. Subsequently, the Respondent made fresh allegations against her vide a letter dated 2<sup>nd</sup> September 2022 and requested for proof that she paid for motor vehicle KBF 764E.
9. The Claimant avers that vide a letter dated 20<sup>th</sup> September 2022, she answered all the queries raised by the Respondent and demanded release of motor vehicle KBF 764E.
10. The Claimant avers that in contravention of Section 35 of the *Employment Act*, she was constructively dismissed from 10<sup>th</sup> August 2022 without notice or payment in lieu of notice.
11. It is the Claimant's case that she was terminated without valid reason in contravention of Section 41, 43 and 45 of the *Employment Act* and prays for an award of 12 months gross salary.
12. It is the Claimant's case that the Respondent unlawfully withheld the dividends and profit owed to the Claimant from incorporation to 10<sup>th</sup> August 2022. She avers that she is entitled to 10% of the annual profits after tax declared by the Respondent from incorporation to date.
13. The Claimant avers that the Respondent unlawfully withheld motor vehicle KBC 213D from 10<sup>th</sup> August 2022 to 8<sup>th</sup> September 2022 and she had to hire a vehicle at Kshs. 4,500 per day for 25 days and she therefore claims Kshs. 12,500 being the cost of hire.
14. She further prays for damages for unlawful detention of her motor vehicle KBF 764E and loss of use of the vehicle which was withheld by the Respondent.
15. The Claimant avers that his role with the Respondent still exists and there are people currently executing the roles he used to execute despite joining the Respondent company after him.



## **Respondent's Case**

16. In opposition, the Respondent filed a Response to Memorandum of Claim dated 6<sup>th</sup> November 2023.
17. The Respondent avers that the Claimant is neither a director nor shareholder of the Respondent company; and that John Newbold holds 100% shares of the company hence solely entitled to all company profits.
18. The Respondent avers that the only remuneration agreed by the parties is a monthly salary of Kshs. 21,000 which the Respondent religiously honoured all payments due to her.
19. It is the Respondent's case that an audit report was conducted on the company's accounts revealing customer payments were being channelled to individual accounts instead of the company's account contrary to company policy. Payments well over Kshs. 2,000,000 had been paid through the Claimant's personal account for the period preceding 10<sup>th</sup> August 2022.
20. The Respondent confirms that it sent the Claimant a letter 10<sup>th</sup> August 2022 and that the requirements therein were to aid in the investigation of potential diversion of company funds.
21. The Respondent avers that the Claimant was supplied with all documents requested for as evidenced vide its letter dated 8<sup>th</sup> September 2022.
22. The Respondent avers that it was reluctant to release the said motor vehicles to the Claimant prior to receiving proof of ownership, however, it released motor vehicle registration number KBC 213D but withheld motor vehicle registration number KBF 764E pending proof of payment from the Claimant, as explained vide its letter dated 8<sup>th</sup> September 2022.
23. It is the Respondent's case that it maintained possession of motor vehicle registration Number KBF 764E because the Claimant had not tendered proof of ownership of the vehicle. Had she done so, the Respondent was willing and ready to release the vehicle to her.
24. It is the Respondent's case that the Claimant's employment was not terminated as clarified in its letter dated 18<sup>th</sup> August 2022. The Respondent is not privy to the letter dated 10<sup>th</sup> August 2022, nonetheless, the Respondent received a copy of the said letter from the Claimant and upon perusal of the same, there was no mention of termination of the Claimant's employment.
25. The Respondent avers that the Claimant's employment was not terminated, she simply absconded work without giving a reason for the same.
26. The Respondent avers that the various letter correspondence between August to September indicate that parties were making preparations for a potential disciplinary hearing, therefore, there was no termination of employment.
27. The Respondent avers that the vehicles was being held by the Respondent pending proof of payment and/or ownership by the Claimant to avoid any unnecessary and unwarranted claims against the Respondent in the future, over the said vehicle, by unknown third parties.

## **Evidence in Court**

28. The Claimant (CW1) adopted his witness statement dated 12<sup>th</sup> October 2022 as his evidence in chief and produced his list of documents dated 20<sup>th</sup> October 2022 as exhibits 1-8 respectively.
29. During cross-examination, CW1 testified that Pioneer Insurance insured his personal loan, however, he did not follow up or have a direct process with the insurer.



30. The Respondent's witness (RW1) Simon Maina, testified that he is the Respondent's Head of Employee and adopted his witness statement dated 3<sup>rd</sup> November 2023 and produced his list of documents dated 3<sup>rd</sup> November 2023 as his exhibits no 1-86.

### **Claimant's Submissions**

31. The Claimant submitted two issues: whether the Claimant's was unfairly and illegally constructively dismissed by the Respondent; whether the Claimant was a director/Shareholder of the Company; whether the Defendant is unlawfully withholding the Claimant's Motor Vehicle KBF 746E; and who bears the costs of this suit.
32. On the first issue, the Claimant relied on the legal principles relevant in determining constructive dismissal as outlined in *Coca Cola East Africa & Central Africa 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 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."
33. The Claimant further relied on the case of *Milton M Isanya versus Aga Khan Hospital Kisumu* (2017) eKLR, where Justice Maureen Onyango J, expressed 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 employment but frustrates the employee to the extent that the employee tender's resignation."
34. The Claimant submitted that the heart of constructive dismissal is the breach of the duty of trust and confidence, which makes it difficult for the employee to continue working and carrying out their obligations under the contract.
35. The Claimant submitted that the Respondent vide its letter dated 10<sup>th</sup> August 2022 asked her to hand over all the company property to the accountant and informed her that she will be allowed to pick her



- assets after clearing with the accounts. Further, the Respondent accused her, this amounts to a serious affront to the Claimant's reputation and integrity. The baseless nature of these accusations undermines the trust in the employment relationship between the Claimant and the Respondent.
36. It is the Claimant's submission that the Respondent's action of withholding her car, despite proof of ownership represents an unjustifiable interference with her lawful property rights and further evidences the Respondent's intent to undermine her dignity and to create an environment of hostility, intimidation and distrust.
  37. The Claimant submitted that Respondent's refusal to hold a proper disciplinary hearing until she furnishes the requested documents is a tactic to ensure she gets frustrated of working in the company and resigns. The refusal to hold a hearing denies her an opportunity to defend herself adequately, thus further contributing to an intolerable working environment.
  38. It is the Claimant's submissions that the Respondent's conduct intolerable making it considerably difficult for the Claimant to continue working and hence her departure from the company.
  39. On the second issue, the Claimant submitted that the Respondent's company's CR12 dated 13<sup>th</sup> November 2020, the company had the following Director Shareholders: Samuel Kariuki holding 100 shares; Christine Wambui Mwangi holding 100 shares; and John Newbould holding 800 shares.
  40. The Claimant submitted that on 13<sup>th</sup> February 2023, she received an email from the Business Registry Services informing her that there had been an application lodged to remove her from the company which she promptly responded on 14<sup>th</sup> February 2023 informing them that she had neither signed any documents to effect the change nor was she aware of the application. Despite this, she was still removed from the company without her consent.
  41. It is the Claimant's submission that the change effected to remove her as a director/shareholder of the company was illegal and unlawful. The Respondent's goal was to frustrate the Claimant to resign from the company as an employee and ultimately remove her as director/shareholder of the Company and thereby frustrate any claim she would lodge against the company in her capacity as a director/shareholder.
  42. On the third issue, the Claimant submitted that she has proved in court her ownership of the vehicle by availing her log book under her supplementary list of documents dated 27<sup>th</sup> November 2024, the log book of motor vehicle KBF 746 E that shows it is registered under her name. The Respondent on the other hand has not given any reasonable reason why they are still holding the Claimant's vehicle, therefore, they should immediately release the motor vehicle and be penalized for unlawful withholding the motor vehicle.
  43. On costs of this suit, the Claimant submitted that it is trite law that costs follow the event, she has proved without a doubt that she was treated unfairly and constructively terminated by the Respondent. She has been able to show that the allegations against her were unfounded and a guise to kick her out as employee and ultimately removing her as a director of the company without her consent.

### **Respondent's Submissions**

44. The Respondent submitted on four issues: Jurisdiction of an Employment and Labour Relations Court; Whether the Claimant was constructively dismissed from employment; Whether the Respondent unlawfully withheld motor vehicle registration number KBF 746E; Whether the Respondent is the author of the letter dated 10<sup>th</sup> August 2022; and Cost of the suit.



45. On the first issue, the Respondent submitted that Section 12 of the Employment and [Labour Relations Act](#) outlines the jurisdiction of this Court. This Court should only determine issues arising, primarily, out of employer-employee relations; and that issues of directorship of the Respondent company and dividends paid therefrom ought to be addressed in a different forum.
46. On the second issue, the Respondent submitted that in it has adduced letters dated 17<sup>th</sup> August 2022, 18<sup>th</sup> August 2022 and 22<sup>nd</sup> August 2022, which clearly state that the Claimant is an employee of the company but she failed to report to work due to reasons unknown to the Respondent. Further, the Claimant did not give sufficient reason as to why she absconded work as from 11<sup>th</sup> August 2022, despite the Respondent asserting the she was still an employee of the company.
47. It is the Respondent's submission that the onus of proving constructive dismissal heavily lies on the Claimant. It relied in the case of Walker -v- Josiah Wedgwood & Sons. Ltd. [1978] IRLR 105) where the Court stated that 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.
48. It is Respondent's submission that the Claimant has not proved the issue of constructive dismissal to a balance of probability. The Claimant did not accord the Respondent the opportunity to explore its right for due procedure in conducting a fair disciplinary hearing; and the Respondent's conduct clearly indicates that it respected the Claimant's right to a fair hearing to explain the allegations raised by the Respondent.
49. The Respondent submitted that its conduct did not in any way frustrate the Claimant's employment. She was given the chance to show cause as stipulated in the [Employment Act](#), all the while being constantly reminded that she was still an employee of the company despite the allegations against her.
50. On the third issue, the Respondent submitted that it would have released motor vehicle registration number KBF 746E had the ownership records been furnished. The Claimant only supplied proof of ownership of motor vehicle registration number KBC 213D, which was subsequently released to her unconditionally, a fact that the Claimant has not contested. The ownership record for KBF 746E only came to the Respondent's attention upon viewing the Claimant's list of documents of this instant suit.
51. On the fourth issue, the Respondent submitted that it has adduced several letters in support of its case, all of which are signed and stamped using the company's official stamp. However, the letter dated 10<sup>th</sup> August 2022 is neither signed nor stamped by the Respondent company and the Respondent therefore denies authorship of the said letter.
52. On the issue of costs, the Respondent relied in the case of Republic vs Rosemary Wairimu Munene, Ex-Parte Applicant Vs Ihururu Dairy Farmers Co-operative Society Ltd Judicial Review application no 6 of 2014 in which the court held as follows: "The issue of costs is the discretion of the court as provided under the above section. The basic rule on attribution of costs is that costs follow the event..... It is well recognized that the principle costs follow the event is not to be used to penalize the losing party; rather it is for compensating the successful party for the trouble taken in prosecuting or defending the case."
53. I have examined all the evidence and submissions of the parties. The issues for this court's determination are as follows:
  1. Whether the Claimant was terminated by the Respondent and if so whether the termination was fair and justified.



2. Whether the Claimant is entitled to the remedies sought.

### Issue No. 1

54. The Claimant was indeed an employee of the Respondent company as per the letter confirming this relationship by the Respondent dated 22<sup>nd</sup> August 2022.
55. The RW1 in her statement also indicated that the Claimant was however earning commission on some parts of the business as a direct earning and a salary. This in my view is an admission of an employment relationship between the Claimant and Respondent. The Claimant was however never issued with any employment letter and none was produced by either party. The Claimant averred that she was a director and shareholder of the Respondent company. On the issue of company shareholding and directorship, this company lacks the requisite jurisdiction to handle the same.
56. It is however evident that the Claimant was an employee of the Respondent as per the Respondent's own admission. That being the case, the Respondent had an obligation to issue the Claimant with an employment letter which they never did. This contravenes the provision of the Employment Act Section 9(1), (2) & (3) which states as follows:

9.

- (1) A contract of service-
  - (a) for a period or a number of working days which amount in the aggregate to the equivalent, of three months or more; or
  - (b) which provides for the performance of any specified work which could not reasonably be expected to be completed within a period or a number of working days amounting in the aggregate to the equivalent of three months; shall be in writing.
- (2) An employer who is a party to a written contract of service shall be responsible for causing the contract to be drawn up stating particulars of employment and that the contract is consented to by the employee in accordance with subsection (3)
- (3) For the purpose of signifying his consent to a written contract of service an employee may-
  - (a) sign his name thereof, or
  - (b) imprint thereon an impression of his thumb or one of his fingers in the presence of a person other than his employer.

Section 10(7) of the Employment Act 2007 also states as follows:

- (7) If in any legal proceedings an employer fails to produce written contract or the written particulars prescribed in subsection (1) the burden of proving or disproving an alleged term of employment stipulated in the contract shall be on the employer.

57. The Claimant has averred that she was constructively terminated by the Respondent on 1<sup>st</sup> August 2022 without notice or payment in lieu.
58. The Claimant has not explained how she was constructively dismissed on the act on omission occasioned by the Respondents which made her leave her employment. The Respondent alludes to a



resignation email from the Claimant dated 11/8/2022 by which they accepted her resignation. None of the parties however produced the email in question.

59. It is therefore my finding that the circumstances under which the Claimant left the Respondents employment cannot be ascertained as to whether it was through a resignation or a dismissal. The issue of an unfair termination cannot therefore be established from the evidence produced by the parties before this court.

**Issue No. 2**

60. This court having been unable to ascertain whether the Claimant was dismissed or she resigned, the court is also unable to determine remedies available for wrongful dismissal.
61. I therefore find that the remedies sought for unfair termination are not available to the Claimant and the court lacks jurisdiction to handle issues relating to the company shares and directorship. I therefore dismiss this case accordingly and award no costs in the circumstances.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 27<sup>TH</sup> OF MAY, 2025.**

**HELLEN WASILWA**

**JUDGE**

