



Ocholla & 4 others v Construction House Company (Employment and Labour Relations Cause E665 of 2022) [2025] KEELRC 1654 (KLR) (4 June 2025) (Judgment)

Neutral citation: [2025] KEELRC 1654 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS CAUSE E665 OF 2022**

HS WASILWA, J

JUNE 4, 2025

BETWEEN

**BRIAN OUMA OCHOLLA 1ST CLAIMANT
JEFF NYAMORI OCHIENG 2ND CLAIMANT
GERALD KIOKO 3RD CLAIMANT
NELSON MANDELA OKUMU 4TH CLAIMANT
MESHACK DULANI 5TH CLAIMANT**

AND

CONSTRUCTION HOUSE COMPANY RESPONDENT

JUDGMENT

1. The Claimants instituted this claim vide a Statement of Claim dated 1st August 2022 based on the Respondent's unlawful termination of their employment or causing them to resign. He prays for judgment against the Respondent for:
 - a. The claimed dues damages by each Claimant for unlawful termination as listed in the Claim.
 - b. Costs of this suit.
 - c. Interest on (b); and
 - d. Any other relief.

Claimants' Case

2. The Claimants aver that they were employed by the Respondent on diverse dates and years in different capacities until when each one of them was terminated and or resigned from employment.



3. The Claimants aver that on diverse dates and years, the Respondents terminated their employment without following due process and some of them resigned due to frustrations from the Respondent.
4. The Claimants aver that the termination was illegal as the Claimants were not given an opportunity to be heard.
5. Some of the Claimants resigned from work due to non-payment of their salaries by the Respondent and being frustrated at work by non-provision of the needed resources to accomplish their end of the contract.
6. It is the Claimants' case that the Respondent severally frustrated their ability to perform by not providing the needed resources on time and not paying their salaries in full as agreed upon.
7. The Claimants aver that they have suffered loss and damage due to the Respondent's unlawful conduct.

Respondent's Case

8. In opposition to the Claim, the Respondent filed a Notice of Preliminary objection dated 7th November 2022 in which the court delivered its ruling 9th February 2024.

Evidence in Court

9. The Claimants herein Gerald Kioko (CW1), Meshack Dulani (CW2), Brian Ouma Ocholla (CW3), Nelson Mandela Okumu (CW4) and Jeff Nyamori Ochieng (CW5) adopted their filed witness statements dated 20th July 2022 and produced their filed documents dated 1st August 2022 as their exhibits.

Claimant's Submissions

10. The Claimant submitted on four issues: whether the termination of the claimant's employment amounts to wrongful and unlawful termination of employment and therefore constructive dismissal; whether the Respondent is in breach of its contractual obligations with regards to the claimants' contracts of employment; whether the claimants are entitled to the prayers sought and the amounts claimed; who should bear the costs of the suit.
11. On the first issue, the Claimants submitted that they were employed by the Respondent between 2020 and 2021 as follows: Jeff Nyamori Ochieng as the Technical Project Co-ordinator between October 2019 to June 2021; Brian Ouma Ocholla as the Head of Technical Department between September 2019 to September 2020; Nelson Mandela Okumu as the Technical Projects Co-ordinator between January 2019 to January 2022; and Meshack Dulani as the Site Manager between July 2020 to September 2021.
12. It is the Claimants' submission that the Respondent vide its preliminary objection dated 7th November 2022 confirmed that indeed there were employment contracts between the claimants and themselves.
13. The Claimants submitted that Section 43(2) of the *Employment Act* provides that the reasons or reason for termination of a contract are the matters that the employer genuinely believed to exist and which caused the employer to terminate the services of the employee. No such reason was ever availed to the Claimants; on the contrary, the Respondent frustrated their efforts to complete their work on time and did not provide the needed materials to facilitate the work that was to be done.



14. The Claimants submitted that the 1st Claimant worked with the Respondent for the period of one year as the Head of the Technical department until his unlawful termination in September 2020. At the time of his termination, the Respondent owed him salary arrears amounting to Kshs. 545,000.
15. The Claimant submitted that the 2nd Claimant worked for the Respondent for a period of 2 years as the Technical Project Co-ordinator and Assistant Quantity Surveyor between October 2019 and June 2021. He resigned in June 2021 and was with the company for a period of one month in order to hand over.
16. The Claimants submitted that at the time of the 2nd Claimant's resignation, the Respondent owed him salary arrears of Kshs. 125,000. Therefore, the termination was unfair by way of constructive dismissal as he resigned due to frustration by the Respondent company.
17. The Claimants submitted that the 3rd Claimant worked with the Respondent for a period of one year as the Project Manager/ Head of Technical department between August 2020 and August 2021.
18. It is the Claimants' submission that the Respondent frustrated the 3rd Claimant's efforts to complete his work on time by not providing the needed materials and non- payment of his salary leading to his resignation; this can be termed as constructive dismissal. At the time of his resignation, the Respondent owed him salary arrears of Kshs. 201,000.
19. The Claimants submitted that the 4th Claimant worked for the Respondent for a period of three years as the Technical Projects Coordinator between January 2019 and January 2022. He resigned from employment in January 2022 due to non- payment of his salary which crippled his ability to work.
20. It was the Claimants' submission that the circumstances leading to the 4th Claimant's resignation can be described as constructive dismissal, as his resignation was caused by non-payment of his salaries by the Respondent who continuously refused to pay him his dues. At the time of his resignation, the Respondent owed him salary arrears of Kshs. 185,000 and no efforts have since been made to reimburse him.
21. The Claimants submitted that the 5th Claimant worked with the Respondent for the period of one year as the Site Manager for the period between July 2020 and September 2021. He could not continue working with the Respondent company as a result of non-payment of his dues which caused him emotional and psychological harm and was even kicked out of the house he was staying and admitted to hospital.
22. It is the Claimants' submissions that up to date the 5th Claimant does not know his current employment status with the Respondent as he has never been served with a termination letter nor warning letter indicating the intention to terminate his employment with the Respondent. As a result, the circumstances surrounding the termination of employment of the 5th claimant, can be defined as unfair termination as he was not given the reasons for termination as required under Sections 43 (1) and 41 of the *Employment Act*.
23. On the second issue, the Claimants submitted that the Respondent frustrated them to the extent they resigned from their positions with the respondent company and/or resigned due to non-payment of their dues. The Respondent continuously refused to pay the Claimants or offer them any compensation to date.
24. It is the Claimant's submission that the Respondent's conduct is unlawful, illegal, malicious and inconsiderate in view of the fair labour practices and therefore in breach of the contracts of employment with the Claimants.



25. On the third issue, the Claimants submitted that the 2nd, 4th and 3rd Claimants resigned, the 1st Claimant was unlawfully terminated, while the 5th Claimant does not know his position of employment as the Respondent never communicated to him, and the 3rd Claimant was equally frustrated to the point he opted to resign. All the incidences led to the Claimants' termination of employment between the years 2020 and 2021 and the Respondent has made no effort to follow up for payment of their salary arrears or their reasons for resignation.
26. The Claimants submitted that they have continued to suffer delay, mental and psychological anguish as a result of refusal by the Respondent's respondent to pay their dues and even some point, the 5th respondent was unable to pay his rent. The Claimants' urge this court do issue orders that the Respondent is liable to the Claimants and they are entitled to their entire dues as claimed via the Statement of Claim.
27. On final issue, the Claimants submitted that costs of this claim be awarded to them as they continue to suffer financial distress and inconvenience due to the delay and refusal of the Respondent to pay their dues. Additionally, the Respondent has continuously failed to attend court nor participate in the proceedings herein despite service of the notices thereof.
28. They relied on Section 27 of the *Civil Procedure Act* which stipulates that costs of and incidental to all suits shall follow the event unless the Honourable Court or judge shall for good reason otherwise order.
29. I have examined all the evidence and submissions of the parties herein. The 1st client herein averred that his contract was unlawfully terminated by the respondent in September 2020.
30. The 2nd to 5th claimants aver that they resigned from the company due to non payment of their salaries. They aver that they were therefore contractually terminated by the respondent. They aver that they are owed salties and leave not taken.
31. The respondent had denied having any employment relationship with the claimants but failed to produce any evidence that the claimants were independent contractors. The contracts produced by the respondents show that the claimants were employees of the respondents and they left employment for non-payment of their salaries. This indeed amounts to a constructive termination whereby the respondents fail to meet their part of the contract by not paying salaries as expected. This indeed qualifies as a constructive termination.
32. I do find that the claimants have established their case against the respondents for constructive termination and failure to pay salaries owing and other dues.
33. I find for the claimants and award them as follows.
 - 1st claimant
 1. Unpaid salary and allowances = kshs 600,999/-
 2. Damages of 6 months for unfair termination = 6x55,900/- = Kshs 335,400/-

Total Kshs 936,399 less statutory deductions
 - 2nd claimant
 1. Unpaid salary and allowances = kshs 177,000/-
 2. Damages for unfair termination equivalent of 6 months for unfair termination = 6x52,000/- = Kshs 312,000/-

Total Kshs 489,000/- less statutory deductions



3rd claimant

1. Unpaid salary and allowances = kshs 250,000/-
 2. Damages for unfair termination equivalent of 6 months = 6x49,000/- = Kshs 294,000/-
- Total Kshs 544,000/- less statutory deductions

4th claimant

1. Unpaid salary and allowances = kshs 241,000/-
 2. Damages for unfair termination of 6 months' salary = 6x56,000/- = Kshs 336,000/-
- Total Kshs 577,000/- less statutory deductions

5th claimant

1. Unpaid salary and allowances = kshs 517,000/-
 2. Damages for unfair termination equivalent to 6 months salary = 6x42,000/- = Kshs 252,000/-
- Total Kshs 769,000/- less statutory deductions

34. The respondents will pay costs of this suit plus interest at court rates with effect from the date of this judgment.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 4TH OF JUNE, 2025.

HELLEN WASILWA

JUDGE

