



**Macharia v Kenya Institute of Management (Cause E891 of 2024)  
[2025] KEELRC 2316 (KLR) (31 July 2025) (Judgment)**

Neutral citation: [2025] KEELRC 2316 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E891 OF 2024**

**SC RUTTO, J  
JULY 31, 2025**

**BETWEEN**

**PAULINE WAMUYU MACHARIA ..... CLAIMANT**

**AND**

**KENYA INSTITUTE OF MANAGEMENT ..... RESPONDENT**

**JUDGMENT**

1. Through a Memorandum of Claim dated 18<sup>th</sup> October 2024, the Claimant avers that she was employed by the Respondent in the position of a Navision Developer commencing 5<sup>th</sup> October 2015. She was to earn a gross salary of Kshs 95,000/- per month and airtime allowances equivalent to Kshs 2,500/-. The Claimant further avers that through a letter dated 6<sup>th</sup> June 2016, her employment was confirmed and vide a letter dated 28<sup>th</sup> May 2018, her salary was increased to Kshs 100,000/-.
2. The Claimant further avers that during the COVID-19 pandemic, the Respondent informed her that she would receive 50% of her salary and the balance would be paid out once the pandemic period was over. The Claimant contends that despite the foregoing promise, she is yet to receive the 50% balance of her accrued salary from August 2020 to December 2020.
3. The Claimant further avers that the Respondent did not pay her full salary for the months of July 2022 to June 2023, and due to these circumstances, she had no choice but to tender a letter of resignation dated 30<sup>th</sup> June 2023.
4. She further states that the Respondent issued a response to her resignation letter on 26<sup>th</sup> July 2023, accepting the resignation and acknowledging the salary arrears owed to her as well as unpaid yearly leave that had accrued but were not taken.
5. It is the Claimant's case that her pleas to the Respondent to pay her salary arrears went unheard, prompting her to instruct her Advocates on record to issue a formal demand for the payment of the salary arrears in a letter dated 1<sup>st</sup> October 2024.



6. Against this background, the Claimant prays for the following reliefs against the Respondent:
  - a. A declaration that the Respondent's conduct was unfair and/or unlawful and actionable.
  - b. An order that the Respondent pays the Claimant her terminal dues and compensatory damages totaling to Kenya Shillings Four Million (Kshs. 4,051,785.71) as tabulated in Clause 17 above, as follows:
    - i. 50% balance of her gross salary accrued from August 2020 to December 2020, a period of 5 months amounting to Kenya Shillings Two Hundred and Fifty Thousand (Kshs. 250,000.00);
    - ii. Claimant's full salary for July 2022 to June 2023 amounting to Kenya Shillings One Million, Two Hundred Thousand (Kshs.1,200,000.00);
    - iii. 29 leave days accrued for the year 2022-2023 not taken of Kenya Shillings Fifty-One Thousand Seven Hundred and Eighty-Five Thousand and Seventy-One Cents (Kshs. 51,785.71);
    - iv. Yearly leave allowance amounting to Kenya Shillings Fifty Thousand (Kshs.50,000.00.);
    - v. One year's salary for unlawful termination of contract amounting to Kenya Shillings One Million Two Hundred Thousand (Kshs 1,200,000.00);
    - vi. One year's salary for constructive dismissal amounting to Kenya Shillings One Million Two Hundred Thousand (Kshs. 1,200,000.00); and
    - vii. One month's salary in lieu of notice amounting to Kenya Shillings One Hundred Thousand (Kshs. 100,000.00).
  - c. Failure to remit pension contributions to the Claimant's pension plan as per clause 6.0 of the employment contract dated 2<sup>nd</sup> September 2015.
  - d. Any other relief that the Honourable Court may deem fit and just to grant in the circumstances;
  - e. Interest on items (b), (c), and (d), above; and
  - f. Costs
7. The Respondent filed a Response to the Statement of Claim in which it avers that all due payments to the Claimant were settled.
8. The Respondent further avers that the Claimant is not entitled to one month's salary in lieu of notice as she failed to issue one month's notice as per the terms of her employment contract.
9. According to the Respondent, it utilised the Claimant's salary for June 2023 to recover payment for 30 days in lieu of notice she did not serve.
10. The Respondent further contends that the claims for unlawful termination and constructive dismissal do not arise in the instant case.
11. In the Respondent's view, the amounts sought by the Claimant are exaggerated and unfounded and that she is seeking to unjustly enrich herself to the detriment of the Respondent.
12. It is the Respondent's assertion that the claim as filed, is unjustified.



13. On 28<sup>th</sup> April 2025, both parties consented to have the matter determined by way of documentary evidence pursuant to Rule 59 of the Employment and Labour Relations Court (Procedure) Rules, 2024.
14. Subsequently, the Court directed the parties to file and exchange written submissions within specified timelines.

### **Submissions**

15. Only the Respondent filed written submissions, as the Claimant's submissions are missing from the Court's physical record and are not traceable on the online portal.
16. On its part, the Respondent submitted that the Claimant voluntarily resigned and is not entitled to compensation for unfair termination and/or constructive dismissal.
17. The Respondent further posited that it has provided proof that all sums due to the Claimant were paid, but she has failed to produce any proof for the sums sought. To this end, the Respondent has submitted that its evidence is uncontroverted.

### **Analysis and Determination**

18. Flowing from the pleadings filed by both parties, the evidence on record, as well as the Respondent's submissions, it is evident that the issues falling for the Court's determination are:
  - i. Whether the Claimant was constructively dismissed; and
  - ii. Whether the Claimant is entitled to the reliefs sought.

### **Constructive dismissal?**

19. The gist of the Claimant's case is that from August 2020 to December 2020, the Respondent paid her only 50% of her salary and withheld her salary from July 2022 to June 2023. On this score, she has cited the Respondent for constructive dismissal.
20. Refuting the Claimant's Claim, the Respondent avers that it settled the Claimant's salary in full and the claim for constructive dismissal does not arise.
21. 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.
22. In support of its case, the Respondent sought to rely on bulk payment excerpts from the NCBA for the months of August, September, October and November 2022. Notably, the Respondent did not produce a list of the beneficiaries covered by the bulk payments. Therefore, there is no proof that the Claimant's salary was processed and paid from the bulk payments whose excerpts the Respondent sought to rely on in support of its case.
23. Consequently, the evidence tendered by the Respondent before this Court does not contradict the Claimant's position that her salary was not paid as contractually agreed.
24. Under Section 74 of the *Employment Act*, it is the obligation of an employer to maintain employment records. As such, it was not a tall order for the Respondent to produce evidence that the Claimant was one of the beneficiaries of the bulk payments and that her salary was paid in full during the period in question. As it is, this was evidence that was within the Respondent's disposal.



25. For the foregoing reasons, the Court has no reason to doubt the Claimant's assertions that the Respondent paid 50% of her salary from August to December 2020 and withheld her salary from July 2022 to June 2023.
26. Having established that there is no evidence that the Claimant's salary was not paid as contractually agreed, the logical question to ask is whether this amounted to constructive dismissal.
27. 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, there must be a causal link between the employer's conduct and the reason for the employee terminating the contract i.e causation must be proved and further, the employee must not have accepted, waived, acquiesced or conducted himself to be estopped from asserting repudiatory breach; the employee must-within a reasonable time terminate the employment relationship under the breach.
28. It is notable that in her letter of resignation dated 30<sup>th</sup> June 2023, the Claimant did not indicate that her reason for resignation was the Respondent's failure to pay her salary. Indeed, as can be discerned from the letter of resignation, the Claimant did not indicate the reason for her resignation from the Respondent's employment.
29. It is also apparent from the record that immediately upon her resignation from the Respondent's employment, the Claimant took up another role with the Respondent in which she was contracted to provide ICT support services.
30. Further to this, it is apparent from the email trail relied on by the Claimant that her resignation was agreed on mutually with the Respondent. Case in point, one Kenneth Milugo forwarded to the Claimant via email, a copy of the Service Contract for ICT Support Services for her execution and asked her to revert with a signed copy together with her resignation letter for the same to be effected. Further, the Claimant vide an email to one Janice Njoki, acknowledged receipt of the acceptance letter and questioned why she was being deducted 30 days for not serving notice, yet it was a mutual agreement.
31. In light of the foregoing, it becomes apparent that despite there being no proof that the Respondent paid the Claimant's salary as contractually agreed, the manner in which she resigned from the Respondent's employment did not fit the dimensions of what would be construed as amounting to constructive dismissal.
32. Revisiting the guiding principles established in Coca-Cola East & Central Africa Limited v Maria Kagai Ligaga [supra] to succeed in her claim for constructive dismissal, it was imperative for the Claimant to prove that she left the Respondent's employment as a result of the Respondent's failure to pay her salary as contractually agreed and that she had not acquiesced, waived or conducted himself to be estopped from asserting repudiatory breach. The Claimant herein failed these two tests as she did not indicate or suggest that she was leaving the Respondent's employment due to failure to receive salary and further, the circumstances under which she resigned pointed to a mutual separation.
33. In the circumstances, the Court finds that the Claimant has not demonstrated to the requisite standard that she was constructively dismissed from employment.



## Reliefs?

### Unpaid Salary

34. As the Court has found that the Respondent did not discount the Claimant's assertions that she was paid 50% of her salary from August to December 2020 and that her salary was withheld from July 2022 to June 2023, the relief under this head succeeds. On this score, I find it imperative to add that the Respondent's claim that the Claimant's salary for the month of June 2023 was recovered in lieu of notice does not hold, for the reason that it is evident from the email trail relied on by the Claimant that the notice requirement was waived mutually by both parties.
35. The claim for leave for 29 days also succeeds as the Respondent did not produce the Claimant's leave records, despite its obligations under Section 74(1) (f) of the *Employment Act*. As such, this claim was not discounted by way of evidence.
36. As the claim for constructive dismissal has failed, the claim for notice pay and compensatory damages cannot be sustained.
37. The claim for yearly leave allowance is equally declined as it is not evident that the same was contractually agreed upon.

### Orders

38. In the final analysis, Judgment is entered in favour of the Claimant against the Respondent as follows;
  - a. The Claimant is awarded the sum of Kshs 250,000.00 being unpaid salary from August to December 2020.
  - b. The Claimant is awarded the sum of Kshs 1,200,000.00 being salary withheld by the Respondent from July 2022 to June 2023.
  - c. The Claimant is awarded the sum of Kshs 96,666.67 being unpaid leave for a period of 29 days.
  - d. The total award is Kshs 1,546,666.67.
  - e. Interest on the amount in (d) at court rates from the date of filing the suit until payment in full.
  - f. The Claimant shall also have the costs of the suit.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 31<sup>ST</sup> DAY OF JULY 2025.**

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**STELLA RUTTO**

**JUDGE**

In the presence of:

For the Claimant Mr. Odari

For the Respondent Ms. Watiri instructed by Ms. Githii

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 15<sup>th</sup> March 2020 and subsequent directions



of 21<sup>st</sup> 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**

