



**Ojiambo v Islamic University of Kenya (Cause E187 of 2023)
[2025] KEELRC 2267 (KLR) (31 July 2025) (Judgment)**

Neutral citation: [2025] KEELRC 2267 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E187 OF 2023**

**L NDOLO, J
JULY 31, 2025**

BETWEEN

DR. JACQUELINE OJIAMBO CLAIMANT

AND

ISLAMIC UNIVERSITY OF KENYA RESPONDENT

JUDGMENT

1. Dr. Jacqueline Ojiambo, the Claimant in this case, was employed by the Respondent University as a Lecturer, at an agreed monthly gross salary of Kshs. 150,000 effective 19th February 2019. She worked until 10th May 2022, when she issued a resignation notice, which was to take effect on 9th June 2022.
2. In her resignation notice, the Claimant states that the Respondent's failure to pay her monthly salary as agreed, forced her out of employment. She therefore lays a claim of constructive dismissal.
3. The Claimant states her case in a Statement of Claim dated 6th March 2023. The Respondent filed a Statement of Defence dated 21st April 2023 but did not participate in the trial, despite due notification.
4. The circumstances leading to this state of affairs are documented in my ruling dated 29th May 2025; and I will therefore not rehash them in this judgment. The Respondent also ignored the directions of the Court to file final submissions. This judgment is therefore based on the parties' pleadings and the Claimant's testimony and written submissions.

The Claimant's Case

5. The Claimant states that after her employment on 19th February 2019, she was paid a net salary of Kshs. 109,887 for the months of February and March 2019. She adds that between April and October 2019, she was paid the reduced figure of Kshs. 100,000 without any justifiable reason. She claims accumulated arrears of Kshs. 69,209.



6. The Claimant further states that in September 2020 she was appointed Acting Deputy Vice-Chancellor, for a period of six (6) months at an agreed monthly allowance of Kshs. 50,000. She avers that she was only paid Kshs. 120,000 leaving a balance of Kshs. 180,000 which she claims.
7. The Claimant claims to have been assigned to teach an extra two units beyond her regular work load, for which she was to be paid separately. She states that she was only paid for one extra unit and therefore claims Kshs. 27,000 for the other extra unit.
8. By a memo dated 2nd April 2020, the Respondent reduced the Claimant's salary by Kshs. 47,347. While the reduction in salary was based on the effects of the COVID-19 pandemic and expenses said to have been incurred in renovations at the University, the Respondent undertook to restore full salaries and pay all arrears, upon resumption of physical classes.
9. The Claimant states that physical classes resumed in October 2020, but the Respondent did not restore her full salary nor pay accrued salary arrears.
10. The Claimant avers that despite the promises made by the Respondent to pay her accrued dues, she was informed by the Vice-Chancellor that the Respondent had decided not to pay the outstanding arrears.
11. According to the Claimant, the Respondent's decision amounted to constructive dismissal, as a result of which she tendered her notice of resignation with effect from 9th June 2022.
12. The Respondent further failed to pay the Claimant her salary for May 2022 and 9 days worked in June 2022.
13. On 7th July 2022, the Respondent wrote to the Claimant committing to pay her salary arrears occasioned by salary cuts, which commitment has not been honoured.
14. The Claimant accuses the Respondent of substantially and materially breaching its contractual obligations by:
 - a. Deducting and retaining Kshs. 9,887 of the Claimant's salary from April to October 2019 amounting to Kshs. 69,209;
 - b. Deducting and retaining Kshs. 47, 347 of the Claimant's salary for 25 months from April 2020 to April 2022 amounting to Kshs. 1,183,675;
 - c. Not paying the Claimant salary for May 2022 and for 9 days worked in June 2022, amounting to Kshs. 109,887 and Kshs. 32,966 respectively;
 - d. Making the work environment difficult for the Claimant to effectively discharge her duties, by subjecting her to financial difficulties and emotional strain.
15. The Claimant's case is that the Respondent subjected her to frustrations that compelled her and entitled her to resign by:
 - a. Refusing to be bound by essential terms of the contract of employment;
 - b. Unilaterally reducing the Claimant's salary;
 - c. Unduly and inordinately withholding the Claimant's salary and other emoluments;
 - d. Refusing to restore the Claimant to her initial agreed salary;
 - e. Refusing to pay outstanding salary arrears despite promising to do so;
 - f. Allowing salary arrears to accrue without any effort to mitigate the accruals; and



- g. Attempting to use the excuse of the COVID-19 pandemic to alter and repudiate the contract.
16. The Claimant further accuses the Respondent of unfair labour practices, by failing to issue her with a letter of appointment and pay slips.
 17. In addition, the Claimant faults the Respondent for failing to remit her NSSF dues for 2021 and 2022, amounting to Kshs. 24,320.
 18. The Claimant seeks the following remedies:
 - a. A declaration that the Respondent breached the contract of employment and constructively dismissed the Claimant from employment;
 - b. A declaration that the constructive dismissal of the Claimant from employment was unlawful and unfair;
 - c. A declaration that the Respondent's conduct was unlawful and amounts to unfair labour practices.
 - d. 12 months' salary.....Kshs. 1,318,658
 - e. Outstanding salaries.....1,395,734
 - f. Payment in lieu of notice.....109,887
 - g. Acting DVC allowance.....180,000
 - h. Unpaid extra load.....27,000
 - i. Unpaid leave for 3 years.....329,663
 - j. Costs plus interest

The Respondent's Case

19. In its Statement of Defence dated 21st April 2023, the Respondent admits having employed the Claimant, but denies that she was constructively dismissed.
20. The Respondent states that the Claimant tendered her resignation voluntarily, by a resignation notice dated 20th April 2022. The Respondent adds that the Claimant's terminal dues were computed to a sum of Kshs. 300,000 with a payment plan being communicated to and acknowledged by the Claimant.
21. The Respondent claims that it has been amenable to an amicable settlement of the dispute, but efforts towards this have borne no fruit.

Findings and Determination

22. There are two (2) issues for determination in this case:
 - a. Whether the Claimant has proved a case of constructive dismissal;
 - b. Whether the Claimant is entitled to the remedies sought.



Constructive Dismissal?

23. On 10th May 2022, the Claimant wrote to the Respondent as follows:

“Re: Resignation Notice

With the most profound regret, I am sending you this letter to inform you of my resignation effective 9th June 2022; constructive discharge tactics from the management have necessitated this. The working environment created by the administration is unbearable to the extent that I feel unable to perform my duties effectively. I feel that the management has breached its fiduciary duty to me over the last two years. I hoped that the conditions would improve during that time, only for them to worsen. I have decided to resign based on the following:

Firstly, salary payments have been inconsistent without any prior notice or apology. Against Kenya labour laws and best HR practices, the university has failed to issue contracts, appointment letters or payslips. Thus, I have no way of tracking how the amount I receive as salary is arrived at.

Secondly, I was appointed Acting DVC for six months, starting September 2020 to February 2021. The University council approved my appointment in October 2021. I was not compensated for taking up extra responsibilities but was subjected to numerous back and forth promises between VC, DVC Finance and HR. I was also discriminated against in December 2021 after using my time and fuel to attend graduation preparations meetings and prepare students to perform at the said graduation. My name was struck from the list of the graduation allowance.

Thirdly, in the last four months, my terms of employment have been changed without notice, consideration or room for negotiation. For example, in January 2022, I was allocated five units by my Head of Department on the understanding that I would teach three units as my regular load and two units as my extra load or part-time units. However, during a Senate meeting on February 10th 2022, we were informed that our load had been reviewed upwards (mischievously) to 4 units, and hence I was left with one part-time unit. I was not paid for the other unit despite having taught it for six weeks before this change. The change of terms was done mid-semester and without room for negotiation.

Fourthly, the university has shrewdly slashed my salary from 108,997ksh net to 62,540ksh since October 2020 to date. After the COVID-19 lockdown of March 2020, we were all put on half salaries with the promise that our full salary would be reinstated once physical learning resumed. We resumed physical classes on October 5th 2020. The Vice-Chancellor assured us on several occasions that the salary would be paid in full the following year, 2021, and we would get a refund for October to December 2020. To date, we remain on half-pay. My colleague and I got a rude shock in February this year when the VC categorically stated that “it was not written anywhere” after asking when we could expect the arrears. This statement implies that the management has no intentions of ever refunding our half salary and yet NEVER told us that our new salaries were 50% of what we had been earning previously.

I regret that I must hand in this resignation and will look back fondly on the good times at work with my students and colleagues. I am grateful for the valuable experience I have gained while working at the Islamic University of Kenya. I am confident that it will benefit me in my future endeavours...



Yours sincerely

(signed)

Dr Jacqueline Ojiambo”

24. In her letter, the Claimant makes a claim of constructive dismissal, against the Respondent. Black’s Law Dictionary (Tenth Edition) defines constructive dismissal or discharge as:

“An employer’s creation of working conditions that leave a particular employee or group of employees little or no choice but to resign, as by fundamentally changing the working conditions or terms of employment; an employer’s course of action that, being detrimental to an employee, leaves the employee almost no option but to quit.”

25. In her final submissions dated 6th March 2025, the Claimant referred to the persuasive decision in *Western Excavating ECC Ltd v Sharp* [1978] QB 761, where Lord Denning MR stated the following:

“If the employer is guilty of conduct which is a 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, then the employee is entitled to treat himself as discharged from any further performance. If he does so, then he terminates the contract based on the employer’s conduct... The employee is entitled in those circumstances to leave at the instant without giving notice at all or alternatively, he may give notice and say that he is leaving at the end of the notice. But the conduct must in either case be sufficiently serious to entitle him to leave at once.”

26. Closer home, our own Court of Appeal, in the well-known decision in *Coca Cola East & Central Africa Limited v Maria Kagai Ligaga* [2015] KECA 394 (KLR) has established the following principles to be applied in adjudicating claims of constructive dismissal:

- 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 the 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.



27. It is not in dispute that in the course of the Claimant's employment with the Respondent, her salary was reduced; first by the sum of Kshs. 9,887 between April and October 2019 and second by Kshs. 47,347 between April 2020 and April 2022.
28. In response to the Claimant's resignation notice, the Respondent wrote a letter dated 7th July 2022 under the reference 'Commitment to Honour Final Dues'. In that letter the Respondent acknowledged owing the Claimant salary arrears arising from salary cuts. The Claimant filed several email correspondences in which the issue of unpaid salary arrears was raised.
29. It is therefore evident that at the time the Claimant issued her resignation notice, the Respondent had failed to honour the most basic of its obligation, being payment of the agreed salary to the Claimant. There was no evidence of any consultation with the Claimant regarding salary cuts, which I must add were significant in amount and period.
30. In *Patrick Madanji & 7 others v Vice Chancellor, Great Lakes University of Kisumu & another* [2022] eKLR the importance of consultation of an employee, prior to variation of terms of employment was underscored. It was thus held that unilateral variation of terms amounts to repudiation of the employment contract and is an affront to the right to fair labour practices, guaranteed by Article 41 of *the Constitution*
31. Salaried employees plan their affairs around their predictable monthly emoluments. Where the monthly salary of an employee becomes a moving target as in the case, the employee cannot effectively discharge their duties and the employment relationship becomes untenable.
32. The situation was confounded by the Respondent's failure to issue the Claimant with a written contract or payslip. The Court was unable to understand how an institution of higher learning would engage a member of its academic faculty without these basic documents.
33. The Respondent's conduct prior to the Claimant's resignation makes a classic case of an employer forcing an employee out of employment, and I have no difficulty in reaching the conclusion that the Claimant has proved her claim of constructive dismissal.

Remedies

34. In the result, I award the Claimant eight (8) months' salary in compensation. In making this award, I have taken into account the Claimant's length of service and the fact that she was pushed out of employment by the Respondent's callous conduct; with particular focus on failure to pay her agreed salary over a prolonged period.
35. I further award the Claimant one (1) month's salary in lieu of notice.
36. The claim for salary arrears was uncontested and is allowed.
37. In the absence of leave records to the contrary, the claim for leave pay succeeds and is allowed.
38. The claims for acting DVC allowance and unpaid extra load were not supported by any evidence and are disallowed.
39. Finally, I enter judgment in favour of the Claimant as follows:
 - a. 8 months' salary in compensation.....Kshs. 1,200,000
 - b. 1 month's salary in lieu of notice.....150,000
 - c. Salary arrears.....1,395,734



d. Leave pay for 3 years $(150,000/30*21*3)$315,000
Total.....3,060,734

40. This amount will attract interest at court rates from the date of judgment until payment in full.

41. The Claimant will have the costs of the case.

42. Orders accordingly.

DELIVERED VIRTUALLY AT NAIROBI THIS 31ST DAY OF JULY 2025

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JUDGE

Appearance:

Mr. Ojiambo for the Claimant

Mr. Ayiecha h/b for Mr. Barongo for the Respondent

