



**Mwangi v Apex Vision Limited (Cause 121 of 2018)
[2025] KEELRC 2201 (KLR) (24 July 2025) (Judgment)**

Neutral citation: [2025] KEELRC 2201 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 121 OF 2018**

**L NDOLO, J
JULY 24, 2025**

BETWEEN

ANNE WAIYEGO MWANGI CLAIMANT

AND

APEX VISION LIMITED RESPONDENT

JUDGMENT

Introduction

1. The Claimant, Anne Waiyego Mwangi was an employee of the Respondent, Apex Vision Limited from April 2011 until 15th January 2017 when she resigned. Mwangi's claim as stated in her Statement of Claim dated 11th January 2018 is that she was constructively dismissed. The Respondent denies the claim by a Reply dated 14th August 2018.
2. At the trial, the Claimant testified on her own behalf but the Respondent elected not to call any witnesses. Both parties filed final submissions.

The Claimant's Case

3. The Claimant states that she was employed by the Respondent in April 2011. She claims to have been a diligent employee until December 2016, when the Respondent began issuing unsubstantiated warning letters regarding her performance.
4. The Claimant complains that she was not issued with a formal employment contract or payslips. She avers that sometime in the year 2015, she got information that the Respondent Company would be taken over by a new proprietor. The Claimant was however not issued with any letter varying the terms of her employment. She states that she worked continuously for a period of over five years.



5. The Claimant accuses the Respondent of denying her maternity and annual leave. Further, the Respondent is said to have failed to remit statutory deductions on the Claimant's account.
6. On 7th December 2016, the Claimant was issued with a warning letter citing poor performance. She was issued with a second warning letter on 6th January 2017. According to the Claimant, these letters were issued in bad faith, thus creating a hostile work environment.
7. The Claimant avers that out of fear of reprisal and unwarranted dismissal, she gave a resignation notice, on 15th January 2017 with the effective date of 15th February 2017.
8. The Claimant tabulates her claim as follows:
 - a. 12 months' salary for constructive dismissal.....Kshs. 186,000
 - b. Unpaid leave for 5 years, 10 months & 14 days.....90,000
 - c. 26 days' service pay for each year worked.....51,928
 - d. Maternity leave for 2 deliveries.....93,000
 - e. Certificate of service
 - f. Costs plus interest

The Respondent's Case

9. In its Reply dated 14th August 2018, the Respondent admits having employed the Claimant but defends the warning letters issued to her as lawful and regular.
10. The Respondent denies the Claimant's claim and states that she proceeded on maternity leave twice and utilised all her annual leave days.
11. Regarding statutory deductions, the Respondent states that the Claimant did not avail her National Social Security Fund (NSSF) and National Hospital Insurance Fund (NHIF) account details. The Respondent adds that it did not deduct any tax from the Claimant's earnings.
12. The Respondent asserts that the Claimant voluntarily resigned from her employment, citing medical reasons.

Findings and Determination

13. 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?

14. The Claimant claims that she was constructively dismissed. *Black's Law Dictionary* (Tenth Edition) defines constructive dismissal 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.”



15. In her final submissions dated 18th March 2025, the Claimant referred to the Court of Appeal decision in *Coca Cola East & Central Africa Limited v Maria Kagai Ligaga* [2015] eKLR where it was held that:

“Constructive dismissal occurs where an employee terminates the contract under which he is employed (with or without notice) in circumstances in which he entitled to terminate it without notice, by reason of the employer’s conduct...The employer’s behaviour in either case must be shown to be so heinous, so intolerable, that it made it considerably difficult for the employee to continue working...Resignation is regarded as constructive dismissal if the employer’s conduct is a significant breach of the contract of employment and that the conduct shows the employer is no longer interested in being bound by the terms of the contract.”

16. The Court of Appeal in *Maria Kagai Ligaga* (*supra*) went further to stress that the primary burden of proof in constructive dismissal claims lies with the employee.

17. The Claimant communicated her resignation by letter dated 15th January 2017, stating as follows:

“Dear Madam

Re: Resignation Letter

I am writing this letter to inform you that from February, 15th 2017 I will not be able to continue with my duties. I am thankful for the years I have been with you and the experience I have gained.

It is my request that you find another person to replace me with and to take over from there. I am resigning on medical grounds as I am unfit to carry on with the duties.

Yours faithfully,

Ann Waiyego Mwangi”

18. In her letter, the Claimant gives the reason for her decision to resign as ‘medical grounds’ that prevented her from performing her duties. The letter makes no mention of any action of the Respondent that made it untenable for the Claimant to continue working.
19. Granted that the Claimant complained about being denied annual and maternity leave, the Court found that these claims being service oriented were capable of being pursued independently. At any rate, the Claimant did not adduce any evidence showing her pursuit of these claims during her tenure with the Respondent.
20. Overall, I find and hold that the Claimant has failed to prove a case of constructive dismissal. The claim for compensation therefore fails and is dismissed.
21. By its own admission, the Respondent did not contribute to the National Social Security Fund on behalf of the Claimant, ostensibly because the Claimant was a casual employee. For the same reason, the Respondent suggests that the Claimant was not entitled to leave pay. In pursuing this line, the Respondent relied on a single casual salary voucher filed by the Claimant.



22. Section 2 of the *Employment Act* defines a casual employee as:
- “a person, the terms of whose engagement provide for his payment at the end of each day and who is not engaged for longer than twenty-four hours at a time.”
23. Even going by the salary voucher produced by the Claimant, which the Respondent seeks to rely on, it is evident that the Claimant was paid a monthly salary. The fact that the voucher is headed ‘casual salary voucher’ does not change this fact. At any rate, the Respondent did not produce any employment records to demonstrate that the Claimant was indeed a casual employee. The argument that the Claimant was a casual employee is therefore rejected.
24. Consequently, I will allow the claims for leave pay and service pay.
25. The claim for maternity leave was not proved and is disallowed.
26. Ultimately, I enter judgment in favour of the Claimant as follows:
- | | | |
|----|---|--------------|
| a. | Leave pay for 5 years $(15,500/30*21*5)$ | Kshs. 54,250 |
| b. | Prorata leave for 10 months $(15,500/30*1.75*10)$ | 9,042 |
| c. | Service pay for 5 years $(15,500/30*15*5)$ | 38,750 |
| | Total..... | 102,042 |
27. This amount will attract interest at court rates from the date of judgment until payment in full.
28. The Claimant is also entitled to a certificate of service plus costs of the case.
29. Orders accordingly.

DELIVERED VIRTUALLY AT NAIROBI THIS 24TH DAY OF JULY 2025

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JUDGE

Appearance:

Ms. Matasi for the Claimant

Ms. Wangare h/b for Mr. Kihara for the Respondent

