



**Muasya v Shell & Vivo Lubricants Kenya Ltd (Cause E6554 of 2020)  
[2025] KEELRC 2132 (KLR) (17 July 2025) (Judgment)**

Neutral citation: [2025] KEELRC 2132 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E6554 OF 2020**

**MN NDUMA, J  
JULY 17, 2025**

**BETWEEN**

**JOHN MUASYA ..... CLAIMANT**

**AND**

**SHELL & VIVO LUBRICANTS KENYA LTD ..... RESPONDENT**

**JUDGMENT**

1. This suit was brought vide statement of claim dated 26<sup>th</sup> November 2020. The claim seeks the following reliefs against the Respondent;
  - a. A declaration do issue that the Respondent engaged in exploitative labour practice and underpaid the claimants salary for performing duties of Production Supervisor between 15<sup>th</sup> August, 2016 to 30<sup>th</sup> March and the duties of Samson Muiruri between 23<sup>rd</sup> October 2014 to 1<sup>st</sup> April 2015 without pay.
  - b. Salary arrears as particularized in paragraph 17 (a) and (b) above.
  - c. Salary equivalent to 1 month termination notice period equivalent to Ksh. 402,958.54
  - d. General damages for wrongful and unfair termination-equivalent to 12 month's salary Ksh. 4,835,502. 48
  - e. Costs of the suit
2. CW1, the claimant testified under oath and adopted a witness statement dated 26<sup>th</sup> November 2020 as his evidence in chief. The claimant also produced exhibits '1' to '20' filed together with the statement of claim and further list of documents as part of his evidence. CW1 testified that he was employed as a Projects & Maintenance Manager on the terms set out in the letter dated 25<sup>th</sup> June, 2020 in accordance with section 10 of the [Employment Act](#).



3. CW1 testified that sometime in June, 2019 one of the Respondents suppliers reported that the General Manager of the Respondent was extorting money from him. That he reported the issue to the Respondent on the 14<sup>th</sup> August, 2019 and also raised other character, integrity and leadership malpractices by the General Manager to the LSC VP Mr. Chaturvedi, Ashishi as this was not the first time the General Manager was acting contrary to the principles and guidelines of the Respondent. That the General Manager thereafter decided to harass, intimidate and censure him into silence.
4. He testified that the General Manager with a view to intimidate him and censure him into silence accused him of failure to report a 'Near Miss' which issue was investigated exhaustively by a cross functional RCA team who through the RCA report exonerated the claimant from any wrong. That the General Manager then rejected the RCA report submitted to him and secretly directed a section of the Respondent's employees to implicate the claimant and prepare a report which would lay the blame of the 'Near Miss Incident' on CW1 to enable the General Manager terminate the claimant's services. He also testified that he was accused of deliberate failure to attend company meeting
5. That on 27/2/2020, the General Manager called the claimant to a meeting in which the General Manager informed the claimant that the Respondent had made the decision to terminate his services and advised the claimant to get in touch with the HR to collect his termination letter. CW1 says that he wrote to the HR as instructed and was instead presented with a separation agreement and coerced to sign the same constructively terminating the claimant's services with the Respondent.
6. On cross examination, CW1 reiterated his evidence in chief. On being referred to clause 10.7 of the contract of employment he confirmed that the contract of employment could be terminated by the giving of one month notice or payment in lieu of notice. He further said that, company policy provides that acting allowance are granted to grade 8 to 9 who are appointed to carry out a higher-grade work.
7. He, however, maintained that he was entitled to acting allowance and stated that he was paid ksh 402,915. 54. CW1 said that he was invited to participate in Company training program but was unable to do so. He referred to the response at page 16 of the Respondent's bundle that his competent cover had an emergency upcountry and he therefore proceeded on leave. That this sudden emergency and the fact that the scheduled training had enlisted all his entire production team to attend the training leaving daily production activities exposed made it challenging for him to attend the scheduled training.
8. Upon being referred to the separation package at page 115- 116 of the claimant's list of documents he said that he signed the separation agreement and was to receive ksh 3.8 million separation package and did receive the amount less the taxes. That this was to be in full and final settlement. CW1 also confirmed receiving payment in lieu of notice per clause 4.11 of the agreement and added that he was not paid for March 2020. He also confirmed that clause 7.2 of the agreement provided that it was reached voluntarily.
9. On re – examination, he said that he was coerced to sign the agreement and there was no other option. That he worked for 2 years as a production manager in addition to his role and that additional roles were purely production activities.
10. RW1 Fred Gituku adduced sworn evidence that he is the HR Manager for the Respondent for about 11 years. He referred to his witness statement dated 31/5/2023 which he adopted as his evidence in chief. He also produced exhibits contained in the bundles dated 13/5/23, in 31/5/2023 and 18/6/24. The exhibits are marked exhibits 'A' (1-6), 'B'(7-16) and 'C ' 17 to 25.
11. RW1 testified that on 26<sup>th</sup> September 2019 the Respondent sent the claimant a notice to show cause concerning his failure to attend Company organized training relating to 'World class Supply Chain



- Management on 4<sup>th</sup> to 6<sup>th</sup> September 2019. That on 3<sup>rd</sup> October 2019 he received an email from Mr. Phelix Ogolla forwarding a copy of the claimant's response dated 2<sup>nd</sup> October 2019 and requesting for advice on the next steps to be taken. He advised that given the explanation by the claimant on the 2<sup>nd</sup> October 2019, a warning letter would suffice.
12. The contract of employment was eventually terminated by a separation agreement dated 12<sup>th</sup> March 2020 at pages 7 to 8 of the Respondent's List and Bundle of documents. He added that the claimant was afforded an opportunity to seek independent advice before the execution. The claimant then took close to 7 days to consider the terms and returned the documents duly executed. That this agreement was to supercede all previous agreements.
  13. RW1 added that the Respondent did discharge its obligations under the agreement by paying the claimant the separation package in the sum of Ksh 3,817,027 as shown in pages 10 and 11 of the Respondent's list and bundle of documents and which is broken down as follows:
    - a. Ksh. 409,959. 00 being one month pay in lieu of notice
    - b. Ksh. 805,917.0 being resettlement allowance
    - c. Ksh. 2,303,765.00 being severance pay, worked out as one month's pay for every year worked;
    - d. Ksh. 204, 385. 00 being payment of 2020 PAYG bonus;
    - e. Ksh. 100,000,000 being transport allowance
    - f. Payment of leave earned but not taken
    - g. The aforementioned sums would be paid less applicable taxes
  14. RW1 testified that the claimant discharged his obligations to the Respondent by handing over as seen from the duly signed and processed Employment Leaver's Checklist at pg 9 of the Respondent's list and bundle of documents. The claimant was then paid a sum of ksh. 3,817, 027. That the claimant pursuant to clause 5 of the agreement as per the agreement undertook not to institute legal proceedings against the Respondent.
  15. RW1 further testified that the Respondent has whistleblowing policy in place and which when raised he would be aware of. The whistleblowing policy allows for anonymity to allay fear of victimisation. RW1 referred to CW1's email at page 35 of the claimant's bundle which is an email to Anish copied to Felix Ogolla. He said that the Claimant vide the email was reporting Ogolla to his boss and RW1 was not copied the email. RW1 stated that this was not anonymous reporting under the whistleblowing policy. That CW1 did not attend the training and that reporting a superior to his boss is irregular and not normal. The claimant should have dealt directly with Felix Ogolla.
  16. Upon cross examination, RW1 largely reiterated the evidence in chief adding that CW1 was not appointed to the role of production supervisor and so was not paid for it and there was no evidence that he was compensated for role as a production supervisor. That the claimant was accorded a face-to-face hearing.

## Determination

17. The parties filed written submissions which the Court has carefully considered and the issues for determination are as follows:-
  - i. Whether the Separation Agreement dated 12<sup>th</sup> March 2020 absolved the Respondent from any further liability arising from the employment relationship with the Claimant?



- ii. If the answer to (a) above is in the affirmative, whether the Claimant was constructively dismissed from employment.
  - iii. What remedies is the Claimant entitled to.
18. The court has considered the Claimant's case as set out that his employment was constructively terminated by the Respondent due to consistent harassment, intimidation and false accusation by the General Manager and he was ultimately forced to sign a separation agreement on 5<sup>th</sup> March 2020 against his will.
  19. That the said agreement was presented to the Claimant by the HR department on 27<sup>th</sup> February 2020 and same was predated 5<sup>th</sup> March 2020.
  20. The Claimant admitted that he did not sign the agreement upon receipt of it but took it with him and signed it on 12<sup>th</sup> March 2020.
  21. The Claimant stated that he signed the separation agreement under protest since he was powerless on the face of continued intimidation by the General Manager who had verbally terminated his employment.
  22. The Claimant submitted that the improper exercise of managerial power by the General Manager directly undermined the implied duty of mutual trust and confidence between the employer and the employee. The Claimant relied on the case of *Eastwood v Magnox Electric PLC* [2004] UKHC 35 in which the Court of Appeal in UK held that abusive and oppressive conduct by senior management fundamentally breached the contract of employment and this conduct entitled the employee to claim constructive dismissal and an award of damages for the breach.
  23. The Claimant said he had continuously expressed a desire to continue working as evidenced by his email to the General Manager on 16<sup>th</sup> October 2019 where he requested approval to apply for the role of LSL Operational Excellence Manager JL 3 but his wishes were ignored.
  24. the Claimant relies further on the decision in *Pauline Wangeci Warui v Safaricom Ltd* 2020 eKLR where the court held:

“The Claimant was called to a meeting, informed that her employment had been terminated, and then presented with a mutual separation agreement...The totality of these facts negates an atmosphere of free and unpressurised negotiations as per the Sandhu decision.

In this case the Claimant was not taken through a hearing. She did not choose to leave employment. She was not heard and found guilty of misconduct. She was not presented with a choice between mutual separation and dismissal.

Instead, she was called, informed of the separation and presented with an agreement to sign... Like in the Sandhu case, the Claimant had no room to negotiate and was presented with an agreement for signature without prior notice. A decision had already been made to dismiss her without a hearing and a mutual separation agreement was merely a formality.

From the foregoing, I find that the Claimant was in actual fact dismissed from employment and coerced into signing the mutual separation agreement which in any event was not mutual.”
  25. The Claimant alleges that he was not availed a fair grievance procedure to resolve the harassment and intimidation issues meted on him by the General Manager. The Claimant relies on the decision in



*Grace Gacheru v Kenya Literature Bureau* [2012] eKLR, where the court held that denying employees a fair grievance resolution mechanism amounts to an unfair labour practice stating,

“It would be an unfair labour practice for the employer to fail to avail the employee genuine grievance management procedure.”

26. The Claimant states that he was desirous of a resolution of the issues between himself and the General Manager and was not presented with any opportunity to do that but instead was coerced to sign a separation agreement which agreement was not mutual as alleged by the Respondent or at all.
27. The Claimant states that the General Manager victimized him for daring to expose the General Manger’s corrupt practices including an attempt to extort Kshs. 600,000.00 from a supplier. That the Claimant had reported the matter to management on 14<sup>th</sup> August 2019 vide an email only to face immediate retaliation in the form of very hostile work environment including unfair disciplinary process for not attending a company training programme despite of having reasonable explanation for the absence.
28. The Claimant states that he was unfairly given a written warning for that matter followed with verbal dismissal by the General Manager and coercion to sign a mutual separation agreement.
29. The Claimant submits also that the “Near miss” incident was a fabrication by the General Manager. That the RCA team exonerated him from any liability but the General Manager continued to harass the Claimant in respect of the matter.
30. That on 18<sup>th</sup> October 2019, the General Manager declined to recommend the Claimant for promotion on unfounded claims of incompetence hence denying the Claimant opportunity for career progression.
31. The Claimant submits that the he has made out a case of constructive dismissal and that he be awarded by the court for the unlawful and unfair dismissal.
32. Furthermore, the Claimant prays to be paid special damages in respect of acting allowance which he was denied by the Respondent. The Claimant relies on the decision in *Jonathan Spangler v Centre for African Family Studies (CAFS)* [2012] KEELRCC 1242 (KLR) in which the court affirmed that an employee who assumes additional responsibilities beyond the contractual duties is entitled to compensation. The court stated,

“The Claimant took over duties of acting director but he was never paid for it. This happened after employees were declared redundant. This is not in dispute and it is a fact that indeed the Claimant took over various duties and kept office running up and until a new director... was appointed. (paragraph 195)

To quantify the time and work by the Claimant on the job for the benefit of the Respondent using what previous directors such as Akoto or Batten earned would be to diminish the value addition and time deduction given by the Claimant...Damages are due (Paragraph 198).”

33. The Claimant submits that he took additional responsibilities of a production supervisor beyond his contractual role, specifically covering one Kevin Nderitu for the period August 2016 to March 2020 and again covering Samson Muiruri for the period October 2014 to April 2015. That these roles were performed without additional remuneration for a period of 49 months and prays to be awarded as prayed.



34. The Claimant cites the case of *Cocacola East and Central Africa Ltd v Maria Kagai Ligaga* [2015] eKLR which upheld the principle of constructive dismissal by fact of sustained harassment of an employee by a supervisor.
- That the court grants all reliefs sought by the Claimant.
35. The Respondent in the detailed submission states that the Claimant was categorized as a Job Group Five (JG5) employee which was a senior managerial role.
36. That the Claimant was entitled to 24 working days paid leave per year. That on 12/3/2020, parties entered into a separation agreement terminating the employment contract as from 31<sup>st</sup> March 2020.
37. That the Claimant was paid full terminal benefits upon entry into the separation agreement in the sum of Kshs. 3,817,027.00. That it was expressly agreed that:-
- i. The payment of the amounts set out in the agreement shall constitute a full and final settlement of all claims of any nature which the Claimant may have against the Respondent arising in any way out of his employment with the Respondent; and
  - ii. The Claimant would not institute any legal or other action against the Respondent arising from his employment with the Respondent or the terms of the agreement and fully absolutely discharges, releases and indemnifies the Respondent, its agents, employees or assigns from all liability, action, suit demands costs incidental thereto arising from his employment with the Respondent.
38. The court is satisfied that the Claimant took (7) days to consider this separation agreement shared with him on 5<sup>th</sup> March 2020 before sharing an executed copy of the agreement on 12<sup>th</sup> March 2020.
39. The Claimant subsequently received the sum of Kshs. 3,817,027.00 less statutory deductions which payment is not in dispute.
40. The court has considered the decision in case ELRC No. E321 of 2021; *Jon Ababas Zaidi v lake Turkana Wind Power Limited* in which the court held,
- “It is not uncommon that a contract of service can be ended through a mutual separation agreement between the parties. The agreement could set out the terms and conditions of the separation between the parties. The same being a contract between the parties must possess the ingredients of a valid contract, absence of the ingredients shall render its validity assailable in a court of law or any other appropriate forum.”
41. The court has also considered the case of *National Bank of Kenya v Hamida Bana and 103 others* Civil Appeal No. 72 of 2017 in which the court held:-
- “It is not in dispute that the Respondent’s accepted the terms offered in the circular according to their respective applications as well as acceptance letters issued by the appellant. Similarly, it was open for the Respondents to reject the aforesaid terms and indeed not take advantage of the VER scheme... A concomitant of the doctrine of freedom to contract is the binding force of the contract.”
42. The court has further considered the circumstances of this case as set out comprehensively by the Claimant and the Respondent and the principles applicable as set out in the constitutional court of



South Africa in Civil case No. 41 of 2016; *Myiwa Gbenga – Oluwatove v Reckitt Benkiser South Africa (Pty) Limited and another* where it was held that:-

“We must consider the importance of giving effect to agreements solemnly concluded by parties operating from the necessary position of approximate equality of bargaining power. Here, the power of the Labour Appeal Court’s approach is obvious. What is at issue here is a powerful consideration of public policy – the need for parties to settle their disputes on terms agreeable to them.

The public, and indeed our courts, have powerful interest in enforcing agreements of this nature. The applicant must be held bound. When parties settle an existing dispute in full and final settlement, none should be lightly released from an undertaking seriously and willingly embraced. This is particularly so if the agreement was, as here, for the benefit of the party seeking to escape the consequences of his own conduct. Even if the clause excluding access to courts were on its own invalid and unenforceable, the applicant must still fail. This is because he concluded an enforceable agreement that finally settled his dispute with his employer.”

The court went on to hold that,

“Employment is not a marriage. It can be dissolved by consent.”

43. In the present case, the court has considered the period of time the Claimant was given to consider the mutual separation agreement, a period of seven (7) days and signed the agreement away from the Respondent and sent a signed copy to the Respondent.
44. The court has also considered that the Claimant held a senior managerial position and was therefore not naïve and unaware of the consequences of signing the agreement.
45. Furthermore, the court has considered that the Claimant was paid and willingly received, substantial amount of money to consummate the said mutual separation agreement.
46. These circumstances considered together exclude the possibility of duress, coercion, fraud, or mutual mistake which are grounds permissible in law to vitiate an agreement of this nature.
47. In the case of *Aristide Marege Nyang’au v Lavington Security Ltd*, the court held that:-

“Coercion from the nature of its definition, is not a light matter. It must be pleaded with clarity and established with precision.”
48. The *Blacks Law Dictionary* 8<sup>th</sup> Edition defines coercion as “compulsion by physical force or threat or physical force.” This court in ELRC No. 1975 of 2011, *Wenslens Oduki Odinga v Kenyatta National Hospital* held:

“An employee alleging duress or inducement to sign a document in a non-custodial environment must provide details of such duress or inducement. It is not enough to say I was forced or I was confused.”
49. The Claimant in the present case, voluntarily in the absence of the Respondent, signed and forwarded the mutual separation agreement between himself and the Respondent. Therefore, the Claimant freely and voluntarily absolved the Respondent from any liability arising from his employment relationship with the Respondent. Accordingly, the case for constructive dismissal cannot be sustained in the circumstances of this case.



50. The Claimant was paid all agreed terminal benefits upon separation and the claims for payment of salary arrears; payment in lieu of one month termination notice; general damages for wrongful termination are without merit.
51. Accordingly, the entire suit by the Claimant lack merit and is dismissed.
52. Considering the relationship the Claimant had with the Respondent overtime, and the premature mutual separation, each party to bear their own costs of the suit.

**DATED AT NAIROBI THIS 17<sup>TH</sup> DAY OF JULY 2025.**

**MATHEWS NDUMA**

**JUDGE**

Appearance:

Mr. Ochieng for the Claimant

Mr. Luseno for the Respondent

Mr. Kemboi – Court Assistant

