



**Chemutai v Lipa Later Limited (Employment and Labour Relations Petition
E007 of 2024) [2025] KEELRC 2102 (KLR) (16 July 2025) (Judgment)**

Neutral citation: [2025] KEELRC 2102 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS PETITION E007 OF 2024**

**HS WASILWA, J
JULY 16, 2025**

BETWEEN

CATHERINE CHEMUTAI PETITIONER

AND

LIPA LATER LIMITED RESPONDENT

JUDGMENT

1. By a Petition dated 8th January 2025, the Petitioner sought for the following reliefs; -
 - a. A declaration that the Respondent's actions violated Articles 27, 28, 41 and 47 of *the Constitution*;
 - b. A declaration to the Respondent's actions amounted to constructive dismissal and unfair labour practices;
 - c. An order for award of compensation for the violation of the Petitioner's fundamental human rights;
 - d. An order for award of compensation for unfair labor practices;
 - e. An order compelling the Respondent to pay the Petitioner special damages of Kshs. 749, 105 being unpaid salaries for July, August and September 2024;
 - f. An order compelling the Respondent to pay the Petitioner special damages of Kshs. 200,000 being salary underpayments for the months of May and June;
 - g. Compensation for constructive dismissal being (12 months' gross salary): Kshs. 2,988,420;
 - h. One month's salary in lieu of notice: Kshs. 350,000;
 - i. Severance pay: Kshs. 175,000;



- j. An order compelling the Respondent to issue the Petitioner with a Certificate of Service under Section 51 of the [Employment Act](#), 2007;
- k. General damages for the violation of the Petitioner’s constitutional rights;
- l. Exemplary damages to punish the Respondent for its gross misconduct and deter similar actions;
- m. Costs of this Petition;
- n. Interest on all monetary awards at court rates from the date of filing until payment in full;
- o. Any other orders that this Honourable Court deems just and expedient in the circumstances of this case.

Petitioner’s Case

- 2. The Petitioner avers she was employed by the Respondent as a Product Manager in the Commerce Division on 20th September 2023, earning a gross monthly salary of Kshs. 350,000.
- 3. The Petitioner avers that she worked for the Respondent diligently and with dedication until September 2024 when she was constructively dismissed due to the continued mistreatment by the Respondent.
- 4. The Petitioner avers that the Respondent deliberately and in bad faith delayed salary payments: salaries for January, February and March were paid months later with piecemeal payments stretching into August 2024; and salaries for July, August and September 2024 remain unpaid to date despite numerous requests for payment.
- 5. It is the Petitioner’s case that on May 2024, the Respondent forced her to sign a purported consultancy agreement which unlawfully reduced her salary to a gross monthly salary of Kshs. 249,035. Despite the reduced amounts, the Respondent has neglected to pay her salaries since May 2024.
- 6. The Petitioner avers that despite numerous pleas on the amounts owed to her to the extent of being forced to beg for money to cover her daughter’s school fees, the Respondent only promised via email to partially settle the salary arrears, which promises remain unfulfilled to date.
- 7. The Petitioner avers that she was forced to continue working under tight deadlines while commuting to and from work which caused her mental and financial strain leaving her in a state of despair and helplessness.
- 8. It is the Petitioner’s case that, the Respondent’s actions created a hostile and dehumanizing work environment, leaving her with no reasonable alternative but to resign and she served her one month notice on 31st August 2024.
- 9. The Petitioner avers that her resignation was not voluntary but was a direct consequence of the Respondent’s violations of her rights.
- 10. The Petitioner avers that persistent delays in salary payments and the unilateral alteration of the terms of her employment constitutes a gross violation of her right to fair labour practices enshrined under Article 41 of [the Constitution](#) and Section 5(2), 10(5) and 18 of the [Employment Act](#).
- 11. The Petitioner avers that the Respondent’s failure to pay her rightful dues subjected her to untold indignity, compelling her to endure public shame and humiliation as she struggled to meet basic



financial obligations and caused her financial and emotional distress in violation of the right of dignity under Article 28 of *the Constitution*.

12. The Petitioner avers that Respondent's arbitrary action of unilaterally altering her employment terms, salary delays despite persistent delays and unfulfilled promises to settle arrears violated her right to fair administrative justice under Article 47 of *the Constitution* and her right to freedom from discrimination under Article 27.

Respondent's Case

13. The Respondent herein did not enter appearance in the matter.

Petitioner's Submissions

14. The Petitioner submitted that Article 41(2)(a) of *the Constitution* guarantees every worker the right to fair labour practices, which expressly includes the timely payment of remuneration. This is given effect by Section 18 of the *Employment Act*, which mandates prompt payment of remuneration. Therefore, the Respondent's repeated delays and eventual failure to pay the Petitioner's salary constitutes breach of these provisions and infringe upon her constitutional right to fair labour practices.
15. It is the Petitioner's submission that the Respondent's coercive imposition of a reduced salary under a consultancy agreement without the Petitioner's free and informed consent, violated her freedom of contract and fair administrative action entrenched in Article 27 of *the Constitution* and Section 10(5) and 13 of the *Employment Act*. Additionally, the Respondent's unilateral action is a breach of the implied term of mutual trust and confidence inherent in every employment contract.
16. It is the Petitioner's submission that the Respondent has not responded to the Petition, therefore, the facts and evidence remain uncontested and the same ought to be adopted as is by the Court.
17. The Petitioner submitted that the Respondent's failure to respond to the Petitioner's repeated demands for payment and the Petition herein evidences an acceptance of the facts alleged and bad faith conduct.
18. The Petitioner submitted that the legal test for constructive dismissal is found in the Court of Appeal's decision in *Coca-Cola East & Central Africa Limited v Maria Kagai Ligaga* [2015] Eklr whereby the court laid down the principles for constructive dismissal being: "(i) the need to identify the fundamental terms of the contract of employment; (ii) whether there was a repudiatory breach of those terms by the employer; (iii) whether there was a causal link between the breach and the resignation; (iv) whether the employee resigned within a reasonable time and did not waive the breach; and (v) that the burden of proof rests upon the employee."
19. It is the Petitioner's submission that the right to be remunerated for work done is a foundational term of any employment relationship; the employer's failure to honour that obligation repeatedly without justification amounts to a repudiatory breach of contract. It is undisputed that the Petitioner was employed at a gross monthly salary of Kshs. 350,000 which the Respondent unilaterally and unlawfully varied her salary downward to Kshs. 249,035 and subsequently failed to pay her salary altogether for the months of July, August, and September 2024.
20. The Petitioner further submitted that her resignation email cites the Respondent's persistent failure to pay salaries. The resignation came after months of financial strain, unmet promises, and a work environment that had become both uncertain and hostile. Therefore, in the circumstances, the Petitioner acted reasonably and in direct response to the Respondent's conduct, as required by the test set out in the aforementioned cases.



21. The Petitioner submitted that there exists a clear and unbroken link between the Respondent's unlawful conduct and the Petitioner's decision to terminate the relationship; this is a case of constructive dismissal.
22. The Petitioner submitted that the Respondent's persistent salary delays and lack of payment, unilateral impositions, and breach of trust rendered her working conditions intolerable; thus, her resignation was not by choice but by necessity. The evidence clearly establishes constructive dismissal; therefore, Petitioner is entitled to the full extent of reliefs sought with costs.
23. I have considered the averments and submissions of the petitioner herein. This petition proceeded undefended when the respondent failed to respond to the petition. The petitioner established that she was an employee of the respondent. She also demonstrated that despite working for the respondents her salary was never paid as expected leading to her to resign. She avers that it is the condition the respondents subjected her to that caused her to resign and was thus constructively terminated.
24. The evidence of the petitioner remained uncontroverted. In this respect it is indeed a breach of labour rights for an employee to work and not be paid. Article 41 of *the constitution* is clear that every employee is entitled to the protection of their labour rights and the article states as follows:

41. (1) Every person has the right to fair labour practices.

2. Every worker has the right—
 - a. to fair remuneration;
 - b. to reasonable working conditions;
 - c. to form, join or participate in the activities and programmes of a trade union; and
 - d. to go on strike.
3. Every employer has the right—
 - e. to form and join an employers organisation; and
 - f. to participate in the activities and programmes of an employers organisation.
25. The respondents having not paid the petitioner her salary when due, it is my finding that they breached her rights and constructively terminated her and she is therefore entitled to compensation.
26. Having found for the petitioner, I accordingly award her as follows:
 1. Unpaid salaries as pledged being kshs 749,105/-.
 2. Underpayment of salaries as pleaded being kshs 200,000/-.
 3. Compensation equivalent to 8 months' salary for the unfair constructive termination based on continuing injury at work = $8 \times 350,000 = 2,800,000/-$.
 4. 1 months' salary in lieu of notice = kshs 350,000/-.
 5. Damages for breach of her constitutional rights being 1 million.

Total Awarded = kshs 5,099,105/-

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 16TH DAY OF JULY 2025.

HELLEN WASILWA



JUDGE

