



**Kiugu v Jubilee Holdings Limited (Employment and Labour Relations Cause E6038 of 2024) [2025] KEELRC 2089 (KLR) (16 July 2025) (Judgment)**

Neutral citation: [2025] KEELRC 2089 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU  
EMPLOYMENT AND LABOUR RELATIONS CAUSE E6038 OF 2024**

**AN MWAURE, J  
JULY 16, 2025**

**BETWEEN**

**MACHEL MUTUMA KIUGU ..... CLAIMANT**

**AND**

**JUBILEE HOLDINGS LIMITED ..... RESPONDENT**

**JUDGMENT**

**Introduction**

1. The Claimant filed a memorandum of claim dated 27<sup>th</sup> June 2024.

**Claimant's case**

2. The Claimant avers that he was employed in the position of Manager, Marketing and Corporate Communication in the Respondent's company vide a contract of employment on 15<sup>th</sup> December, 2022.
3. The Claimant avers that his duties as Manager, Marketing and Corporate Communication included developing and executing a multi-platform communication strategy, collaborating with sales and product teams on market strategies, conducting customer and competitor research, organizing marketing events, and managing the marketing budget.
4. The Claimant avers that upon commencing work on 19<sup>th</sup> January 2023, he was additionally assigned three substantive roles: Manager, Marketing and Corporate Communications at Jubilee Asset Management Limited (a separate legal entity), Digital Strategy and Assets Manager, and Marketing Research & Strategy Analyst at Jubilee Holdings Limited, positions which should have been held by distinct individuals.
5. The Claimant avers that he objected to the unilateral addition of three substantive roles to his position without consent, clear expectations, job descriptions, or amendment of his appointment letter.



6. The Claimant avers that he was misled to believe the roles were temporary, yet performed them for over a year without additional compensation. In March 2023, one month into employment, he raised concerns about being overstretched to both his line manager and the CEO of Jubilee Asset Management Limited (JAML), both of whom assured him that recruitment for the substantive role holders was underway.
7. The Claimant avers that despite repeated assurances from his line manager and the CEO of JAML, the Claimant's three additional roles were never substantively filled.
8. Consequently, the Claimant avers that he continued discharging the functions of all four roles across eight companies within Kenya, Uganda, and Tanzania from 19<sup>th</sup> January 2023 until his resignation on 28<sup>th</sup> March 2024, a total of one year, two months, and nine days.
9. While earning a gross monthly salary of Kshs.550,000/= for his official position, the Claimant avers that the combined salaries for the three extra roles, based on the Respondent's job grading, amounted to Kshs.150,000/= per month, underscoring a significant disparity in compensation relative to the expanded workload.
10. The Claimant avers that during the mid-year performance review process on 13<sup>th</sup> July 2023, he submitted his balanced scorecard for his assigned role. His performance was rated as "far above expectations," a rating his line manager did not dispute. Notably, the line manager did not convene a performance review meeting as was customary or expected.
11. The Claimant avers that this performance assessment review dropped from 95% to 55% and he was invited to a performance assessment review and placed on a Performance Improvement Plan (PIP).
12. The Claimant avers that he faced harassment, disrespect, and derogatory remarks from his line manager, who also failed to intervene promptly in critical matters, causing delays in task execution. He was burdened with three additional roles beyond his official duties, leaving him overwhelmed.
13. Despite consistently high performance across all responsibilities, the Claimant avers that his line manager still intended to place him on a Performance Improvement Plan.
14. The Claimant avers that while on sick leave on 20<sup>th</sup> March 2024, he learned from his physician that someone identifying as an employee of the Respondent had called seeking confidential medical details, including verification of his visit, the nature of his illness, and the authenticity of his sick note.
15. The Claimant avers that he traced the call to Ms. Joyce Mugwe of the Respondent's Forensics Department. He contends that this was a serious breach of his right to medical privacy, done without his consent, and that it damaged his reputation by implying dishonesty. He further claims this incident reflects the Respondent's intent to fabricate grounds for his dismissal.
16. The Claimant avers that while he was on sick leave, the Respondent sent him a suspension letter suspending him for 30 days at half pay with immediate effect.
17. The Claimant avers that he was suspended to pave way for investigations to be done into two alleged IT infractions: sharing of documents using a cloud sharing platform "without approval"; and sending of emails from this official email address to his personal email address.
18. The Claimant avers that he was suspended on the grounds of gross misconduct, and was informed that it was necessary to remove him from the workplace to aid with investigations into misconduct.



19. The Claimant avers that due to the constant breaches of his contractual, constitutional and statutory rights, he resigned on 28<sup>th</sup> March 2024, which was effective immediately, his last day of employment being 28<sup>th</sup> March 2024.
20. The Claimant avers that after his immediate resignation, the Respondent remained silent for nearly four weeks before issuing a backdated acceptance letter demanding payment in lieu of notice and recovery of part of March's salary. The Respondent withheld payment for accrued leave and demanded a balance of Kshs.204,995.95/=, further refusing to issue a Certificate of Service until the amount was paid.
21. The Claimant avers that his resignation without notice was necessitated by hostile conditions and a month-long suspension, making it impractical to serve notice, and contends the Respondent's financial demands constitute unjust enrichment stemming from its own actions.
22. The Claimant avers that the Respondent failed to issue him with a Certificate of service, breaching section 51 of the [Employment Act](#).
23. Despite demand and notice of intention to sue being issued, the Respondent has failed, refused and/or neglected to make good the claim.
24. The Claimant prays that:
  - a. A declaration that the Claimant's employment came to an end by virtue of constructive dismissal;
  - b. Compensation for wrongful and unlawful constructive dismissal from employment equivalent to 12 months' gross pay, or such other sum as the court may deem fit;
  - c. An order of payment of leave pay in the sum of Kshs. 393,997.01 with interest at court rates from 29<sup>th</sup> March 2024 until the date of full payment;
  - d. An award of compensation for service rendered in the three additional positions in the sum of Kshs. 16,445,000/= or such amounts as the court may deem fit;
  - e. Compensation for unfair labour practices in wrongful placement on PIP, wrongful dismissal of the objection on PIP placement, denial of his rights to a fair grievance hearing, and wrongful suspension from employment;
  - f. Compensation for breach for his rights under section 4(3) and 6 of the Fair Administrative Actions Act respectively;
  - g. Interest at court rates in the sums awarded under paragraphs (b), (d), (e), (f) and (g), from date of filing suit until payment in full.
  - h. Issuance of a Certificate of Service as required under section 51 of the [Employment Act](#);
  - i. Costs of this cause

### **Respondent's memorandum of response**

25. In opposition to the Statement of Claim, the Respondent filed a memorandum of response dated 16<sup>th</sup> July 2024.
26. The Respondent admitted paragraphs 7,8, and 9 of the Statement of Claim except that the functions were not limited to what is set out in paragraph 9 of the claim.



27. The Respondent denies the Claimant's assertions regarding the performance of multiple managerial roles, entitlement to additional salaries, and claims of harassment, suspension, or forced resignation, insisting that all actions taken were lawful, procedural, and aligned with company policy and the *Employment Act*.
28. The Respondent maintains that any restructuring or role splitting did not imply the Claimant was executing additional duties and disputes allegations of privacy violations or improper disciplinary procedures.
29. The Respondent avers that the Statement of Claim is procedurally defective, overly argumentative, and inadmissible, and states it will seek to have it struck out while denying all reliefs sought.

#### **Claimant's evidence in court**

30. The Claimant, CW1, adopted his witness statement dated 27<sup>th</sup> June, 2024, together with the bundle of documents dated even date marked as exhibits nos. 1 to 27 respectively.
31. CW1 testified that, in addition to his contracted role as Manager, Marketing and Corporate Communication, he was assigned two more positions, Digital Strategy and Assets Manager and Marketing Research & Strategy Analyst, for 14 months without any contract amendments or additional compensation. He stated that although he consistently achieved high performance scores which were 121% in mid-year and 91% at year-end, he was suddenly placed on a Performance Improvement Plan with a contested score of 55% and felt coerced into signing it.
32. Despite raising grievances about overwork, unfair treatment, lack of support, and being burdened with multiple substantive roles, CW1 testified that his concerns were neither meaningfully addressed nor properly reviewed. Following a privacy breach involving unauthorized inquiries into his medical records while on sick leave and a subsequent suspension on half pay without a show cause letter, CW1 stated that the work environment became intolerably toxic. He ultimately resigned on 28<sup>th</sup> March 2024 without notice, citing the Respondent's conduct, including the suspension, as having made it impractical to serve his notice period.
33. CW1 further stated that the Respondent delayed the acknowledgement of his resignation, withheld his Certificate of Service for six months, and improperly claimed financial dues from him despite the circumstances surrounding his departure.
34. In cross-examination, CW1 acknowledged he was unaware he would be assigned additional roles from the Respondent's subsidiaries but accepted his salary as fair, noting his job description allowed for periodic review. He confirmed the extra roles were reflected in his scorecard. He also addressed allegations of sharing company information, stating he sought managerial approval, but such approvals were not included in the documentation.
35. In re-examination, CW1 clarified that his grievance letter was not an afterthought, as he had previously raised concerns with the CEO of Assets without receiving a response. He maintained that he was not paid in lieu of notice because his resignation stemmed from constructive dismissal.

#### **Respondent's evidence in court**

36. RW1, Caroline Ndung'u, the Respondent's Group Marketing and Corporate Communication, adopted her witness statement dated 25<sup>th</sup> November 2024 together with the bundle of documents dated even date marked as exhibits 1 to 14 respectively, as her evidence in chief.



37. RW1 testified that the Respondent was solely responsible for defining job roles and she also denied that the Claimant's medical information was accessed illegally. She stated that the Claimant was suspended for allegedly sharing confidential information through an unauthorized platform and that he was informed of the breach.
38. RW1 stated that she assessed his performance at 55%, later adjusted to 54% by his line manager. She noted that the Claimant submitted a grievance letter on 1<sup>st</sup> March 2024, which was addressed the same day and dismissed, with no subsequent appeal. Regarding his resignation, RW1 stated he did not give proper notice or pay salary in lieu, and his Certificate of Service was delayed until December due to ongoing investigations and unpaid dues. She also disputed that the Claimant held multiple roles, asserting he only performed the duties assigned to him.
39. The court directed the parties to put in their written respective submissions.

### **Claimant's written submissions**

40. The Claimant submitted that he performed three additional distinct roles alongside his main contract job without pay for 14 months, supported by internal KPIs and Balanced Scorecards. While the Respondent denies this, it fails to show who else fulfilled those duties or rebut the evidence, and even later split the roles after his exit. The Claimant cited the case of *Oyatsi V Judicial Service Commission* [2022] KEELRC 3, the Claimant asserts entitlement to remuneration for work done, emphasizing the principle that exemplary service in an unofficial capacity still demands fair compensation. In *Misheck V Kenya Airways Ltd\** [2024] KEELRC 129 1, the court held that lack of an appointment letter cannot negate acting allowances when the employer acquiesced, invoking *Combe V Combe* (1951) 2 KB 215 on estoppel to further support his claim for Kshs.16,445,000/=.
41. The Claimant submitted that the Respondent breached its own Human Resource Policy Manual by skipping mandatory mid-year and quarter-three performance reviews in 2023, failing to provide timely appraisal feedback, and escalating a dispute to an unauthorized officer. The Claimant relied on the case of *Oyatsi V Judicial Service Commission*(supra), where the court held that HR policies are binding on employers, and cited section 4(3)(a) of the Fair Administrative Actions Act arguing that being placed on a Performance Improvement Plan without adequate reasons violated his right to fair administrative action.
42. The Claimant submitted that in his grievance letter dated 1<sup>st</sup> March 2024, detailing harassment, neglect by his manager, and being overloaded with extra roles, was mishandled by the Respondent. He claimed the Respondent violated Clauses 7.2.5 and 7.2.6.1 of its Human Resource Manual by not considering his supporting documents, failing to provide the GCOO's ruling, and thereby denying him a fair opportunity to understand or appeal the decision. This procedural failure also breached section 4(3) (b), (d), and (g) of the *Fair Administrative Action Act*, which mandates that affected persons be given reasons, supporting material, and relevant evidence for administrative actions. The Claimant cited the case of *Grace Gacheri Muriithi V Kenya Literature Bureau* (2012) eKLR, arguing that denying a fair grievance process violates the right to fair labour practices under Article 41(1) of *the Constitution*. He maintains that these failures justify judicial intervention and compensation.
43. The Claimant submitted that the Respondent violated his right to privacy under Article 31 of *the Constitution* by contacting his doctor during approved sick leave to inquire about the nature and duration of his illness, despite having already submitted a valid medical certificate as required under Clause 5.2.3.2 of the Respondent's HR Policy Manual. The Respondent admits to making the call but claims it was solely to confirm attendance, a position unsupported by witness statements or documentary evidence.



44. The Claimant relied on the cases of Kenya Plantation and Agricultural Workers Union V James Finlay (K) Ltd [2013] KEELRC 422, where the court affirmed that medical records fall within protected personal information, and Mohammed Khamis Hemed V Almasi Beverages Ltd [2019] eKLR, which held that requesting medical details beyond a fitness certificate constitutes an unlawful invasion of privacy. The Claimant submits that the Respondent's actions amounted to an unjustified intrusion into his private medical information and seeks compensation for this breach.
45. The Claimant submitted that he was unfairly suspended on half-pay for 30 days while on sick leave, allegedly due to IT infractions involving file sharing, despite similar conduct by other employees going unpunished. The Claimant argued that this amounted to discrimination in violation of Article 27 of *the Constitution* and section 5 of the *Employment Act*, as reinforced by Jonah Ramogi Oduya V Tradewinds Aviation Services Ltd [2021] eKLR.
46. The Claimant submitted that the suspension also violated Clause 7.1.9 of the Respondent's HR Manual, which allows half-pay suspension only in fraud cases. The Claimant cited the case of Njuguna V Times U Sacco Ltd [2024] KEELRC 1249, where non-compliance with internal HR procedures rendered disciplinary action unfair. These actions, along with cumulative breaches, including overburdening him with extra roles without pay, mishandling his performance review and grievance, and infringing his privacy, compelled him to resign. The Claimant claims this resignation was not voluntary but a result of sustained mistreatment, thus constituting constructive dismissal as defined in Karimi V Katheri Farmers Co-op Society Ltd [2024] KEELRC 2195 and Milton M. Isanya V Aga Khan Hospital Kisumu [2017] eKLR.
47. The Claimant further submitted that the Respondent's refusal to pay out leave dues and issue his Certificate of Service was unlawful and violated section 51 of the *Employment Act*. The Claimant relied on the case of Janine Buss V Gems Cambridge International School Ltd [2016] eKLR to support his entitlement to damages, arguing that the denial of the certificate hindered his re-employment prospects and constituted further unfair labour practice.
48. For reliefs sought, the Claimant submitted that he has proved his case and therefore he is entitled to them. The Claimant urged this Honourable Court to allow the Claim as prayed.

### **Respondent's written submissions**

49. The Respondent defined constructive dismissal as set out in the case of Milton M Isanya V Aga Khan Hospital Kisumu (supra), where Maureen Onyango J expressed herself as follows:

“In constructive dismissal, the desire to resign is from the employee as a result of a hostile working environment or treatment by the employer. A constructive dismissal occurs where the employer does not express the threat or desire to terminate employment but frustrates the employee to the extent that the employee tender's resignation.”
50. Further, in Nathan Ogada Atiagaga V David Engineering Limited (2015) eKLR, the court also defined constructive dismissal as follows:

“Constructive dismissal occurs when an employee resigns because their employee's behaviour has become so intolerable or made life so difficult that the employee has no choice but to resign. Since the resignation was truly voluntary, it is in effect a termination. For example, when an employer makes life extremely difficult for an employee to force the employee to



resign rather than outright firing the employee, the employer is trying to effect a constructive discharge.”

51. The Respondent also relied on section 41 of the *Employment Act*, which deals with the procedure of terminating an employee and section 4 of the Fair Administrative Actions Act provides that a person’s right to administrative action is fair, lawful, timely, and reasonable. It requires administrators to provide affected individuals with prior notice, reasons for actions, an opportunity to respond, access to evidence, and the right to legal representation or appeal. It also guarantees participation in proceedings, including cross-examination, and emphasizes that these rights uphold the constitutional principles in Article 47 of *the Constitution*, ensuring procedural fairness in all administrative decisions.
52. The Respondent also relied on sections 43,45, and 47(5) of the *Employment Act* which require that an employer must prove the reasons for termination/dismissal, prove that the reasons are valid and fair, so long as the grounds are justified. The Respondent contends that it followed proper disciplinary procedures, supported by both oral and documentary evidence, and maintains that the Claimant voluntarily resigned from his position on 28<sup>th</sup> March 2024, choosing to do so instead of completing the ongoing disciplinary process.
53. The Respondent relied on the case of Kenfreight (EA) Limited V Benson K. Nguti (2016) eKLR, it was held:

“that it is not enough to terminate employment by notice or payment in lieu thereof; termination should be based on valid reasons and fair procedure.”
54. The Respondent submitted that it complied with section 41 of the *Employment Act* and section 4 of the Fair Administrative Actions Act by giving the Claimant a chance to respond to the alleged IT breach. The Respondent contends that the Claimant’s admission during cross-examination to sharing company information without authorization supports the legitimacy of the suspension. Therefore, the Respondent maintains that it met its legal obligations and that the Claimant’s claim of unfair and illegal constructive dismissal is unsubstantiated. Additionally, the Respondent references an unrelated past incident involving the Claimant’s alleged role in the unauthorized loading of goods on 26<sup>th</sup> April 2018 to further challenge his credibility.
55. The Respondent relied on the case of Kipkepe Limited V Peterson Ondieki Tai (2016) eKLR where the court observed that the burden of proof lies on the party making an allegation or asserting a legal claim. According to Sections 107 and 108 of the *Evidence Act*, any person seeking a court’s judgment in their favour must prove the facts supporting their case; otherwise, they risk losing if no evidence is presented. In essence: he who asserts must prove. The Respondent submitted that the Claimant had not proved his claim on a balance of probabilities.
56. The Respondent relied on section 47(5) of the *Employment Act* provides that in cases of unfair termination or wrongful dismissal, the employee must prove that the dismissal occurred and was unjust, while the employer carries the burden of justifying that the termination was lawful and based on valid reasons. The Respondent contends that the Claimant did not meet the burden of proof required under section 47(5) of the *Employment Act* to establish claims of wrongful and unlawful constructive dismissal. They argue that the Claimant failed to provide sufficient evidence on a balance of probabilities, whereas the Respondent presented adequate justification for the suspension, thereby negating the Claimant’s dismissal claim.
57. The Respondent submitted that the Claimant is not entitled to the relief sought and urged this Honourable Court to dismiss the case with costs.



## Analysis and determination

58. The court has considered the pleadings of both parties together with the rival submissions by both counsels; the issues for determination are as follows:
- i. Whether the Claimant was constructively dismissed by the Respondent
  - ii. If (i) above is in the affirmative, whether the Claimant is entitled to the relief sought
  - iii. Who should bear the costs of the suit?
59. In *Milton M Isanya V Aga Khan Hospital Kisumu (supra)* and *Nathan Ogada Atiagaga V David Engineering Limited (supra)* in both cases defined what constitutes constructive dismissal. In *Coca Cola East & Central Africa Limited V Maria Kagai Ligaga [2015] KECA 394 (KLR)* the Court of Appeal lay down the principles of constructive dismissal as follows:
- 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 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."
60. The Claimant was employed as a Manager Marketing and Corporate Communication as per his letter of appointment dated 15<sup>th</sup> December 2022 reporting to Head of Marketing and Corporate Communication. He was to work in Nairobi but as part of the appointment letter that he would be asked by the company to serve in any of its other offices or group companies as required.
61. The Claimant relied in his evidence on his write up contained in his exhibits Nos. 34-38 yet the same seem to have been prepared by the Claimant and he indicated he served Kenya Jubilee Holdings, Jubilee Life Kenya, Jubilee Health Kenya and Jubilee Management. He also served Jubilee life Uganda and Jubilee Life Tanzania according to his write up.
62. The Claimant was well aware he was in a Managerial role and was to work from Nairobi or any other offices or groups of company as would be required.
63. He was not given any other contract to cover the other three roles being Manager Marketing and Corporate Communications (Jubilee Asset Management Limited and Digital Strategy and Asset



Manager (Jubilee Holdings Limited and Marketing Research and Strategy Analyst (Jubilee Holdings Limited).

64. The law is that he who alleges must prove as provided in the Law of Evidence Section 107, 108 and 109. The allegations that the Claimant served three other roles is not supported by any concrete and factual evidence and or documentation. It would be presumptuous of the court to hold that the Claimant deserves to be paid compensation for three additional positions at Kes.16,445,000/= . The Claimant has not proved how he is entitled to the above and the court finds no reason to grant that particular claim.
65. The Claimant also claims he was unfairly placed on Performance Improvement Plan (P.I.P) and he faced unfair labour practice and so prays for compensation. The Respondent were in their right to place the Claimant on Performance Improvement Plan. The court is not an inspector for employers and cannot stop them evaluating their employees and taking other necessary steps to ensure their employees keep on the cutting edge. There was no unfair labour practice because the Claimant was evaluated by his line manager for the year 2023 and eventually placed on Performance Improvement Plan.
66. In 2023 13<sup>th</sup> July, the Claimant assessed his performance and according to himself it was “far above expectations.” His line manager was Caroline Ndungu. He says the Respondent did not raise issues on the score at that point.
67. He says on 29<sup>th</sup> January 2024 he had a performance review meeting with his line manager to review his 2023 scorecard. He had scored himself at 95% but after the discussions with his line manager he resubmitted his score to 91%.
68. He says on 1<sup>st</sup> March 2024 the Claimant received an invite from Peter Keundu from the Respondent’s Human Resource Department summoning him to a performance review meeting at 12.30p.m. Now it was 10.11a.m. The notice was too short according to him but nevertheless he attended. He was informed his review was at 55% and was below expectation. He asked his line manager how his rating had gone so down from 91% but the line manager did not give him an explanation. He was now to be placed on Performance Improvement Plan and his rating according to Mr. Juan Cazcerra the Group Chief Operations Officer was to remain at 55%. He objected to the rating and after review by the Group Chief Operations Officer it was reduced again to 54%.
69. On or around 1<sup>st</sup> March 2024 he was placed on Performance Improvement Plan and the Claimant objected to being placed on Performance improvement Plan and wrote a letter claiming grievance, harassment, disrespect and unfair treatment. He especially raised issues on his line manager. This is as per his letter dated 1<sup>st</sup> March 2024. He received a response dated 19<sup>th</sup> March 2024 and was told the issues he raised were merely to subvert the Performance Improvement Plan (P.I.P) and the complaint was regarded as suspicious and was closed.
70. The court is going into all these details to make it evident that there was questionable treatment of the Claimant by the Respondent. On 1<sup>st</sup> March 2024 he was placed on Performance Improvement Plan and after a hearing in the presence of the Group Chief Operations Officer, Head of Marketing and Corporate Communications and Senior Human Resources Business Partner Central Operation his complaint was dismissed on 19<sup>th</sup> March 2024.
71. Apparently, Claimant went to see a Doctor and on 20<sup>th</sup> March 2024 his Doctor Dr. Githua communicated to the Claimant and he was called by one Joyce Mugure from Jubilee Insurance who wanted to ascertain if the Claimant had been treated at his hospital. He says he was asked to describe Claimant’s appearance in detail and what medical treatment he received. She also wanted to know how many days he had given him for sick leave.



72. It is clear the Respondents had lost trust in the Claimant and had to even involve his doctor to know about his medical conditions and whether he had indeed gone to see the Doctor. There was no good will any more between the parties.
73. By 26<sup>th</sup> March 2024 the Claimant was placed on suspension and was sent for one month leave at half pay. He was told the suspension was to enable them to investigate issues to do with IT security Alert including uploading company files into unsanctioned cloud sharing platform among others.
74. The reason given for the suspension were not verified and also too many things were happening that could have caused stress and anxiety to an employee. The Claimant said it candidly in his resignation letter as follows “The company’s oppressive conduct towards me and persistent violations of my rights made me resign but otherwise I would have stayed on.”
75. Considering all the foregoing, the court is satisfied all what the Claimant was put through by the Respondent confirmed principles set out for constructive dismissal as already cited hereinbefore and in particular as laid in case of CocaCola East & Central Africa Limited -vs- Maria Kagai Ligaga Supra
76. The court holds that the Claimant was constructively dismissed as the Respondent created an environment that was hostile and he was forced to resign.
77. Flowing from the foregoing, this court finds the Claimant has proven his case and therefore award him the reliefs sought as follows:
- a. A declaration that the Claimant’s employment came to an end by virtue of constructive dismissal;
  - b. One month’s salary in lieu of notice amounting to Kshs.550,000/=
  - c. The claim for other additional positions/roles claimed to have performed were not proved and are declined.
  - d. Leave pay is not proved and so is disallowed.
  - e. Compensation for wrongful and unlawful constructive dismissal from employment equivalent to 2 months’ gross pay X 550,000/=amounting to Kshs.1,100,000/= considering the Claimant worked for the Respondent for a short period.
  - f. The Respondent to issue the Claimant the certificate of service in accordance with Section 51 of the Employment Act. If not already issued.
78. The Claimant shall have costs of the suit together with interest at 14% per annum from the date of delivering judgment until final payment.

Orders accordingly.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAKURU THIS 16<sup>TH</sup> DAY OF JULY, 2025.**

**ANNA NGIBUINI MWAURE**

**JUDGE**

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 has 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.

A signed copy will be availed to each party upon payment of Court fees.

