



**Nangabo v Sana Industries Limited & another (Cause E430 of 2022)
[2025] KEELRC 2117 (KLR) (16 July 2025) (Judgment)**

Neutral citation: [2025] KEELRC 2117 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E430 OF 2022
HS WASILWA, J
JULY 16, 2025**

BETWEEN

JAMES BENARD NANGABO CLAIMANT

AND

SANA INDUSTRIES LIMITED 1ST RESPONDENT

PARIT INDUSTRIES LIMITED 2ND RESPONDENT

JUDGMENT

1. The Claimant instituted this claim vide a Memorandum of Claim dated 22nd June 2022 and prays for judgment against the Respondents for: -
 - a. A declaration that the Respondents actions amount to constructive dismissal;
 - b. A declaration that the Respondents actions amount to discrimination and unfair labour practices;
 - c. Kshs. 1,920,000 being the Claimant's twelve-month salary as a Graphics Designer for the 1st Respondent;
 - d. Kshs. 64,000,000 being the Claimant's unpaid dues for roles performed at the 2nd Respondent from April 2015 to October 2021 with the standard salary for a General Manager being Kshs. 800,000;
 - e. The Claimant's house allowance at a monthly rate of Kshs. 50,000 since October 2005 to October 2021 – Kshs 9,600,000;
 - f. Dues from October 2021 to retirement age of 60 years being Kshs. 28,800,000 for his role at the 1st Respondent;



- g. Dues from October 2021 to retirement age of 60 years being Kshs. 144,000,000 for his role as a General Manager of the 2nd Respondent;
- h. Compensation for the unlawful arrest, psychological trauma and financial hardship occasioned by the Respondents unfair treatment, humiliating treatment and malicious allegations made against the Claimant;
- i. Compensation for unfair labour practices;
- j. Compensation for unpaid leave days;
- k. Unpaid statutory deductions;
- l. Special damages of Kshs. 97,000;
- m. General damages;
- n. Costs of the suit;
- o. Interest at court rates; and
- p. Any other or further relief that this Honourable Court may deem just and fit to award in the circumstances.

Claimant's Case

2. The Claimant states that he was employed by the 1st Respondent on 13th October 2005 as a Graphics Designer. He worked diligently, honestly and discharged his duties as required, due to his commendable performance, his scope of duties and responsibilities widely expanded over the years.
3. The Claimant avers that sometime in 2015, the 1st Respondent incorporated a new company, being the 2nd Respondent, so as to cut on expenses it was incurring as a result of outsourcing printing, designing and packaging services for its products. The 1st Respondent had then widely expanded and to manage its operations better, it moved a section of the company to Ruiru alongside the 2nd Respondent.
4. The Claimant avers that the two companies were to operate independently with separate and distinct employees but their operations were to be in tandem.
5. The Claimant states that owing to his expertise and work ethic, the 1st Respondent seconded him and tasked him with setting up the 2nd Respondent's structures, employees and the general oversight. He was basically to work as the 2nd Respondent's General Manager.
6. The Claimant avers that the 1st Respondent did not issue him with a letter of secondment and his salary was still channelled through the 1st Respondent and he still performed his roles at the 1st Respondent.
7. The Claimant avers that he still maintained his role at the 1st Respondent and also performed duties that cut across all departments of the 2nd Respondent. However, his salary did not match the kind of roles and duties he performed; he received salary for his role as the 1st Respondent's Graphic Designer but his name was never featured on the 2nd Respondent's payroll as its employee.
8. The Claimant avers that all through his employment, he was never allowed to go on leave owing to the nature of his duties and instead he was compensated through infrequent cash deposits into his bank account.



9. He avers that he would feel fatigued in many instances and require some down time but his requests for time off were turned down and given no consideration. The 1st Respondent's General Manager, Mr. Chung, brushed off his requested and informed him as a manager he was to work or he would lose his job if he continued insisting.
10. It is the Claimant's case that this was discriminatory as other managers of Korean descent with equal responsibilities were allowed to travel out of the country to attend to personal matters whereas he was forced to take pay in lieu of leave, which was discriminatory.
11. The Claimant avers that the Respondents were further discriminatory towards him as they never remitted his statutory deductions and was required to pay for them himself whereas the same was remitted for the managers of Korean origin. Despite this, he continued to perform his roles at both companies.
12. The Claimant avers that at the end of each year, the 2nd Respondent prints calendars for the 1st Respondent which normally commences towards the end of the year. For the year 2021, the same commenced in October, however, mid October 2021, there was a problem with the printing machine and as such the process of punching and binding stalled a bit.
13. He informed the in-house engineer, who indicated that he would head to the premises on 13th October 2021 for purposes of fixing the machine. On this date, while in his office performing his administrative duties, the Claimant was informed by one of the junior staff that the CEO, Mr. Choi, was quarrelling about the calendar making process in progress.
14. It is the Claimant's case he rushed to the site where he tried to explain to Mr. Choi his concerns why the calendar making process had stalled. However, Mr. Choi asked him to shut up and leave and instructed the junior staff to take up the said operation; when he intended to walk away, Mr. Choi continued to direct questions at him while hurling insults at him. When the Claimant tried answering, the CEO got agitated.
15. Feeling disrespected and humiliated was beyond the machine, the Claimant respectfully asked the CEO if there was any issue between them. The CEO responded with insults and threats while charging towards him as if intending to assault him.
16. The Claimant avers that he excused himself out of embarrassment and proceeded to raise the issue via a phone call with the 1st Respondent's Finance Manager, Ms. Fadhlum Mohammed aka Lorna, who promised to revert after addressing the issue with the CEO.
17. Lorna subsequently reverted blaming him for talking back to the CEO and informed him that he would be issued with a warning letter in account of his unprofessional conduct.
18. Towards the end of the day, the Claimant approached the CEO in good faith to square out the issue but he chased him away. Thereafter, he received a warning letter from the CEO's office on 14th October 2021 at 9 am and required to write an apology letter to the CEO, which he did in the interest of peace, non-confrontation and out of respect of his employers.
19. The Claimant avers that he thought the matter had been put to rest, however at around 11am, he was summoned by the CEO who accused him of stealing printing plates costing Kshs. 3,000,000.
20. Before the Claimant could explain himself, the CEO asked him to record a statement and at the same time went ahead to call the police to deal with the situation. The Claimant was then arrested on allegation of stealing by servant without being afforded an opportunity to defend himself.



21. It is the Claimant's case that the arrest was inhumane and embarrassed him as he was arrested like an armed robber in the presence of his juniors and taken to Ruiru Police Station where he spent the night. He was released the following day on a police bail of Kshs. 50,000.
22. The Claimant avers that no charges were preferred against him in relation to the said allegations. The charges were subsequently dropped after the police informed him that they had not found any evidence to link him to the accusation and even refunded his cash bail.
23. The Claimant avers that at the point of his arrest, he was not afforded a chance to pick his personal belongings including his motor vehicle which were left at the Respondents' premises.
24. The Claimant avers that owing to the amount of stress and pressure suffered, he fell sick and was rushed to Agakhan University Hospital on 16th October 2021 where he was recommended six days bed rest. He informed the General Manager of his illness and inquired about his resumption of duty which letter did not elicit any response.
25. The Claimant avers that he proceeded to the Respondents' premises on 27th October 2021, however, he was denied access and issued with a letter dated 14th October 2021 informing him of his suspension till further notice. He was further denied a chance to pick his belongings from the premises which were availed much later and a sum of Kshs. 97,000 was missing from his bag while his motor vehicle was towed to Ruiru Police Station for purposes of collection.
26. The Claimant avers that despite being cleared of the charges, the Respondents have never called him back even for a disciplinary hearing and he has never received his monthly salary which has put him through significant hardship and inconvenience psychologically and financially.

Respondents' Case

27. In opposition to the Claim, the Respondents filed a Response to Statement of Claim dated 24th August 2022.
28. The Respondents admitted that the Claimant was its employee and avers that he would routinely insubordinate his superiors and cause disturbance at the workplace grinding the activities of the factory to a halt.
29. The Respondents aver that the Claimant did not properly discharge his duties and would intermittently steal aluminium printing sheets under his custody.
30. The Respondents aver that the 2nd Respondent was incorporated to streamline the 1st Respondent's roles and operations as a hair products manufacturer while the 2nd Respondent handled design and marketing. The 2nd Respondent remains a branch of the 1st Respondent with the same management.
31. It is the Respondents' case that the Claimant was never appointed as the 2nd Respondent's General Manager but was serving in his capacity as the Graphic Design Officer on secondment to the 2nd Respondent by the 1st Respondent reporting to the Respondents' CEO and General Manager, Mr. Choi.
32. The Respondents aver that the Claimant only performed duties assigned to him which were within his job description and was sufficiently remunerated for his service under the terms mutually agreed by the parties.
33. It is the Respondents' case that an employer is entitled to deploy an employee in any role within his job description as long as both parties agree to the terms of engagement. In this case, there is nothing



- different with the role played by the Claimant to claim to be the General Manager when he performed only duties designated for his role as a graphic designer.
34. The Respondents aver that that they did not terminate the Claimant's employment but he failed to report to work and absconded duty upon receipt of a warning letter after he had been reported to the police for a suspected case of theft by servant where he is the key suspect rendering the employment contract automatically terminated.
 35. The Respondents aver that the Claimant would take leave or in the alternative requisition for pay in lieu of accrued leave days. They deny any averments that they discriminated against the Claimant.
 36. The Respondents aver that in October 2022, they noticed printing sheets were missing and the Claimant by virtue of his position, was the person with the sole responsibility of ensuring the security of the printing sheets. Therefore, on 13th October 2021, the CEO requested him to explain the circumstances the same went missing.
 37. In response, the Claimant verbally abused the CEO and threatened actual violence against the CEO and staff; he then incited his fellow employees to gang up against the CEO and senior managers and cause harm to the Respondents' property and premises. As a result the chaos and violence caused by the Claimant, the Respondents were forced to invite the police to intervene and the Claimant was put in custody for the situation to be brought under control.
 38. The Respondents aver that the Claimant was issued with a suspension letter on 14th October 2021 as investigations took place into the theft and the disturbance caused. The Claimant vide a letter dated even date, wrote to the CEO apologizing for his conduct; the management considered his plea, accepted his apology, withdrew the suspension letter and instead issued him with a warnig letter dated 13th October 2021 issued on 14th October 2021 which he accepted and signed.
 39. The Respondents aver that despite this, the Claimant never reported to work after the incident and after the lapse of 7 days without communication, they concluded that the Claimant had abandoned work and thus terminated his employment contract by conduct.
 40. The Respondents aver that they cooperated with the police and investigations were carried out with staff who privy to the fact sent to record statements, however, they do not control the findings of the police since for charges to be preferred, evidence must be beyond reasonable doubt.
 41. The Respondents aver that the Claimant never communicated he was unwell as alleged and that he never reported to work on 27th October 2021 or on any other date after 14th October 2021.

Evidence in Court

42. The Claimant (CW1) adopted his witness statement dated 22nd June 2023 as his evidence in chief and produced his filed bundle of documents dated even date as his exhibits.
43. During cross examination, CW1 testified that he was employed by the 1st Respondent in 2005 earning a salary of Kshs. 30,000. Over the years, his salary increased and by 2021 he was earning Kshs. 160,000.
44. CW1 testified that he had never had a job description but he understood the scope of his knowledge and that the employer could give him various jobs.
45. CW1 testified that he was seconded to the 2nd Respondent in 2015 and his job was to design materials for the 1st Respondent through the 2nd Respondent; recruitment; designing materials and printing internally. Further, the 2nd Respondent printed materials for third parties other than the 1st Respondent.



46. CW1 testified that he raises objections verbally on his employment such as his secondment, salary increment, and his role as the 2nd Respondent's manager whereas he was employed as a graphic designer, however, his concerns were never addressed.
47. CW1 testified that he never received he received pay slip but he did not present any documents in court in respect to PAYE, NHIF and NSSF.
48. CW1 testified that there were no missing printing plates, the Respondents used to take stock and even the police took stock and none were missing. However, he could not remember the last time they took stock.
49. The Respondents' witness (RW1) Agnes Kagwiria stated works as the 1st Respondent's Human Resource Officer and adopted her witness statement dated 24th August 2022 as her evidence in chief and produced the Respondents bundle of documents dated 5th December 2022 as her exhibits.
50. During cross examination, RW1 testified that the Claimant was arrested on 14th October 2021 when it was discovered 20 pieces of aluminium sheets under his custody were missing.
51. RW1 testified that the Respondents did their own investigations on the matter but she does not have the investigation report. The police and DPP also did not charge the Claimant.
52. RW1 testified that the Claimant was never invited for a disciplinary hearing and his suspension was indefinite. There was no letter lifting the suspension
53. RW1 testified that there is no evidence before the court that the Respondents remitted the Claimant's statutory deductions; that the Claimant's house allowance was inclusive in his salary; and that the Claimant indeed went on leave.

Claimant's Submissions

54. The Claimant submitted on two issues: - whether the Claimant has proved his case on a balance of probabilities; and which party should bear the costs of the claim.
55. On the first issue, the Claimant submitted that the Respondents discriminated against him on the basis of race because managers of Korean origin were allowed to take leave days and travel out of the country during the said leave days. On the other hand, he was never allowed to take any time off from work for the entire duration of his employment with the Respondents.
56. The Claimant submitted that since his employment 2005 all through to the time his employment was unfairly terminated in October 2021, he was never allowed to go on leave owing to the nature of his duties; instead, he was compensated for the same through infrequent cash deposits into his bank account. The denial of leave days by the Respondents contravened Section 28 of the [Employment Act, 2007](#), which mandates that employees are entitled to annual leave.
57. He relied in *Joaqim Mbithi Mulinge v Transoceanic Projects & Development [K] Limited [2017] eKLR*, where the court held:

“The law under Section 28 of the [Employment Act](#) 2007 does not sanction the practice of forfeiture of unutilized leave. The law entitles Employees, after 12 consecutive months of service with the Employer, to a minimum of 21 days of fully paid annual leave. There is no provision for forfeiture. The policy of forfeiture of annual leave days, adopted by some Employers, has no foundation in law.”



58. The Claimant submitted that in *Pascal Lucas Mwabuni & 2 others v Pentagon Elite Security Services Limited* [2020] KEELRC 1581 (KLR), the Court held:
- “In the absence of leave records to show that the Claimants had utilized their annual leave, the claim thereon also succeeds and is allowed.” He therefore prays to be compensated for accrued leave days.
59. The Claimant submitted that the Respondents discriminated upon him on grounds that as a general manager, he was being paid a monthly salary of Kshs. 160,000 while the other managers of Korean Origin were being paid a salary of Kshs. 800,000. He relied in ELRC Appeal No. E001 OF 2023-West Kenya Sugar Company Limited versus Lihungu, where the Respondent was paid less than other employees performing similar work, solely because he was not a member of the union. The Court found this to be discriminatory, violating Article 27 of *the Constitution* and Section 5(3)(b) of the *Employment Act* which prohibits discrimination in terms and conditions of employment.
60. The Claimant submitted that fairness requires that people doing similar work should receive equal pay; he was not just a graphics designer but a Manager as confirmed by the Respondents at paragraph 2 of the letter dated 14th October 2021. The fact that he was earning less than the other managers of Korean Origin was discriminatory.
61. The Claimant submitted that the Respondents’ actions constituted unfair labour practice as they communicated in their letter dated 14th October 2021 that they would communicate to him upon the conclusion of the investigations where he would be required to present his defence at a disciplinary hearing over the same matter. However, during cross-examination, RW1 confirmed that to date, almost four years later, the Respondents have never invited the Claimant for a disciplinary hearing over the allegations of theft that had been levelled against him.
62. The Claimant submitted that the Respondents’ failure to invite the him for the said hearing or reinstate his employment pursuant to the close of the alleged investigations is tantamount to unjust termination of employment without cause or procedure. This was contrary to Section 41 of the *Employment Act* which mandates that employers explain the reasons for the reasons for considering termination to the employee and allow them to present their case; and Section 43 of the *Employment Act* which requires employers to prove the reasons for termination in any claim any claim arising from termination.
63. The Claimant submitted that RW1 confirmed during cross examination that the Claimant was not paid house allowance neither were his statutory deductions ever remitted during the period of the Claimant’s employment. Based on this admission, he urged the court to grant these prayers.
64. The Claimant submitted that the Respondent’s witness admitted during cross examination that he never handled the aluminium printing sheets which were alleged to have been missing and was the basis of his suspension. Therefore, based on the extent of the unfairness suffered by the Claimant he is entitled to the maximum compensation under the Section 49 (1) (c) of the *Employment Act* which provides that an award of compensation for unfair termination, which can be up to 12 months’ salary.
65. The Claimant submitted that when he to collected his belongings, he discovered that Kshs. 97,000 was missing from his bag and that his motor vehicle was not towed to the police station but rather, the CEO’s driver was tasked with driving to the station. He therefore prays for special damages; which claim has not been challenged or controverted and should be allowed.
66. The Claimant submitted that the Respondents’ caused his arrest and detention on account of fabricated and malicious allegations, as confirmed by RW2. This treatment towards him was



humiliating caused him psychological trauma and the Respondents have not controverted the same and/or the said unlawful arrest and he therefore seeks compensation for the unlawful arrest and psychological trauma.

67. On costs, the Claimant relied on Section 27 of the *Civil Procedure Act* and Halsbury's Laws of England (4th Ed.) Vol. 37 (at p. 552) which provides:

“Costs follow the event. Although in general the court has discretion as to costs, no party is entitled to recover any costs of or incidental to any proceedings from any other party to the proceedings except under an order of the court. If in the exercise of its discretion the court sees fit to make any order as to cost, then subject to the rules relating to costs, the court must order the costs to follow the event except where it appears to the court that in the circumstances of the case some other order should be made as to the whole or any part of the costs.”

Respondents' Submissions

68. The Respondents submitted on three issues: - whether there was discrimination and unfair labour practices during his employment; whether the Claimant's employment was unfairly and unlawfully terminated on account of constructive dismissal; and whether the Claimant is entitled to the reliefs sought.
69. On the first issue, the Respondents submitted that an employer it has always provided fair and proper working conditions to all its employees. The claimant's claim that he was discriminated by the respondent is unmeritorious and remains malicious which he has not proved as he has failed to lead evidence to prove how discrimination occurred at work place.
70. The Respondents submitted that the Claimant has failed to prove the claim of discrimination at work place; he has not provided any evidence to show that he was denied leave days due to his race. The contract of employment between the Claimant and the Respondent has provided for the leave days and if an employee fails to take leave days he would be compensated appropriately. On its part, the Respondent has proved that majority of its employees are of African descent and its Human Resources officer confirmed vide her testimony that all employees would apply for leave, herself included, and would go on leave.
71. The Respondents submitted that the Claimant's claim that he was paid a salary of Kshs. 160,000 yet the Korean managers were paid a salary of Kshs. 800,000 has not been proved. The Claimant has not availed any contract of employment and payslips showing that any Korean manager, with a similar job description as his was being paid Kshs. 800,000, therefore, such a claim remains pure hearsay without any backing of evidence.
72. The Respondents submitted that the burden to prove discrimination squarely rests on the Claimant. The Claimant never availed evidence to back up this claim. He has proved through his contract of employment on his scope of work being that of a graphic designer and not a general manager. The Claimant has never worked as a general manager and as such does not amount to discrimination.
73. It is the Respondents' submission that the Claimant was never discriminated in any form at place of work. Having failed to meet the requisite evidentiary burden, the Respondents pray that this court dismisses this issue.



74. On the second issue, the Respondents submitted that the Claimant was not constructively dismissed, he in fact absconded duty when he was required to show cause why he should face disciplinary action for insubordination and theft of company property.
75. The Respondents relied on the laid down the principles or questions relevant to determining constructive dismissal set by the Court of Appeal in *Cocacola East & Central Africa Limited vs. Maria Kahai Ligaga* (2015) eKLR. 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 the employer’s conduct?
 - c. The employer’s conduct must be a fundamental or significant breach going to the root of the contract of employment of which shows that the employer no longer intends to be bound by one or more of the essential terms of contract
 - d. An objective test is to be applied in evaluating the employer’s conduct
 - e. There must be a causal link between the employers conduct and the reason for the employee terminating 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 the repudiatory breach or constructive dismissal are varied.”
76. The Respondents submitted that it is trite law that there must be causation between the employer’s actions and the employee’s decision to resign from employment. The Claimant was suspected on theft of company property and suspended and thereafter absconded duty never to return to work. There is no causal link between the Claimant’s absconding duty, and the purported actions by the employer, so as to claim constructive dismissal; it is not the employer’s fault that the Claimant elected to abscond duty.
77. The Respondents submitted that the Claimant vide his apology letter dated 14th October 2021 admitted culpability; as such, he is estopped from alleging constructive dismissal when he in fact acknowledges wrongdoing on his part.
78. The Respondents submitted that the Claimant was subjected to disciplinary proceedings as a result of his conduct which amounted to insubordination. However, rather than participate in the proceedings, he elected to wilfully terminate his own contract of employment by absconding duty. They relied in *Richard Nyaundi Marasi vs Board of Management Geturi Mixed Secondary School*, (2017) eKLR where it was held that suspension of an employee from duty pending investigation does not amount to repudiation of his contract of employment or some compulsion on him to resign.



79. The Respondents submitted that the Claimant was arrested on suspicion of stealing printing plates from the employer. While the matter was pending investigation, the Claimant elected to institute this suit, without permitting the proceedings to proceed to their logical conclusion. The institution of this suit was therefore premature as it was not preceded by any resignation notice and the same was in anticipation of the disciplinary action that the employer intended to commence against him.
80. It is the Respondents' submission that reporting to work is a fundamental term of the employment contract, therefore, absconding is gross misconduct by the Claimant. For this reason, it cannot be disputed that the Claimant erred as observed in *Ronald Nyambu Daudi v Tornado Carriers Limited* [2019] eKLR where the court held:
- “Desertion of duty is a grave administrative offence, which if proved, would render an employee liable to summary dismissal.”
81. The Respondents submitted that the Claimant has not presented any evidence to show that indeed he was terminated wrongfully thereby failing to meet his burden of proof as required by law. Additionally, he has been unable to explain the reason behind his absconding. On the other hand, the Respondents demonstrated throughout these proceedings that the Claimant absconded duty for a period of more than a week without justification, therefore, the allegation that the termination was unlawful, unfair and/or illegal is false.
82. On the third issue, the Respondents submitted that it is trite that the burden of proof in matters of constructive dismissal, unlike ordinary claims for unlawful termination, falls on the Claimant. In this case, the Claimant has not led any evidence whatsoever to support the averment that he was summarily dismissed.
83. The Respondents submitted that discrimination is a factual allegation, that must be proved by way of evidence, none of which has been led to support the fact that the Claimant applied for leave and was denied. Additionally, no job descriptions have been filed for comparison purposes to demonstrate that the Claimant and the alleged Korean managers had similar jobs but differing salaries; and no set of professional and academic qualifications has been filed, showing that the Claimant matches the same qualifications as the purported Korean Managers for comparison purposes. Further, no other evidence, beyond mere assertions, has been led to prove any discrimination whatsoever; not even a letter of complaint from the claimant complaining of any discriminatory conduct during his extensive tenure as the Respondents' employee of over 12 years.
84. It is therefore the Respondents' submission that the prayer for a declaration that their actions amounted to discrimination and unfair labour practices should be dismissed for want of evidence.
85. The Respondents submitted that whenever the Claimant was awarded a promotion, it would come with additional responsibilities and additional pay, which he gladly accepted. The Claimant never even once filed an objection to the job description, but would comfortably take up the roles as awarded, therefore, there is no basis for an award of 12 months' salary as graphic designer.
86. The Respondents submitted that the Claimant never protested the secondment to the 2nd Respondent and continued performing duties thereunder for 6 years. Therefore, he is not moving the court in good faith by claiming compensation from the 2nd Respondent when he fully understood the assignment he was given, received benefit from the 1st Respondent for work done, and never protested.
87. The Respondents submitted that the Claimant has always been paid a gross salary hence he is not entitled to house allowance. Additionally, his claim for Kshs. 50,000 house allowance per month is



misguided and ought to be dismissed on grounds that house allowance has been held to be 15% of the employee's salary, in this case, Kshs. 24,000.

88. The Respondents submitted that law does not envision compensation for dues from date of termination to retirement; it only envisages a maximum compensation up to 12 months' salary. They urged the court to dismiss the prayers for the same.
89. The Respondents submitted that the Claimant's prayer for compensation for unlawful arrest, psychological trauma, and financial hardship is tortious claim that entails parties including arresting officers, who are not parties to the employer- employee relationship. The claim not being one arising out of the employer – employee relationship, is not suited for determination by this court.
90. It is the Respondents' submission that a claim for compensation for unlawful arrest does not fall within the jurisdiction of this court as it does not relate to the employer, employee relationship. This court lacks jurisdiction to entertain the claim and as such, the same ought to be dismissed.
91. The Respondents submitted that the Claimant's labour rights were not denied. But in any event, should the court be minded to grant any compensation, the court to exercise its discretion by denying the Claimant any damages or granting only nominal damages on account of the Claimant's own lack of good faith, pursuit of unjust enrichment and extortion of the employer as evidenced on the face of the statement of claim and the reliefs sought, as well as his undisputed conduct of abusing the employer's CEO in front of his staff.
92. It is the Respondents submission that it is trite law that special damages should be pleaded and proved before the court. no evidence has been led, including receipts, to support incurring such special damages, and linking the same to the Respondents.
93. The Respondents submitted that the Claimant always proceeded for leave at the end of the year. If the Claimant was entitled to payment of leave, they relied on the case of *Kwekwe Mwakela v Krystalline Salt Ltd [2015] KEELRC* where the court held as follows: -

“The court will only award leave served within 3 years immediately before the claimants filed their respective suits. It means therefore that any leave earned before May 2011 is lost due to limitation period. It means therefore that all the claimants who worked for over 3 years before termination will only get paid for 63 leave days plus one-month salary in lieu of notice. The rest of claimants worked for about one year 2 months and therefore get only paid for 21 leave days plus one-month salary in lieu of notices.”
94. The Respondents further submitted that under Section 28(4) of the *Employment Act*, leave can only be claimed up-to 18 months back from the current year.
95. The Respondents submitted that the Claimant never availed proof that he applied for leave. It is unjust for the court to award a prayer for leave where an employee never applied for such leave. They relied in *Togom v Radar Limited ELRCA No. E003 of 2023* where the court held that under ILO Convention 132 (Holiday with Pay Convention (revised) 1970, (132), the operative word is consultation, and therefore, an employee must submit to the employer an application for leave or the intention to proceed on leave. Without evidence of the employee applying for leave, a claim for untaken leave should be dismissed.
96. The Respondents submitted that the statutory deductions can only be claimed by the requisite statutory bodies and not the claimant. In any event, no evidence has been led to support non-remittance of such dues.



97. On costs, the Respondents submitted that it is trite law that costs follow the event. The Claimant has not led sufficient evidence to prove his case. They therefore urge the court to find that the Claimant's claim unmerited and the same be dismissed with costs.
98. I have examined all the evidence and submissions of the parties herein. The claimant has indicated that he was issued with a warning letter by the respondents on 14/10/2021 ostensibly for talking back to the CEO. He was thereafter arrested by police when the respondents alleged that he was engaged in theft. He was however never charged with any offence.
99. He was thereafter released on 15th October 2021 on police bail. He avers that he fell sick after this owing to the stress and pressure exerted against him. He even informed the boss of this illness and asked when he could resume duty.
100. The letter was never responded to and he tried to go to the respondent's premises to seek clarification on the issue. He was however denied access and only issued with a letter of 14/10/21 informing him that he had been suspended from employment until further notice. (APP JN 8)
101. The supervisor's letter of 14/10/21 indicated as follows:

Dear Sir,

Re: Investigations into the Theft of used Printing sheets,

Reference is made to the incident occurring on the 14th OF October 2021 at the Ruiru office.

The management has launched an investigation into the theft of used aluminum printing sheets which were under your care and custody as the Manager in that department.

To allow these investigations you are hereby suspended from your duties until further notice.

The company will communicate to you upon the conclusion of the investigation where you will be required to present your defence at a disciplinary hearing over the same matter.

Yours Faithfully.

Agnes Kagwiria

For: Parit Industries.Co.

102. The respondents indicated that it was true that the claimant was issued with an indefinite suspension letter. He also indicated that this suspension letter was never lifted. The respondents also admitted that the claimant was never invited for any disciplinary hearing. The claimant indicated that the respondents decided to stop remitting his salary for which he asked about as per the letter he wrote to the respondents dated of 2/11/2021 inquiring about the suspension and his October 2021 salary but this was never paid.
103. The stoppage of the claimant's salary by the respondents is in my view is an indication that the respondent intended to sever their relationship with the claimant which they did and which in my view points to constructive termination. The claimant was never subjected to any disciplinary hearings and was thus condemned unheard. The claimants submissions that he was constructively dismissed therefore is proved and I declare the action of the respondents indeed amounted to constructive dismissal.



104. The claimant has averred that he performed dual role working for the 2nd respondent from April 2015 to October 2021 and was not paid. The claimant however fail to adduce any evidence that he served as 2nd respondents general manager to warrant payment of the dues claimed.
105. The claimant also sought to be paid house allowance which he avers he was never paid. The claimant has also claimed for payment of his house allowance which he avers that he was never paid. Whereas the respondents admit having an employment relationship with the claimant there is no indication that they issued him with an employment contract detailing the terms of engagement.
106. Section 10(7) of the *Employment Act* 2007 states as follows:
- (7) If in any legal proceedings an employer fails to produce a written contract or the written particulars, prescribed in subsection (1) the burden of proving or disproving an alleged term of employment stipulated in the contract shall be on the employer.
107. The law is clear that an employer is obligated to issue an employee with an employment contract and when the employer fails to do so, in case of any conflict to the terms of the contract the employee's the onus to prove otherwise lies on the employer. In the case of the claimant's, the respondents having failed to issue the claimant with an employment contract, it can be assumed that there was no provisions for payment of house allowance as submitted by the claimant and therefore the claimant is entitled to payment of house allowance at 15% of his salary = $15/100 \times 160,000 = 24,000 \times 36$ months = kshs 864,000/- the rest of the claim being time barred.
108. The claimant is also entitled to compensation for unfair termination and given the inhumane manner in which the respondent treated him after serving them for over 16 years, I find 10 month's salary as adequate which I grant at $10 \times 160,000 = 1.6$ million.
109. I also find that the claimant is entitled to his leave not taken in last year = Kshs 160,000/-. Total payable= kshs 2,624,000/- less statutory deductions. The respondent will pay costs of this suit plus interest at court rates with effect from the date of this judgment.

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

HELLEN WASILWA

JUDGE

