



**Kakai v Ergerton University (Employment and Labour Relations Cause E045 of 2023) [2025] KEELRC 2057 (KLR) (11 July 2025) (Judgment)**

Neutral citation: [2025] KEELRC 2057 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU  
EMPLOYMENT AND LABOUR RELATIONS CAUSE E045 OF 2023**

**AN MWAURE, J  
JULY 11, 2025**

**BETWEEN**

**GEOFFREY KAKAI ..... CLAIMANT**

**AND**

**ERGERTON UNIVERSITY ..... RESPONDENT**

**JUDGMENT**

**Introduction**

1. The Claimant filed a Statement of Claim dated 19<sup>th</sup> September 2023.

**Claimant's case**

2. The Claimant avers that he was an employee of the Respondent for 12 years from year 2011 until sometime or about 2023 when he was unfairly, unjustly or constructively dismissed from employment by the Respondents.
3. The Claimant avers that at the time of the dismissal, he was employed as a Deputy Chief Medical Laboratory Technologist in the Medical Department, earning a gross salary of Kshs. 100,000/=.
4. The Claimant avers that through a letter dated 26<sup>th</sup> March, 2023, he notified the Respondent via the Registrar (Human Capital & Administration) of his intention to resign for what he considered to be a fundamental repudiatory breach of the terms of the contract.
5. The Claimant accuses the Respondent of serious employment breaches, including unauthorized salary changes, failure to pay pension contributions as per the Egerton University Pension Deed, and non-remittance of loan deductions that harmed his credit status.
6. The Claimant avers that upon submitting a resignation letter, the Registrar indicated it was procedurally invalid, requiring submission through designated hierarchical channels.



7. Later, influenced by emotional distress and his bipolar disorder, the Claimant avers that he retracted the resignation via emails dated 28<sup>th</sup> April and 2<sup>nd</sup> May 2023, expressing a desire to continue working and join legal proceedings concerning the unpaid pension.
8. However, the Claimant avers that the Respondent accepted his original resignation without acknowledging the retraction. Despite further pleas, such as a letter to the Vice Chancellor, the Claimant received no responses, which he says deepened his financial difficulties and emotional stress due to the employer's failure to resolve his grievances.
9. The Claimant prays that judgment be entered against the Respondents as follows:
  - a. A declaration that the Respondent's actions, which included non-payment of the Claimant's salary, failure to remit loan deductions on his salary on account of his loans, and failure to remit owed pensions, resulted in the creation of a hostile work environment. This hostile environment led to the Claimant's resignation notice and should be deemed as constructive dismissal, thereby entitling the Claimant to general damages for unlawful dismissal.
  - b. The Respondent is compelled to pay the Claimant:
    - i. Unremitted pension funds accruing from June 2017 to August 2023 in the sum of Kshs.1,932,683/=
    - ii. Deferred salary in the sum of Kshs.1,287, 954/=
    - iii. Non-remitted loan deductions on his salary for his bank loans (Family Bank and Faulu Microfinance) in the sum of Kshs.914,000/=
  - c. A declaration that the letter/notice of resignation issued by the Claimant dated 26<sup>th</sup> March, 2023, is voidable to the extent that the Respondent withdrew it for failure to appropriately navigate requisite channels and also due to the fact that the Claimant wrote it/issued it while not in a good state of mind.
  - d. A declaration that the letter of resignation issued by the Claimant to the Respondent dated 26<sup>th</sup> March, 2023, was validly withdrawn by the Claimant, via email to the Respondent on 2<sup>nd</sup> May 2023.
  - e. A declaration that the Claimant is still in the employ of the Respondent.
  - f. Any other just and expeditious relief
  - g. Costs and interests.

### **Respondent's Response to the Memorandum of Claim**

10. The Respondent admits the contents of paragraphs 3, 5, 6, 7, and 8 of the memorandum of claim.
11. However, the Respondent denies the rest of the allegations, including claims regarding salary deductions, pension breaches, and procedural unfairness, placing the Claimant to strict proof.
12. Additionally, the Respondent argues that no valid demand letter or government notice to sue was issued per the [Government Proceedings Act](#) and asserts that the Claimant's claims and requested declarations are illegal and unlawful.
13. Consequently, the Respondent urged this Honourable Court to dismiss the suit with costs.



### **Claimant's Evidence in Court**

14. The Claimant, CW1, adopted his written statement dated 19<sup>th</sup> September, 2023, together with the bundle of documents dated even date marked as exhibits 1 to 11 respectively as his evidence-in-chief.
15. CW1 testified that he wrote a resignation letter while suffering from bipolar disorder and undergoing treatment, which impaired his judgment. He stated that he highlighted his grievances, such as a reduction in pension contribution from 20% to 10%, and non-remittance of loan deductions to Faulu, resulting in financial hardship. Upon realizing procedural errors in submitting his resignation, CW1 attempted to rescind it via email to the Registrar, stating his intention to continue in employment. Despite this, the Respondent accepted his resignation, marking 7<sup>th</sup> August 2023 as his last working day, and allegedly did not pay his dues.
16. In cross-examination, CW1 affirmed his mental illness at the time of resignation and acknowledged the absence of supporting documentation. He appealed to the Vice Chancellor on recounting of his resignation on 27<sup>th</sup> July 2023 but received no response. CW1 also noted that the Respondent later paid his deferred salary on behalf of his daughter and confirmed that email is an accepted communication method within the institution.
17. In re-examination, CW1 stated that the email is an accepted mode of communication by the Respondent.

### **Respondent's Evidence in Court**

18. RW1, Janet Bii, the Respondent's legal officer, adopted her witness statement dated 9<sup>th</sup> September 2024 as her evidence in chief.
19. RW1, during cross-examination, confirmed that the Respondent owed the Claimant Kshs. 1,574,804.48, although the Claimant asserted a higher amount of Kshs. 1,932,683/=. She explained that the discrepancy might relate to the Respondent's financial challenges, which have affected multiple employees. RW1 stated that the deferred salary of Kshs. 179,878/= and the loan obligations to Family Bank were settled, though she lacked documentary evidence. She acknowledged that the only outstanding amount was related to the Claimant's pension benefits.
20. The court directed the parties to put in their respective written submissions.

### **Claimant's Submissions**

21. The Claimant submitted that having served the Respondent for approximately 14 years, contends that his resignation was not voluntary but the result of a hostile work environment and repeated breaches of the employment contract, including failure to pay or deferment of salary, non-remittance of pension and loan deductions, and humiliation caused by CRB listing.
22. The Claimant submitted that with his bipolar disorder and medical treatment, the Claimant argues his decision to resign was impulsive and later rescinded, a move disregarded by the Respondent. The Claimant cited sections 19, 43, 45, and 47(5) of the Employment Act, which support the Claimant's position, along with case law such as *Coca Cola East and Central Africa Ltd v Maria Kagai Ligaga* (2015) eKLR, *Milton M. Isanya v Aga Khan Hospital Kisumu* (2017) eKLR and *Edgar Kiplangat Mutai v James Kipkech Toroitich* [2022] KEELRC, which define constructive dismissal as employer conduct that fundamentally breaches the contract and forces resignation of an employee.



23. The Claimant submitted that the Respondent's poor working conditions promptly caused him to resign. The Claimant relied on the case of *Edwin Beiti Kipchumba v National Bank of Kenya* [2018] eKLR, where the court cited the case of *McaManus v Brian McCarthy Contractorts*, and accepted that a letter withdrawing a notice of resignation made by the employee was binding on the employer, having taken stock of the context in which resignation was offered.
24. Still in *Edwin Beiti Kipchumba v National Bank of Kenya* (*supra*) the court cited the case of *Kwik-Fit (GB) Limited v Lineham* (1992) IRLR 156 where the court stated that when an employee resigns impulsively, particularly in emotionally charged or pressured circumstances, the employer must investigate and understand the employee's true intentions before accepting the resignation. Such "special circumstances" may include humiliation, stress, or mental health factors influencing the employee's decision. In these instances, the law supports a deeper inquiry into whether the resignation was genuine or a reaction to undue pressure.
25. The Claimant requests the court to declare the termination unlawful and award compensation.
26. For the reliefs, the Claimant submitted that since he has proved his case, he is entitled to the said reliefs.
27. For costs, the Claimant relied and referred to *Judicial Hints on Civil Procedure*, 2<sup>nd</sup> Edition, (Nairobi) Law Africa 2011 at page 101 of the book, where Retired Justice Kuloba authoritatively stated as follows:

"The law of costs as it is understood by courts in Kenya, is this, that where a plaintiff comes to enforce a legal right and there has been no misconduct on his part-no omission or neglect, and no vexatious or oppressive conduct is attributed to him, which would induce the court to deprive him of his costs-the court has no discretion and cannot take away the Plaintiffs right to costs. If the Defendant, however innocently, has infringed a legal right of the Plaintiff is entitled to the costs of the suit as a matter of course."
28. The Claimant urged this Honourable to award him costs of the suit and allow the cause as prayed.

### **Respondent's submissions**

29. The Respondent submitted that constructive dismissal arises when an employee resigns due to the employer's conduct that breaches essential terms of their contract or creates a hostile working environment, making continued employment untenable. In *Western Excavating Ltd v Sharp* (1978) 2 WLR 344, Lord Denning emphasised that the breach must be fundamental and that prompt action is required from the employee to avoid affirming the contract. In *Milton M. Isanya v Aga Khan Hospital Kisumu* (2017) eKLR, Justice Maureen Onyango clarified that constructive dismissal can result from employer behaviour that indirectly forces resignation. The Court of Appeal in *Coca Cola East & Central Africa Ltd v Maria Kagai Ligaga* (2015) eKLR established a nine-factor test to assess such claims, including the nature of the breach, timing of the resignation, and whether the employee attempted to resolve the issues. These cases form a robust framework for determining when an employee's resignation legally qualifies as constructive dismissal.
30. The Respondent submitted that the Claimant's resignation was valid and binding. The fact that the Claimant may have been experiencing personal challenges, including his disclosed bipolar condition, does not invalidate his resignation letter. The Respondent noted that the Claimant was a senior employee holding a responsible position who would be presumed to understand the implications of his actions. The resignation letter was clear and unambiguous in its terms. The Respondent relied on the case of *Apudo v Azure Hotel Limited* [2024] KEELRC 321 (KLR), where the court stated that the



evolving legal approach from the Employment and Labour Relations Court shows that an employee's resignation doesn't require the employer's approval to be valid. Since resignation is a personal and independent decision, the employment contract ends immediately once it is communicated, provided any required notice is observed. The employer has no power to reject the resignation, which becomes final and binding as soon as it's issued by the employee.

31. The Respondent argued that even though the Claimant attempted to withdraw his resignation through different means, reinstatement is not automatic. Instead, it remains at the employer's discretion whether or not to accept the rescission and reinstate the employee. Simply reversing the decision to resign does not restore the employment relationship.
32. The Respondent Submitted that the Claimant's suit is premature and improperly filed, particularly regarding the unremitted pension contributions. The Respondent asserted that Egerton University Retirement Benefits Scheme, not itself, is the responsible party, and the Claimant failed to exhaust administrative remedies by approaching the proper institution before seeking judicial redress.
33. The Respondent relied on the cases of including *Abdalla Osman & 628 Others v Standard Chartered Bank Ltd & 11 others* [2018] eKLR and *Staff Pension Fund & KCB Staff Retirement (DC) Scheme 2006 and another v Anne Ngugi & 524 Others* (2018) eKLR, the Respondent claims that pension disputes lie outside the jurisdiction of the Employment and Labour Relations Court as per Article 162(2) of the *Constitution* and section 12 of the *ELRC Act*. Additionally, the Respondent stated that it was experiencing financial constraints, had delayed payments and affected all staff, not just the Claimant, while amounts owed (including deferred salary and loan deductions) have largely been settled.
34. Regarding costs, the Respondent urged this Honourable court to allow each party to bear their own, citing judicial discretion established in the cases of *Republic v Rosemary Wairimu Munene, Ex parte Applicant v Ihururu Dairy Farmers Cooperative Society Ltd* JR No. 6 of 2014 and *Party of Independent Candidate of Kenya & another v Mutula Kilonzo & 2 others* [2013] KEHC 5939 (KLR).
35. Ultimately, the Respondent urged this Honourable Court to find the claim lacks merit and therefore should be dismissed with costs.

### **Analysis and determination**

36. The court has considered the pleadings by both parties together with the rival submissions by both counsels; there are two issues for determination, which are as follows:
  - i. Whether the claim is merited; and
  - ii. Who should bear the costs of the suit?
37. Constructive dismissal has been explained and precluded in the earlier part of this judgment, including cases such as *Coca Cola East and Central Africa Ltd v Maria Kagai Ligaga* (2015) eKLR, *Milton M. Isanya v Aga Khan Hospital Kisumu* (2017) eKLR and *Edgar Kiplangat Mutai v James Kipkech Toroitich* [2022] KEELRC.
38. In *Public Service Commission & 4 others v Cheruiyot & 20 others* [2022] KECA 15 (KLR) the Court of Appeal held that it lacked jurisdiction to hear a dispute involving former public officers who had already resigned in accordance with section 43(5) of the *Elections Act*, which requires resignation at least six months before contesting an election. Since their resignation had taken effect and the employer-employee relationship no longer existed, the Employment and Labour Relations Court could not lawfully entertain their claims for reinstatement.



39. It is not in dispute that the Claimant was employed as a Deputy Chief Medical Laboratory Technologist in the Respondent's Medical Department, earning a gross salary of Kshs.100,000/=. The Claimant wrote a resignation letter dated 26<sup>th</sup> March 2023, giving 3 months' notice, with his last date being 8<sup>th</sup> August 2023. This was accepted by the Respondent on 5<sup>th</sup> May 2023 but he later tried to rescind the same via his email dated 27<sup>th</sup> July 2023. He stated that he was not in a good state of mind when he wrote the resignation letter indicating he had bipolar disorder. His rescission was however not accepted.
40. In his resignation letter the Claimant disclosed that his resignation was largely necessitated by the fact that there had been fundamental fiduciary breach of terms of contract particularly on 20% employer contribution as captured in Egerton University Pension Deed which the Respondent were not remitting.
41. There is evidence the Respondent had failed to remit 20% of the Claimant's salary being his pension fund and the Claimant used to have his salary paid in piecemeal referred as (deferred salary). The Respondent was not remitting the part of his salary to pay the bank loans that is Family Bank and Faulu Bank as well. Indeed this breach of contract to fail to pay an employee all or part of his salary is a fundamental breach of the contractual obligation.
42. In the case from the Court of Appeal *Coca Cola East & Central Africa Limited -vs- Maria Kagai Ligaga* Appeal No 20 of 2012 the court held –
- “In constructive dismissal, the issue is primarily the conduct of the employer and not the conduct of employee – unless waiver, estoppel or acquiescence is in issue. Conduct by an immediate superior or supervisor may be enough to justify constructive dismissal. (See *Hilton Industrial Hotels (UK) Ltd. -v- Protopapa* [1990] ILR 316). An employer is required not to behave in a way that amounts to a repudiatory breach of contract. In this appeal, the appellant did not make any submissions regarding its conduct as an employer. All that is stated is that the appellant was keen to promote and advance the role of women in managerial positions and that intervening circumstances arose. As we have observed above, in dealing with constructive dismissal, it is the conduct of the employer that is in issue and not the conduct of the employee; by ignoring to address the legal consequences of the conduct of the appellant, as an employer, the submissions by the appellant relating to the respondent's conduct were thus directed at an issue that is not pertinent in determining whether the facts disclosed constructive dismissal.”
43. Also in the case of *UASUEgerton University Chapter -vs- Egerton University & 2 Others* the court held –
- “The Act provides for minimum terms and conditions of relationship between an employer and an employee favorable and or in contravention of the minimum terms set in the Act are null and void. Full payment of the agreed wages by the employer to the employee for work done is a basic labour right. There is no way an employee shall work without receiving the full pay as agreed by and between the parties. In case of members of the Claimant herein the salaries are paid monthly and hence become due and payable at the end of each month. Further section 19 of the Employment Act outlaws deductions from wages of any amount other than what is authorized by the law. There is nothing in law called deferred pay; the Respondent herein is asserting that wages due and payable to the Claimant shall be paid at a future date.”



44. The Respondent in his submissions admits the Claimant had not been paid his dues due to the fact that the institution was facing serious financial constraints and was awaiting support from the Government in order for the University to settle the entire pending claim owed to the Claimant and other staff.
45. That may be so but an employee who reports to work faithfully and has his obligations as well must be paid. Not to mention that the parties to a contract are bound by the terms of their contract.
46. The court finds and holds the Claimant had proof of unfavourable grounds that pushed him to tender his untimely resignation. The court concedes the resignation of the Claimant was due to hostile environment created solely by the Respondent. The Claimant has proved he was constructively dismissed and he is awarded costs equivalent to ten months of his salary for compensation for unlawful termination amounting to Kshs.1,000,000/=.
47. The Respondent failed also to remit the pension dues to their Retirement Benefits Fund. This then is not a matter where the Claimant can engage the Pension Fund because his funds though were deducted from his salary were not remitted to the Fund that manages the Pension funds of the University. The Claimant deserves to be paid his unremitted pension funds amounting to Kshs.1,932,883/=.
48. The evidence from both the Respondent and the Claimant is that the deferred salary and unremitted moneys to the banks have since been paid. The court then holds these prayers are settled.
49. Costs are to be paid to the Claimant and interest at 14% per annum from date of this judgment till final payment.

Orders accordingly.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAKURU THIS 11<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.

**ANNA NGIBUINI MWAURE**

**JUDGE**

