



**Laurence v Multiple Hauliers [EA] Limited (Employment and Labour Relations Cause 500 of 2018) [2023] KEELRC 1118 (KLR) (27 April 2023) (Judgment)**

Neutral citation: [2023] KEELRC 1118 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA  
EMPLOYMENT AND LABOUR RELATIONS CAUSE 500 OF 2018**

**AK NZEI, J**

**APRIL 27, 2023**

**BETWEEN**

**GAVIN PETER LAURENCE ..... CLAIMANT**

**AND**

**MULTIPLE HAULIERS [EA] LIMITED ..... RESPONDENT**

**JUDGMENT**

1. The Claimant sued the Respondent herein vide a Memorandum of Claim dated November 5, 2018 and pleaded:-
  - a. That the Claimant was employed by the Respondent on May 8, 2017 as a General Manager – Oil and Gas Projects, and that his contract provided for:-
    - i. A monthly salary of USD 12,000 as overseas package and and USD 2000 per month as local salary.
    - ii. Family medical insurance.
    - iii. Kshs 65,000 being house allowance per month.
    - iv. The Respondent to reimburse the Claimant for his daughter’s education for the duration of the contract.
    - v. Post paid cell phone and 4X4 vehicle inclusive of fuel.
    - vi. The contract was to run for a period of 30 months and could be renewable.
  - b. That having been contracted by another entity known as Tullow Oil to provide transportation of crude oil from Lokichar in Turkana County to KPRL in Mombasa County, the Respondent deployed the Claimant to work for them in Mombasa County.



- c. That after two months in (to) the Claimant's contract, the Respondent started paying him only half of his monthly overseas salary and despite protestation by the Claimant and promises that the accruing unpaid salary would be paid, the situation remained the same until October 22, 2018 when the Claimant regarded this and other breaches as fundamental breach of his contract of employment and resigned.
- d. That the Respondent's Managing Director, Mr Rajinder Baryan, despite halving the Claimant's salary, became very hostile towards the Claimant, constantly screaming at him and abusing him in front of colleagues and using Mr Clive Critchlow to embarrass him and finally taking over the Claimant's functions regarding EOPS (project) without any regard.
- e. That during the performance of the contract, the Respondent failed to reimburse the Claimant Kshs 97,400 for fuel and the Claimant's medical cover was not paid to the tune of USD 8,946, and failed to reimburse the Claimant's daughter's education expenses to the tune of Kshs 74,400 and to provide the Claimant with post paid or pre-paid telephone. That the Claimant raised the issue of these breaches with the Respondent on numerous occasions with the Respondent promising to fulfil them but no fulfilment, resulting to fundamental breach of the Respondent's contractual obligations.
- f. That on realizing that the Respondent was determined to continue with repudiation of the employment contract, the Claimant opted to resign, and served a resignation letter on the Respondent on October 22, 2018.
- g. That upon resignation, the Claimant's company laptop and the car assigned to him were collected from the Claimant's residence by the Respondent's representatives and a clearance certificate was issued.
- h. That the Claimant did not resign voluntarily and that the Respondent's act of paying only a half of the Claimant's salary, despite protestations, and other breaches of the contract amounted to fundamental breach of the contract of employment, and constituted constructive termination of the Claimant's employment.
- i. That the Respondent's constructive termination of the Claimant's employment was unlawful, extremely unfair and cruel, and amounted to unfair labour practice contrary to Article 41 of the Constitution of Kenya and violation of sections 41,43 and 45 of the Employment Act 2007; as a result of which the Claimant suffered emotional distress, trauma and inability to meet his continuing obligations, for which he seeks compensatory damages.

2. The Claimant sought the following reliefs:-

- a. A declaration that the Claimant was constructively terminated from employment by the Respondent.
- b. A declaration that the said constructive termination was unlawful, unfair and amounted to unfair labour practice.
- c. Payment of terminal and contractual dues as follows:-
  - i. Two (2) months' salary in lieu of notice - USD 28,000
  - ii. Salary for October 2018 - USD 14,000
  - iii. Accrued unpaid salary from July 2017 to September 2018 - USD 90,000



- iv. Aetna Family medical cover for 2017 and 2018 - USD 8,946.00
  - v. Loss of earning for the balance of
  - vi. 11 months contract period - USD 154,000
  - vii. 12 months salary as compensation for unfair termination - USD 168,000.00
  - viii. Outstanding un-remitted school fees for the Claimant's daughter - USD 74,000
  - ix. Unpaid outstanding fuel expenses - USD 974.00
  - Total USD 464,660.00
  - x. General damages for breach of contract, emotional trauma, distress and inconvenience to be assessed by the Court.
  - xi. costs of the suit and interest.
3. Other documents filed by the Claimant along side the memorandum of claim included a verifying affidavit, the Claimant's detailed written witness statement dated November 5, 2018 and an evenly dated list of documents, listing some five documents. The listed and filed documents included the Claimant's national identity card, the Claimant's contract of employment dated May 17, 2017, email correspondence, resignation letter dated October 22, 2018, and a clearance form dated October 26, 2018.
4. The Respondent entered appearance on December 6, 2018 and filed an evenly dated statement of Response on the same date. The Respondent denied the Claimant's claim and pleaded, inter-alia:-
- a. That in March 2017, the Respondent was awarded an Early Oil Production Supply ('EOPS') Contract by Tullow Kenya BV (Tullow) to provide transportation of crude oil from Turkana County to Mombasa County.
  - b. That the Claimant was employed as a General Manager Oil & Gas projects for purposes of supporting the EOPS contract, and it was his duty to prepare and to present an acceptable project execution plan under the EOPS contract for approval by Tullow following the Claimant's assertion that he was an oil and gas expert.
  - c. That the Claimant failed or neglected to present a project execution plan to the Respondent's management which necessitated the Respondent's Operations and Customer Relations Manager, Mr Clive Critchlow, to prepare the project execution plans in close collaboration with other team members of the Oil and Gas Departments, and that the Claimant simply submitted the same to Tullow without any input on the same.
  - d. That the Respondent gave the Claimant other variable tasks in the running of the EOPS contract, which the Claimant neglected to personally act upon but instead delegated to other team members without providing any supervision on the team members regarding the tasks.
  - e. That the Respondent's management severally informed the Claimant of its displeasure regarding his behavior but there was no change or improvement on the part of the Claimant.
  - f. That the Respondent did inform the Claimant that it would not confirm his employment in the terms and conditions stipulated in his letter of engagement due to his failure to perform as he was at the time still serving his probationary period of three months.



- g. That the Claimant counter-proposed to the Respondent to reconsider its position and to retain him at 50% of the agreed salary, thereby altering his own terms of the contract, which counter-proposal the Respondent reluctantly accepted.
  - h. That despite having been allocated offices in two locations in Mombasa, being multiple ICD Kenya Limited Building Complex in Kibarani and the Respondent's offices in Magongo Mombasa, the Claimant preferred to work from the comfort of his own home, which amounted to absence from work without authorized leave.
  - i. That due to continued absence from work, the Respondent asked the Claimant to relocate to Nairobi as per the contract of employment, so as to enable the Respondent to monitor his performance. That the Claimant chose to travel to Mombasa every Friday and back to Nairobi on Monday evenings at the Respondent's expenses, hence working for 3 productive days as opposed to 6 days in his contract of employment.
  - j. That the Claimant wrote his resignation on October 22, 2018 and served it on the Respondent the same date, upon which the Respondent collected its laptop and the car assigned to the Claimant and issued him with a clearance certificate.
  - k. That the Claimant is not entitled to the reliefs sought because he voluntarily resigned without giving 2 months' notice or salary in lieu thereof as per the contract, was paid his salary for July, September and October 2018; was paid for fuel expenses and is not entitled to damages for breach of contract.
  - l. That the Respondent had no way to pay for the Claimant's Aetna family medical cover for 2017 and 2018 as the Claimant applied for, and got his medical insurance cover confirmed by the service provider on September 12, 2018, advised the Respondent on the same a few weeks later and resigned on October 22, 2018, and therefore the Claimant is not entitled to the claim for Aetna family medical cover for 2017 and 2018.
5. Other documents filed by the Respondent included detailed witness statements by Rajinder Baryan (dated June 18, 2020) and Clive Critchlow dated February 15, 2020, a list and bundle of documents (filed on September 11, 2020) listing seven documents and a supplementary list bundle of documents (also filed on September 11, 2020) listing one document (copies of emails and air tickets showing the Claimant's travel itinerary). Documents listed on the Respondent's list and bundle of documents included a copy of an email dated September 6, 2018, emails exchanged between the Claimant and Clive Critchlow, the Respondent's Organizational programme dated October 1, 2018, the Claimant's communication that he would be out of office and documents showing that the Respondent catered for the Claimant's fuel expenses.
6. When trial opened on December 8, 2020 (before Ndolo J.) the Claimant adopted his filed witness statement, which replicates the averments in the statement of claim, as his testimony. He also produced his listed documents in evidence. He further testified that he was employed on May 8, 2017, having been headhunted due to his experience in gas and oil, and that the contract was to run for 30 months and could be renewed. That his salary was paid in full for 2 months and thereafter his overseas salary was cut by half. That he protested about the reduction but there was no reversion, that he however remained in employment, and that the Respondent company had financial constraints. That he resigned in October 2018 due to non-payment of salary and did not resign voluntarily. That he was constructively dismissed by the Respondent and his entitlements were not paid.
7. The Claimant further testified that it was not true that he had failed to prepare a project execution plan, that he was to review the execution plan in place, that he worked alone as he was not given a team



- to work with, though at engagement he had been promised a team. That he did not work from home, that he went for safari rallies on behalf of the company, that he never received a warning or show cause letter or issued with a letter on poor performance, that he did not agree to a pay cut and did not execute an agreement to amend his employment contract on remuneration.
8. It was the Claimant's further evidence that he was called from Mombasa to work in Nairobi vide an email dated September 6, 2018, and that he advised the Respondent that he would have to leave his family in Mombasa, upon which the Respondent's Managing Director told the Claimant that it would be cheaper for him to keep flying from Nairobi to Mombasa.
  9. Regarding the medical cover, the Claimant testified that he had paid premiums for 2017 and was to be refunded by the Respondent, but was never refunded.
  10. Cross-examined, the Claimant testified that he remained in employment for 15 months after the Respondent started paying him half (1/2) salary two months after employment, and that he objected orally. That the Respondent requested him to work from Nairobi occasionally and facilitated the required travel and accommodation and that he worked at Nairobi from Monday to Friday. That the Respondent's MD subjected the Claimant to abusive treatment and shouted at him in the presence of staff. That he did not complain about this in writing until he resigned.
  11. The Claimant further testified that although he had paid for his medical policy in 2017, which was an existing policy, he did not have any invoice or receipt on the same. That his July, August and September 2018 salary was paid but salary for October 2018 was not paid. That the reason that he took long to resign was because he had been promised that he would be paid his arrears and had no other job to go to.
  12. The Respondent called two witnesses. The first witness, Rajinder Baryan (RW1) adopted his filed witness statement dated June 18, 2020 as his testimony, and produced in evidence the Respondent's documents referred to in paragraph 5 of this judgment as the Respondent's exhibit nos.1-8. RW1 further testified that the Claimant did not draw up procedures on execution of his contract and did not perform his duties to the Respondent's expectations, as a result of which RW-1, being the Respondent's Managing Director, called the Claimant for a meeting in August 2017 whereat it was agreed that the Claimant would continue working but at a half of the salary that had been agreed. That the Claimant received half salary without complain until the time he resigned in October 2018.
  13. It was RW1's further evidence that the Claimant did not write any objection during the period he received half salary.
  14. Cross-examined, RW-1 testified :-
    - a. That the Claimant's office was based in both Mombasa and Nairobi and that the Respondent company paid for the Claimant's transport and hotel accommodation whenever he went to Nairobi. (RW-1 produced a bundle of hotel receipts and documents on the Claimant's air travel between Nairobi and Mombasa).
    - b. That although the Claimant's performance was supposed to be assessed by the Respondent's management team, there was no assessment report and /or minutes on record.
    - c. That there was no formal complain on the Claimant's performances, either from the Respondent or other team members. That there was only one team member under the Claimant.
    - d. That the discussion on paying the Claimant half salary was verbal and was done within the Claimant's probationary period; and that no formal addendum was made to the Claimant's contract of employment.



- e. That the Claimant was still receiving half salary as at the time he resigned.
  - f. That RW-1 did not know whether the Claimant's salary for October 2018 was paid, and had no proof of payment of the same
  - g. That the Claimant could at times take money for fuel from the Respondent in form of imprest, and other times he could use his own money and claim back.
  - h. That the Claimant had a 3 year old daughter when he joined the Respondent company, and that the Respondent remitted the daughter's school expenses if and when they arose.
  - i. That if any one expended his money on the Respondent company's business, they would forward a claim together with supporting documents, and that the Claimant should have done the same.
15. The Respondent's second witness, Clive Critchlow (RW-2), adopted his filed witness statement dated February 15, 2010 as his testimony. RW-2 further testified that both he and the Claimant were General Managers and worked at the same level, with none of them being superior to the other. RW-1 further testified that prior to the Claimant joining the Respondent company, he (RW-2) had been working on the subject (oil and gas) project for a year, and had prepared the project execution plan together with other team members; that the execution plan had not been produced in Court, and that no formal complaint on the Claimant's performance had been made.
16. It was RW-2's testimony that the Claimant was based at Mombasa while the (oil and gas) contract was supposed to be executed from the Respondent's head office in Nairobi. That he (RW-2) did not take over the Claimant's duties. That they worked as a team, and if one did not do their job, another person would do it, and that there was no issue of one person taking over another person's duties. That each person knew what the other one was doing.
17. Having considered the pleadings filed and evidence adduced by both parties, issues that fall for determination, in my view, are as follows:-
- a. Whether the Claimant's employment was constructively terminated by the Respondent.
  - b. Whether the Claimant is entitled to the reliefs sought.
18. On the first issue, it was a common ground that upon the Claimant's employment on May 8, 2017, the Claimant received the full agreed salary for only two (2) months, and thereupon, the Respondent reduced the Claimant's overseas salary package by a half, from USD 12,000 to USD 6000. Although the Respondent did not adduce any evidence to show that the Claimant consented to this salary reduction as alleged by the Respondent, the Claimant received and accepted the reduced salary for a record period of fifteen (15) months without any formal objection and/or indication that he was receiving and accepting the halved salary under protest. The Claimant's testimony in Court that he objected to the salary reduction orally is, in my view, outweighed by his act of receiving the reduced salary for a period exceeding one year without any formal objection and/or a formal undertaking and/or commitment by the Respondent to pay his salary arrears at a later date.



19. Indeed, the Claimant continued performing his contractual duties after reduction of his salary and even complained of being under utilized by the Respondent vide an email send by him to the Respondent's Managing Director on March 20, 2018 where the Claimant states thus:-

' I feel I am being underutilized, I would like to assist wherever possible within the group to increase efficiency should there be other areas that you require assistance, I would also be very happy to engage myself.'

20. The Claimant resigned from his employment vide a letter dated October 22, 2018 and his case is that he did not resign voluntarily but was constructively dismissed. He cited the following as amounting to fundamental breach of the contract of employment by the Respondent:-

- a. Failure to pay full salary, failing to reimburse Kshs 94,000 for fuel, failure to pay the Claimant's medical cover to the tune of USD 8,946, failure to reimburse the Claimant on his daughter's education expenses to the tune of Kshs 74,000 and failing to provide the Claimant with pre-paid or post paid telephone since commencement of the contract of employment.
- b. RW-1's hostility towards the Claimant and use of RW-2 by RW-1 to embarrass the Claimant and to take over his contractual functions.
- c. Acting in a manner that could damage the Claimant's reputation and future career prospects by constantly avoiding compliance requirements and submitting erroneous documentation and project execution plans contrary to the EOPS contract requirements for which the Claimant was responsible.

21. As already stated in this judgment, the Claimant received and accepted a reduced salary for a record period of fifteen months (July 2017 to October 2018) without any objection. He also did not object to the other alleged breaches which, according to the Claimant, covered the entire period of employment. No specific dates or months were given by the Claimant regarding the occurrence of those other breaches.

22. RW-1 denied and refuted the allegations of hostility and the Claimant did not adduce any evidence pointing to or objecting to such conduct and /or actions on the part of RW-1. Indeed, the Claimant did not demonstrate a single documented incident of hostility and abusive language/screams by the Respondent's Managing Director (RW-1).

23. RW-2 denied having taken over the Claimant's contractual functions and testified that he had been working on the EOPS project for at least a year before the Claimant joined the Respondent company, and that they worked with the Claimant as a team, and each person knew what the other was doing, and that if one person failed to do his job regarding the project, another person would do it. This position was corroborated by the Claimant when he testified that he did not prepare a project execution plan but had to review the plan in place. The Claimant further testified that he did not have the personal notes that he said RW-2 used to send to him telling him what to do. It was the Claimant's further testimony that:-

- a. He tolerated RW-1's abusive mistreatment and sporadic shouting until he resigned.
- b. That he did not write any email complaining about how he was being treated by RW-1 and RW-2.



24. The *Black's Law Dictionary 10<sup>th</sup> Edition* defines constructive dismissal as:-

' An employer's creation of working condition that leaves a particular employee or group of employees little or no choice but to resign, as by fundamentally changing the working conditions or terms of employment, an employer's course of action that, being detrimental to an employee, leaves the employee almost no option but to quit.'

25. In *Cocacola East & Central Africa Ltd -vs- Maria Kagai Ligaga [2015] eKLR*, the Court of Appeal stated as follows:-

' 29. What is the key element and test to determine if constructive dismissal has taken place'. The factual circumstances giving rise to constructive dismissal are varied. The key element in the definition of constructive dismissal is that the employee must have been entitled to have the right to leave without notice because of the employer's conduct. Entitled to leave has two interpretations which give rise to the test to be applied. The first interpretation is that the employee could leave when the employer's behavior towards him was so unreasonable that he could not be expected to stay. This is the unreasonable test. The second interpretation is that the employer's conduct is so grave that it constituted a repudiatory breach of the contract of employment – this is the contractual test. The contractual test is narrower than the reasonable test. The dicta in *Western Excavating [ECC] LTD -VS- SHARP [1978] ICR 222* adopts the contractual approach test and we are persuaded that the test is narrow, precise and appropriate to prevent manipulation or overstressing the concept of constructive dismissal. For this reason, we affirm and adopt the contractual test approach. This means that whenever an employee alleges constructive dismissal, a Court must evaluate if the conduct of the employer was such as to constitute a repudiatory breach of the contract of employment.

The employee must be able to show that he left in response to the employer's conduct (ie causal link must be shown).

There can still be constructive dismissal if the employee waits to leave until he has found another job to go to. The burden of proof lies with the employee. If the employee makes it clear he or she is working under protest, he or she is not to be taken to have waived the right to terminate the contract under constructive dismissal.'

26. In the present case, the Claimant worked under the alleged repudiatory breach for fifteen (15) months without any protest. He did not make any indication that he was working under protest. He can safely be taken to have waived his right to terminate the contract under constructive dismissal.

27. Although the Claimant testified that he had orally been promised that his salary arrears would be paid and that he had no other job to go to, he waited for unreasonably long period, over one year, and did not present any evidence, like an email send by him to his employer, regarding any promise to pay the unpaid half of his overseas salary.

28. I find and hold that the Claimant accepted, waived, acquiesced and conducted himself as to be estopped from asserting repudiatory breach. He did not, within a reasonable time from the date of commencement of the repudiatory breach, terminate his employment relationship with the



- Respondent pursuant to the breach. He is estopped from asserting the alleged repudiatory breach and resultant constructive dismissal.
29. On the second issue, and having made a finding that the Claimant's resignation on October 22, 2018 did not amount to constructive dismissal, it is my finding that the Claimant is not entitled to compensation for unfair termination. His claim in that regard is declined; and so is the claim for two months' salary in lieu of notice. The claim for loss of earnings for the balance of eleven months contract cannot be allowed, both in view of the foregoing finding and in view of the fact that such relief is not available under Section 49 of the *Employment Act*.
  30. On the claim for USD 8,946 being the Claimant's Aetna family medical cover for 2017 and 2018, the Respondent produced in evidence emails from Aetna International showing that it could not have paid for the Claimant's 2017 and 2018 family medical cover as the claimant applied for the same on September 12, 2018 and resigned in October 2018. On the other hand, the Claimant testified that his medical insurance policy was an existing one and that he had paid for the 2017 cover and did not have the invoice or receipt. He did not clarify on whether he had paid before or after joining the Respondent company in May 2017. The claim is declined.
  31. The claim for outstanding unremitted school fees for the Claimant's daughter was not proved. No invoices on the same were produced in Court. RW-1 testified that the fees was paid as and when it arose. The claim is declined.
  32. The claim for USD 974 being unpaid outstanding fuel expenses, which was denied by the Respondent, was not proved. The Claimant did not present any evidence in support of this claim. He only exhibited his own calculation of the claim. RW-1 and Rw-2 testified that if one expended their money on the Respondent, they had to make a claim supported by documents such as receipts for reimbursement. The claim is declined.
  33. The claim for accrued unpaid salary for July 2017 and September 2018 cannot be allowed in view of the Claimant's admission in his evidence in Court, under cross examination, that the same had been paid.
  34. On the claim for USD 14,000 being salary for October 2018, RW-1 testified that he did not know whether the same had been paid. The Claimant testified that he was not paid his salary for October 2018. Under the Claimant's contract of employment, he could terminate the contract by giving 2 months' notice. He voluntarily resigned without notice. The claim is declined.
  35. On the claim for accrued unpaid salary from July 2017 to September 2018 amounting to USD 90,000, the Respondent pleaded, and RW-1 testified that in July 2017, RW-1 and the Claimant discussed the Claimant's performance whereupon the Claimant was informed that his performance was below the Respondent's expectation. That this was within the Claimant's 3 months' probationary period and he offered to continue working at 50% of the agreed salary, hence the reduction of the Claimant's agreed overseas salary of USD 12,000 by half.
  36. Although there was no formal agreement varying the terms of the Claimant's written contract of employment, the Claimant was paid, and he accepted half salary without any objection or protest for a record period of fifteen (15) months, until he resigned on October 22, 2018. This conduct on the part of the Claimant points to intention by both parties to affect the legal relationship between them.
  37. In *748 Air Services Limited -vs- Theuri Munyi [2017] eKLR*, the Court of Appeal stated as follows:-  

' With such conduct, it is easy to accept the evidence of the executive chairman, Jibril, that Munyi and others understood and accepted the cost cutting measure since they never reported to the labour office or went to Court. There is no evidence on record to show



that Munyi and the other employees objected to salary reduction, as erroneously found by the Court. A finding made on no evidence on record amounts to no finding at all. Munyi received the reduced salary for eight months until the second phase of the company restructure struck by way of redundancies. He was indeed the Financial Director in charge of the payroll. Needless to say, he did not file a cross appeal against the finding by the trial Court that there was nothing wrong with the redundancy declared by the company in January 2009.'

38. The Court went further to state:-

' It would be unjust and inequitable in those circumstances, in our view, to allow Munyi to revert to the previous legal relationship with the company. By his conduct, he evinced an intention to affect the legal relationship between him and the company for a period of eight months. The doctrine of estoppel was raised and urged by the parties but was not considered by the trial Court, which was a clear non direction. We find on the first issue that the doctrine applied in this case and was favourable to the company.'

39. I find and hold that the doctrine of estoppel applies against the Claimant. He is estopped from reverting back to the previous relationship that obtained between him and the Respondent prior to the reduction of his salary in July 2017.

40. On whether a written contract of employment can only be amended in writing, the Court of Appeal in the 748 Air Services Limited CASE (Supra) cited with approval the decision of Mwera J, (as he then was) in *Housing Finance Company Of Kenya Limited -vs- Njuguna LLR 1176 [CCK]* where it was stated:-

' Contracts belong to parties and they are at liberty to negotiate and even vary the terms as and when they choose.'

The functions of Courts is to enforce and give effect to the intention of the parties as expressed in their agreement. In the English Court of Appeal case above – *Globe Motors Inc & Others -vs- TRW Lucas Electric Steering Ltd & Others (supra)*, Lord Justice Beatson stated as follows:-

' Absent statutory or common law restrictions, the general principle of the English Law of Contract is [that parties to a contract are free to determine for themselves what obligations they will accept]. The parties have the freedom to agree whatever terms they choose to undertake, and they can do so in a document, by word of mouth or by conduct.'

41. While appreciating the English Court of Appeal's finding that parties were at liberty to make a new contract varying the original contract by an oral agreement or by conduct, even where the contract contained a 'no oral variation' clause, the Court of Appeal in the 748 Air Services Case (supra) held that variation of the salary by the act of both parties was a new term which bound them.

42. And so it is in the present case. Variation of the Claimant's salary by the parties herein in July 2017 was a new term of the contract between them and it bound them. The Claimant was subsequently paid the reduced salary for fifteen months, and he received and accepted it without any form of objection until he voluntarily resigned on October 22, 2018. The Claimant's conduct corroborates the Respondent's assertion that parties orally agreed on reduction of the Claimant's salary.



43. Having said that, and having considered written submissions filed by Counsel for both parties, it is my finding that the Claimant has not proved breach of contract on the part of the Respondent. The claim for general damages for breach of contract must, therefore, fail, and is declined.

44. The Claimant has failed to prove his entire claim against the Respondent, and the suit herein is hereby dismissed. Each party will bear its own costs.

**DATED, SIGNED AND DELIVERED AT MOMBASA THIS 27<sup>TH</sup> APRIL 2023**

**AGNES KITIKU NZEI**

**JUDGE**

**ORDER**

This Judgment has been delivered via Microsoft Teams Online Platform. A signed copy will be availed to each party upon payment of Court fees.

**AGNES KITIKU NZEI**

**JUDGE**

Appearance:

.....for Claimant

..... for Respondent

