Mwangi v Ecolab East Africa (EA) Limited (Cause E937 of 2024)
[2025] KEELRC 3454 (KLR) (1 December 2025) (Judgment)

Neutral citation: [2025] KEELRC 3454 (KLR)

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE E937 OF 2024

SC RUTTO, J

DECEMBER 1, 2025

BETWEEN

SIMON MWANGI ..... CLAIMANT

AND

ECOLAB EAST AFRICA (EA) LIMITED ..... RESPONDENT

JUDGMENT

1. The Claimant states that in or about September 2021, he was offered employment by the Respondent as Country Manager, effective 1st October 2021. He contends that, owing to a substantial breach of the employment contract and persistent frustration arising from the Respondent's refusal to grant him car allowance, phone allowance, and fuel benefits, he was effectively forced out of his employment on 31st March 2024.

2. It is the Claimant's position that the Respondent's actions amounted to a breach of the employment contract, contrary to the express provisions of the *Employment Act*, and resulting in unlawful and unfair constructive dismissal. Accordingly, the Claimant seeks the following reliefs against the Respondent:

    a. A declaration that the Claimant's involuntary resignation was as a result of the Respondent's intolerable conduct which amounts to unfair labour practices, unlawful, wrongful, and unjustified constructive termination and/or unfair dismissal not within the ambits of the *Employment Act*, 2007, and other employment laws.

    b. Compensation in the amount of KES. 15,303,750.00 for unlawful and wrongful constructive termination of employment.

    c. An order compelling the Respondent to pay the Claimant USD. 21,000 being the earned bonus by the Claimant for the year 2023.

d. An order compelling the Respondent to pay our Client USD 28,166.67 being the general budgeted Company Car cost for a person holding the roles he has for a period of 26 months.

e. An order compelling the Respondent to pay the Claimant KES. 200,000.00 being phone allowance ranging from the month of August 2022 that was unilaterally withdrawn by the Respondent.

f. An order compelling the Respondent to pay the Claimant KES. 1,147,781.25 being the amount that the Respondent ought to have contributed to the Claimant's Provident Fund.

g. Interest on the awarded amount at court rates from the date of filing this Claim.

h. Costs of this suit.

i. Such other and further relief that this Honourable Court may deem just and fit to grant.

3. In response to the claim, the Respondent filed a Statement of Response and a Counterclaim dated 25th February 2025. The Respondent maintains that the Claimant voluntarily resigned, thereby breaching the retention agreement between the parties. Consequently, the Respondent asserts that the Claimant's resignation triggered the claw-back provision attached to the retention bonus, necessitating its full recovery.

4. In its Counterclaim, the Respondent avers that the Claimant unlawfully and without justification breached his obligations under the retention agreement, thereby causing the Respondent significant financial loss and damage.

5. Consequently, the Respondent prays that the Claimant's suit be dismissed with costs, that the Counterclaim be allowed, and that the Claimant be declared liable to the Respondent for the sum of Kshs 287,321/=. The Respondent also seeks costs of the suit together with interest.

6. In his reply to the Statement of Response and the Counterclaim, the Claimant denied the Respondent's averments and reiterated the allegations contained in the Statement of Claim. He contends that he was compelled to use his personal funds to meet the essential communication needs of his significantly expanded role as Country Manager and Institutional Lead for East Africa, and later as Institutional Lead for Sub-Saharan Africa, thereby imposing an unreasonable financial burden on him.

7. The Claimant further contends that the salary increase was solely the result of a counteroffer following an external job offer he received. That the timing of the increment, six months after assuming the new role, indicates that it was a response to the external offer rather than recognition of his expanded responsibilities.

8. While not disputing the tax implications of the company car, the Claimant argues that offering the car without adjusting his earnings to offset the resulting tax burden effectively reduced his overall remuneration.

9. The Claimant also asserts that the USD 22,000 Retention Bonus Package, which included a claw-back clause, was only applicable if he voluntarily resigned before completing two years of service. In this instance, he claims to have been frustrated out of his contract and therefore resigned involuntarily.

10. The matter proceeded for hearing on 24th June 2025 and 29th July 2025, during which both parties called oral evidence in support of their respective cases.

Claimant's Case

11. The Claimant testified in support of his case and, at the outset, sought to adopt his witness statement as his evidence in chief. He also produced the bundle of documents filed with the Memorandum of Claim as exhibits before the Court.

12. The Claimant testified that his employment contract provided for an airtime allowance of Kshs. 120,000, which the Respondent unilaterally withdrew without any consultation. He stated that, given his role and responsibilities, this allowance was a crucial term of the contract.

13. He further stated that on or about February 2022, as later reiterated in an email dated 17th November 2023, his scope of work was significantly expanded only four months into his tenure as Country Manager, by assigning him the additional role of Institutional Division Lead for East Africa.

14. The Claimant testified that, in line with the organizational communication that accompanied his appointment as Country Manager – Ecolab East Africa, the role carried an entitlement to a company car benefit or car allowance, together with fuel benefits.

15. He averred that, contrary to the contract and company policy, he was compelled to use his own vehicle without any car allowance. Although the Respondent indicated that it was working on resolving the issue, no meaningful progress was made.

16. He averred that despite an email from the Respondent's Marcel de Broize dated 2nd May 2024 denying the necessity of addressing these allowances, the Respondent had earlier, on 12th August 2022, expressly acknowledged the need to provide him with a company car or car allowance and fuel benefit. Nevertheless, these issues were never resolved despite his numerous attempts to have the Respondent address them.

17. The Claimant stated that by August 2022, feeling deliberately frustrated despite his invaluable service to the Respondent, he opted to separate from the company. The Respondent, however, issued a written counteroffer on 12th August 2022 outlining a streamlined package that included a company car, phone allowance, fuel benefits, and a retention bonus.

18. He added that, on 15th August 2022, the Respondent introduced a retention bonus package valued at USD 22,000, payable upon the Claimant serving for at least two years, and subject to a claw-back only in the event of voluntary resignation. All other employment conditions were to remain unchanged.

19. The Claimant averred that after agreeing to the new terms, the Respondent again unilaterally removed his phone allowance, in breach of the contract. As a result, he struggled to perform his duties effectively, particularly when dealing with international clients.

20. He raised multiple concerns with the Respondent, but the issue of the phone allowance, despite being essential to his role, was repeatedly ignored, amounting to a clear breach of the employer–employee relationship.

21. The Claimant stated that on 14th June 2023, he contacted the Respondent regarding his remuneration, company car, and phone allowance, and his immediate manager undertook to address the issues.

22. He further testified that in September 2023, 12 months after assuming the Country Manager role and 8 months after taking on the Institutional Division Lead role, the Respondent proposed a company car structure that would have reduced his salary to a level below what he earned when he joined the company. He informed the Respondent of this on 6th September 2023.

23. The Claimant added that during the same period, two employees based in Uganda were issued new company cars without any negative effect on their salaries, as the Respondent maintained their original taxation structure. However, in his case, the Respondent applied a new taxation based on the updated cost of the car, resulting in a detrimental impact on his salary.

24. The Claimant further averred that on 17th November 2023, the Respondent expanded his responsibilities yet again, appointing him Institutional Lead for Sub-Saharan Africa, in addition to his Country Manager role, with only a 10% salary increment as reflected in a letter dated 14th November 2023. He stated that although he was the best performer in both roles, measured by sales, profits, and team performance, the 10% increment was disproportionately low compared to lower-level employees who received increases of 15%–23% for similar expansions of scope.

25. He contended that his salary was never adjusted appropriately when he was first hired, nor when his scope expanded in February 2022, and that the eventual adjustment in December 2023 was inadequate. He had raised concerns about salary on 14th June 2023, but the Respondent failed to act.

26. The Claimant stated that due to the Respondent's significant breaches, including the failure to provide a company car, phone allowance, and fuel benefits, and the resulting untenable working conditions, he was effectively forced out of his employment with effect from 31st March 2024.

27. He further testified that on 10th June 2024, the Respondent, through its advocates, wrongly alleged that he owed Kshs. 287,321. He maintained that he had been constructively dismissed as the Respondent had withdrawn key contractual benefits, offered an unjustifiably lower and discriminatory salary structure, and feigned efforts to resolve the issues, thereby rendering his resignation involuntary.

Respondent's Case

28. The Respondent called oral evidence through Marcel De Broize, who testified as RW1. Mr. De Broize, identifying himself as the Respondent's Vice President and Sub-Saharan Africa Country Cluster Lead, adopted his witness statement as his evidence in chief and produced the Respondent's list and bundle of documents as exhibits before the Court.

29. RW1 testified that the Respondent's policies have always been subject to its discretion and may be adjusted as necessary to ensure business profitability.

30. RW1 stated that around November 2023, the Respondent revised its phone policy, a change that was approved by the Claimant in his capacity as Country Manager. The revised policy introduced post-pay services valued at Kshs. 3,150.00 for associates, effectively discontinuing the provision of physical airtime.

31. RW1 added that, contrary to the Claimant's assertions, he was fully aware of the revised phone policy as he was a key member of the team responsible for its rollout.

32. He testified that the Claimant's appointment as Institutional Division Lead for East Africa was accompanied by a proposed revision of his annual base salary from Kshs. 11,109,996 to Kshs. 13,250,000. Following discussions and mutual agreement, the salary increment was implemented in August 2022.

33. RW1 further stated that the Respondent awarded the Claimant a retention bonus of USD 22,000 to encourage him to remain in its employment until 30th September 2024. The Claimant was expressly informed that leaving before this date would trigger the claw-back provision attached to the bonus.

34. He added that on 17th November 2023, the Respondent offered the Claimant the role of Institutional Lead for Sub-Saharan Africa, which the Claimant accepted on 26th November 2023 as part of his career progression. This appointment came with a 10% salary increment, raising his annual salary to Kshs. 15,303,750, as confirmed in the Respondent's letter dated 14th November 2023.

35. RW1 testified that the Claimant himself acknowledged declining the company car offered to him due to its potential impact on his net earnings, as evidenced in his email dated 6th September 2023.

36. He further stated that the Claimant's comparison of his benefits with those of employees in Uganda was misplaced, as their roles differed from his, and the tax laws governing employee motor-vehicle benefits in Uganda and Kenya are not the same. As a result, the taxation of car benefits in Kenya would have adversely affected the Claimant's salary. RW1 added that all additional benefits were subject to mutual agreement between the parties.

37. RW1 averred that in or about March 2024, the Claimant voluntarily left the Respondent's employment to join another company, Royal Unibrew.

38. In RW1's view, the Claimant's resignation activated the claw-back provision applicable to the retention bonus, making its full recovery necessary, as stipulated in the Respondent's letter of 15th August 2022.

39. RW1 also stated that the Claimant earned a discretionary bonus of Kshs. 2,583,679.00 for the year 2023, which had not yet been paid.

40. According to RW1, the Respondent is entitled to recover the retention bonus paid to the Claimant in 2022 and 2023, as his voluntary departure triggered the claw-back mechanism under the agreement.

41. He added that the Respondent has withheld the Claimant's 2023 bonus to partially offset the USD 22,000 retention bonus. Consequently, the Claimant still owes the Respondent Kshs. 287,321, forming the basis of the Counterclaim.

42. It was RW1's view that the Claimant filed the present suit in an attempt to unjustly enrich himself by demanding sums that are entirely unjustified.

Submissions

43. The Claimant submitted that the benefits, including annual airtime allowance, provident fund, bonuses, fuel card, and company car, constituted fundamental terms of his employment contract, as they were essential for the effective performance of his duties, given the nature of his role.

44. He further argued that the Respondent's actions and omissions amounted to repudiatory breaches of the employment contract by denying him a company car, phone allowance, and offering inadequate remuneration, thereby frustrating him out of employment with effect from 31st March 2024, in line with the principles set out in Coca Cola East & Central Africa Limited v Maria Kagai Ligaga [2015] KECA 394 (KLR).

45. Citing the cases of Mcllkenny v Chief Constable of West Midlands [1980] All ER 227 and Lucy Watiri Nduati v George Kamau [2021] KEHC 7442 (KLR), the Claimant argued that he never waived his entitlement to the phone allowance or company car. In his view, the evidence demonstrates that he persistently pursued these benefits through numerous emails and reminders explaining the impracticality of performing his duties without them.

46. The Claimant contended that his resignation was a direct and foreseeable consequence of the Respondent's breaches, and that the doctrine of estoppel prevents the Respondent from avoiding the consequences of the assurances it repeatedly issued but failed to honour.

47. The Claimant maintained that he did not acquiesce to the breaches, and that his resignation was timely and directly prompted by repudiatory conduct. He added that there was no waiver or affirmation on his part, and any delay was reasonable and did not amount to acceptance of the breaches. To support this position, he relied on the decision in William Njoroge v Kenol Kobil Limited [2022] KEELRC 526 (KLR).

48. Referencing the case of Joseph Aleper & another v Lodwar Water and Sanitation Company Limited [2015] KEELRC 613 (KLR), the Claimant argued that his resignation stemmed from the Respondent's fundamental breaches of contract. He submitted that the Respondent's persistent refusal to provide a company car, phone allowance, and adequate remuneration created an intolerable working environment, demonstrating an intention not to be bound by the agreed terms, thereby leaving him with no choice but to resign.

49. The Claimant urged the Court to dismiss the Respondent's counterclaim in its entirety on the basis that he was constructively dismissed.

50. The Respondent, on its part, submitted that the remuneration terms were mutually negotiated and agreed upon. It argued that the Claimant only raised the issue of entitlement to a higher percentage increment through the pleadings by comparing himself to lower-ranking employees.

51. It was the Respondent's position that introducing new contractual terms at this stage amounts to inviting the Court to rewrite the parties' agreement. In support of this argument, reliance was placed on the cases of Pius Kimaiyo Langat v Co-operative Bank of Kenya Limited [2017] eKLR and Bank of Baroda (K) Limited v Banking Insurance & Finance Union (K) & another [2025] KECA 439 (KLR).

52. The Respondent further contended that the Claimant was adequately remunerated and that no breach of contract occurred on its part. It added that the contract expressly anticipated possible changes affecting benefits and allowances and provided mechanisms to accommodate such adjustments. The Respondent further argued that the Claimant failed to disclose that the applicable policy allowed reimbursement for additional business-related phone expenses incurred beyond the provided scope.

53. The Respondent maintained that the contract did not entitle the Claimant to a company car. It argued that the issue arose only during negotiations concerning role expansion, and that an arrangement was proposed to address the Claimant's transport needs, which he declined.

54. The Respondent further submitted that it made considerable efforts to accommodate the Claimant's requests within legal and financial constraints, which did not amount to repudiatory breach or constructive dismissal.

55. It was further submitted by the Respondent that where contractual benefits are discretionary or subject to legitimate policy changes, and where the Respondent engaged the Claimant at each stage of negotiation, no breach arises. The case of Coca Cola East & Central Africa Limited v Maria Kagai Ligaga [2015] eKLR was cited in support of this argument.

56. The Respondent maintained that it acted reasonably and in good faith in seeking to retain the Claimant within the bounds of its policies and financial capacity.

57. The Respondent further argued that the Claimant failed to establish the legal threshold for constructive dismissal, asserting that there was no fundamental breach, no repudiatory conduct, and no causal link between the alleged breaches and his resignation.

58. The Respondent further contended that it was entitled to claw back the USD 22,000 retention bonus from the annual bonus of Kshs. 2,583,679/-, and that the Claimant failed to prove settlement of this amount. To this end, it urged the Court to allow the Counterclaim with interest at court rates until payment in full.

Analysis and Determination

59. Flowing from the pleading filed by both parties, the evidence on record, as well as the rival submissions, the following issues emerge for determination:

    i. Whether the Claimant has established that he was constructively dismissed;

    ii. Whether the Claimant is entitled to the reliefs he seeks;

    iii. Whether the Respondent's Counterclaim is merited.

Constructive dismissal?

60. The Claimant contends that the Respondent frustrated him out of his employment contract by withholding a company car, phone allowance, and fuel benefits.

61. The Respondent holds otherwise and has consistently maintained that the Claimant voluntarily resigned to join another company.

62. The central issue for determination by this Court is whether the Claimant has demonstrated that his resignation from the Respondent's employment was involuntary and that he was constructively dismissed.

63. It is important to begin by examining the meaning of constructive dismissal. Although the *Employment Act* 2007 does not define the term, it has been extensively considered in numerous decisions of this Court and the Court of Appeal. In the landmark case of Coca-Cola East & Central Africa Limited v Maria Kagai Ligaga [2015] eKLR, the Court of Appeal stated as follows:

> "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 or have the right to leave without notice because of the employer's conduct. Entitled to leave has two interpretations which gives 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."

64. And further, the Black's Law Dictionary (10th Edition) defines the term constructive dismissal to mean:

> "An employer's creation of working conditions that leave 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."

65. Simply put, constructive dismissal arises when an employee resigns because of intolerable working conditions imposed by the employer or a fundamental breach of the employment contract, rendering the resignation effectively involuntary. Despite the resignation, the employee may pursue a claim against the employer for wrongful termination.

66. Therefore, where an employee resigns due to a hostile work environment, intolerable working conditions, or a fundamental breach of the employment contract by the employer, it is considered a case of constructive dismissal.

67. Where a unilateral breach of fundamental terms of an employment contract is alleged, as in the present case, it constitutes a repudiatory breach, entitling the employee to treat the contract as no longer binding.

68. In Coca-Cola East & Central Africa Limited v Maria Kagai Ligaga [supra], the learned Judges of Appeal outlined the following guiding principles for claims of constructive dismissal:

    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 conduct of the employer?

    c. The conduct of the employer must be a fundamental or significant breach going to the root of the contract of employment or which shows that the employer no longer intends to be bound by one or more of the essential terms of the contract.

    d. An objective test is to be applied in evaluating the employer's conduct.

    e. There must be a causal link between the employer's conduct and the reason for employee terminating the contract i.e causation must be proved.

    f. An employee may leave with or without notice so long as the employer's conduct is the effective reason for termination.

    g. The employee must not have accepted, waived, acquiesced or conducted himself to be estopped from asserting repudiatory breach; the employee must within a reasonable time terminate the employment relationship pursuant to the breach.

69. It is worth noting that the Claimant's resignation letter was not exhibited in Court. Consequently, the reasons, if any, that the Claimant provided for resigning from the Respondent's employment are not known to the Court. It therefore remains unclear whether the Claimant offered any reason at the time of resignation, and whether those reasons align with those now presented in the current claim.

70. It was essential to produce the Claimant's resignation letter, as a successful claim of constructive dismissal requires establishing a causal link between the employer's conduct and the reason for the employee's termination of the contract; in other words, causation must be demonstrated.

71. In claiming constructive dismissal, the Claimant asserts in his Statement of Claim that his salary was not properly adjusted upon hire or following the expansion of his scope of work in February 2022, and that the subsequent revision was inadequate. He also alleges that he was denied a company car, phone allowance, and fuel benefits.

72. Applying the principles set out in Coca-Cola East & Central Africa Limited v Maria Kagai Ligaga (supra), and considering the definition of constructive dismissal, the onus was on the Claimant to demonstrate that the Respondent breached a fundamental term of the employment contract, leaving him with no option but to resign.

73. It is undisputed that in February 2022, the Claimant's role was expanded with his appointment as Institutional Lead for East Africa, which was further extended to cover Sub-Saharan Africa effective December 2023. The Claimant asserts that this role entitled him to a company car or car allowance, as well as a fuel benefit. He further contends that the remuneration that came with these expanded roles was inordinately low and that he was compelled to use his own vehicle without receiving a car allowance and further, that the Respondent unilaterally withdrew his phone allowance, in breach of his employment contract.

74. Regarding the Claimant's allegation of inadequate remuneration, the record shows that following the expansion of his role to Institutional Lead for East Africa, his annual salary was revised from Kshs 11,109,996.00 to Kshs 13,250,000.00, effective 1st August 2022.

75. Further, the record indicates that when the Claimant's role was once again expanded to cover Sub-Saharan Africa, effective December 2023, his annual salary was increased from Kshs 13,912,500.00 to Kshs 15,303,750.00.

76. Additionally, the Claimant was awarded a retention bonus of USD 22,000, as per the letter dated 15th August 2022. The bonus was structured to be paid in two tranches, with the first tranche payable upfront and the second tranche due at the end of February 2023. It is undisputed that the Respondent had fully paid the retention bonus by the time the Claimant resigned.

77. In light of the foregoing, it becomes apparent that the Claimant's role expansion was accompanied by additional remuneration. The question of whether the increments were adequate is a distinct issue.

78. It should be appreciated that determining what constitutes "adequate" remuneration is inherently subjective and typically lies within the employer's business discretion. Consequently, there is no objective basis to support the Claimant's assertion that his salary was inadequately revised or that the Respondent's failure to adjust it further amounted to constructive dismissal.

79. Applying the principles established in Coca-Cola East & Central Africa Limited v Maria Kagai Ligaga (supra), the Court finds no merit in the Claimant's assertion that he was constructively dismissed on the basis that the Respondent expanded his scope of work without providing adequate remuneration.

80. Regarding the withdrawal of the phone allowance, it is undisputed that the Claimant's employment contract included a cell phone airtime allowance of Kshs 120,000.00 per annum. It is also common cause that the Respondent implemented a new telephone policy, which led to the discontinuation of physical airtime provided to employees.

81. The Claimant contends that the withdrawal of the phone allowance hindered his ability to perform his duties, particularly when engaging with the Respondent's international clients.

82. The record bears that, by an email dated 18th November 2021, Joan Mugeci communicated to the Claimant regarding the new telephone policy. In response, the Claimant wrote:

> "Joan,

> Let's go ahead and execute pls. these packages are quite sufficient. I would go with the 3k one just to be on the safe side, let's standardize for everyone. Bear in mind these Safaricom resources don't expire so you will find a lot of carryovers every month."

83. It is therefore evident from the Claimant's email that he was in concurrence with the introduction of the new telephone policy and was fully aware of its impact on his contractual terms. As it is, the said telephone policy was applicable to all employees of the Respondent.

84. To this end, the Court is not persuaded that the Respondent unilaterally modified the Claimant's contract of employment by withdrawing the phone allowance, and therefore does not find that this action amounted to constructive dismissal.

85. It is also clear that clauses 8 and 9 of the Respondent's telephone policy addressed international roaming and international calls. For international roaming, the policy provided that employees travelling abroad for business could request activation for the duration of the trip, subject to pre-approval from their Division Manager. Regarding international calls, the policy encouraged employees to utilize local communication channels, including landlines, Skype, and WebEx, wherever possible.

86. Therefore, it is evident that the policy catered for any eventuality where the Claimant was required to engage with the Respondent's international clients.

87. It is also noteworthy that the Claimant continued working for the Respondent for approximately 20 months after the introduction of the new telephone policy, which raises a significant issue under the doctrine of affirmation.

88. For a claim of constructive dismissal to succeed, an employee must not have accepted, waived, acquiesced to, or acted in a manner that estops them from asserting a repudiatory breach. The Claimant's continued service, coupled with his concurrence with the policy, undermines his claim of constructive dismissal.

89. On this issue, the Court finds that the Respondent's introduction of the new telephone policy, replacing the airtime allowance, did not constitute a fundamental breach of the Claimant's employment contract as to entitle him to treat himself as constructively dismissed.

90. Another issue raised by the Claimant concerns the denial of a company car benefit. The record shows that, in an email dated 12th August 2022, the Claimant was informed that he would receive a 19% increase in his gross salary, amounting to Kshs 13,250,000.00 per annum. He was further advised that this package would include pension fund contributions and the car benefit. Following clarifications, the Claimant informed the Respondent's Qasim Abrahams that he would accept the offer as presented and acknowledged that deductions for the car benefit would commence once the company provided a company car.

91. It is also apparent that the Claimant did not explicitly respond to Qasim's query regarding whether he would prefer to forego the company car and receive only the fuel benefit.

92. The record shows that the Claimant revisited the issue of the company car in an email dated 14th June 2023, stating that 18 months after assuming the role of Institutional Lead, he was still using his personal vehicle. He noted that he had to replace tyres and service the car more frequently due to the challenging terrains he encountered, and therefore requested a car allowance and a one-time service for his vehicle.

93. On the same date, RW1 responded via email, assuring the Claimant that his concerns would be addressed.

94. Subsequently, the Respondent initiated the process of providing a company car for the Claimant. However, the Claimant pulled the plug on the process through his email dated 6th September 2023, citing that accepting the car would reduce his earnings below his starting salary due to tax implications. In the email, he addressed Joan Mugeci as follows:

> " Hi Joan
>
> As shared earlier, please don't order a company car for me. It will drive me to earn less than my starting salary from 2 years. I'm grateful for the car but with the current policy-I can't take it. The company has chosen to keep a policy that favours the government to collect more taxes. I must make a choice about my income."

95. According to the Respondent, the reduction in the Claimant's salary was incidental and resulted from changes in the country's tax policies, which were beyond its control.

96. Taking the foregoing into account, along with the Claimant's assertion that he was denied a car benefit, the Court finds that he has not established a case of constructive dismissal. I say so for the reason that the Claimant's request for a company car was addressed, and although he contends that the company's policy favoured the government in collecting higher taxes, there is no evidence that the Respondent had control over the tax implications of this benefit.

97. It is also common knowledge that the taxation of employee benefits is governed by the *Income Tax Act* and the attendant regulations. Accordingly, the employer's responsibility is limited to calculating, deducting, and remitting taxes in accordance with the law.

98. In light of the tax implications highlighted by the Claimant, it is unclear why he did not seek a revision of the contractual terms to address the tax implications and mitigate any adverse impact, rather than declining the benefit entirely.

99. In revisiting the guiding principles established in Coca-Cola East & Central Africa Limited v Maria Kagai Ligaga [supra], the Court finds no merit in the Claimant's allegation that he was constructively dismissed on the basis of being denied a car benefit.

100. The total sum of my consideration is that the Claimant has not proven, on a balance of probabilities, that the Respondent committed a fundamental breach of the employment contract that left him with no choice but to resign. It is this Court's respectful view that any dissatisfaction on the Claimant's part with his employment did not constitute a fundamental breach of his employment contract.

101. Put differently, the Claimant has not demonstrated that he was constructively dismissed and therefore has not shown that he was unfairly or unlawfully terminated from employment.

Reliefs?

102. As the Court has found that the Claimant was not constructively dismissed, the declaratory reliefs and the claim for compensation for unfair termination do not lie.

103. Further, as the Court has not found merit in the Claimant's claim with respect to the phone allowance and company car, the reliefs sought in that regard are not sustainable.

104. The Claimant has also claimed Kshs 1,147,781.25, representing the amount he alleges the Respondent ought to have contributed to his provident fund. Despite making this claim, the Claimant has not specified or demonstrated that the Respondent failed to make deductions for any particular period. For this reason, this claim fails.

105. Regarding the claim for the 2023 bonus, it is noted that the Respondent conceded that the Claimant earned a bonus of Kshs 2,583,679.00, with its only contention being that it was entitled to offset the retention bonus against this amount.

106. Consequently, the Court finds that the Claimant is entitled to the admitted bonus of Kshs 2,583,679.00.

Merit in the Counterclaim?

107. The Respondent's Counterclaim seeks the sum of Kshs 287,321.00, which it asserts represents the portion of the retention bonus it is entitled to recover.

108. The Counterclaim is based on the retention bonus of USD 22,000 awarded to the Claimant under the letter dated 15th August 2022.

109. In opposing the Respondent's Counterclaim, the Claimant contends that the USD 22,000 Retention Bonus Package, which included a claw-back clause, was only applicable if he voluntarily resigned before completing two years of service. He asserts that, in this case, he was frustrated out of his contract and therefore resigned involuntarily. He contends that had he not been frustrated out of the contract, he would have been entitled to the retention bonus.

110. The Court has found that the Claimant has not established that he was constructively dismissed and that his resignation was involuntary. In reviewing the letter dated 15th August 2022, it is clear that the letter explicitly states that the retention bonus would be recoverable from the Claimant if he voluntarily terminated his employment with the Respondent on or before 30th September 2024.

111. Since the Claimant resigned from employment on 31st March 2024, before 30th September 2024, and the Court has determined that his resignation was not involuntary due to constructive dismissal, the Respondent is entitled to enforce the claw-back clause in the retention agreement. Accordingly, the Respondent's Counterclaim succeeds.

Orders

112. In light of the foregoing, the Claimant's Claim is dismissed in its entirety, with no orders as to costs.

113. The Respondent's Counterclaim is allowed in the sum of Kshs 287,321.00, representing the retention bonus. There will be no orders as to costs on the Counterclaim.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 1ST DAY OF DECEMBER 2025.

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STELLA RUTTO

JUDGE

In the presence of:

For the Claimant Ms. Ajumbo

For the Respondent Mr. Kebenei instructed by Ms. Wangui

Court assistant Mohammed

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 15th March 2020 and subsequent directions

of 21st 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 had 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.

STELLA RUTTO

JUDGE