

## 2026 June | Employment

### DOES CHOOSING TO RESIGN INSTEAD OF BEING DISMISSED CONSTITUTE CONSTRUCTIVE DISMISSAL?

Mwaura v CIC Insurance Group Ltd [2026] KECA 250 (KLR)

---

#### 1. Background

- 1.1. The Appellant, Peter Mutarura Mwaura had been employed by CIC Insurance Group Ltd (the Respondent) for over thirty years and had risen through the ranks to become the Managing Director/Principal Officer of CIC Asset Management Ltd.
- 1.2. In October 2015, one of the Respondent's bankers, Imperial Bank Limited, was placed under the management of the Kenya Deposit Insurance Corporation. Consequently, the Respondent's Group Chief Executive Officer and Board sought to establish the Respondent's exposure to the bank and requested the Appellant to provide the relevant information.
- 1.3. The Appellant obtained the information from the Respondent's Investment Manager, who advised that the Respondent's exposure to Imperial Bank was Kshs. 334,160,821.91. Relying on this information, the Appellant reported that figure to the Respondent's Group Chief Executive Officer and Board.
- 1.4. Subsequently, following a request by the Capital Markets Authority to confirm the Respondent's deposits with Imperial Bank, the Respondent established from its internal records that its actual deposits amounted to Kshs. 605,482,191.78. The discrepancy arose because two deposits amounting to Kshs. 200 million and Kshs. 83 million had been omitted from the information initially provided to the Appellant.
- 1.5. After discovering the discrepancy, the Respondent issued the Appellant with a notice to show cause requiring him to explain why disciplinary action should not be taken against him for providing inaccurate information to the Group Chief Executive Officer and the Board.
- 1.6. The Appellant responded to the notice and attended a disciplinary hearing. During the hearing, he admitted that proper reconciliations would have identified the discrepancy and acknowledged shortcomings in the discharge of his responsibilities. He further requested that, should the Board be unwilling to retain him, he be permitted to take early retirement.

- 1.7. At the conclusion of the disciplinary hearing, the Board considered several possible outcomes before resolving that the Appellant's employment should be terminated for gross negligence. However, in recognition of his long service, the Board afforded him the opportunity to resign instead of being dismissed. The Appellant elected to resign and the Respondent accepted his resignation.
- 1.8. The Appellant subsequently instituted proceedings before the Employment and Labour Relations Court, alleging that his resignation had been procured through threats, intimidation and coercion and therefore amounted to constructive dismissal. He sought, among other reliefs, compensation for unfair termination, reinstatement and payment of his terminal dues.
- 1.9. The Employment and Labour Relations Court dismissed the Appellant's claim. Although the Court found that the Respondent had valid reasons to terminate the Appellant's employment, it nevertheless held that the Appellant's resignation had been influenced by the Respondent's decision to terminate his employment and therefore amounted to constructive dismissal.
- 1.10. Both the Appellant and the Respondent were dissatisfied with different aspects of the decision and consequently filed appeals before the Court of Appeal.

## **2. Court of Appeal Determination**

The Court of Appeal made the following findings:

- 2.1. Constructive dismissal arises where the employer is guilty of conduct which amounts to a significant breach going to the root of the contract of employment or demonstrates that the employer no longer intends to be bound by one or more of the essential terms of the contract. In such circumstances, the employee is entitled to treat the contract as terminated by reason of the employer's conduct.
- 2.2. The key element in constructive dismissal is that the employee must have been entitled to leave without notice because of the employer's conduct. The Court reiterated that the test is whether the employer's conduct was so unreasonable that the employee could not reasonably be expected to remain in employment, or whether the conduct amounted to a repudiatory breach of the contract of employment.
- 2.3. A core aspect of the term constructive dismissal is the existence of intolerable working conditions brought about by the employer, which ultimately compel the employee to resign.
- 2.4. Applying the foregoing principles, the Court considered whether the Appellant's resignation amounted to constructive dismissal. The Appellant contended that, following the disciplinary hearing, the Respondent's Chief Executive Officer followed him to his office, demanded that he tender his resignation within ten (10) minutes and leave the premises, thereby compelling him to submit a two-line resignation letter. The Respondent

disputed that assertion and maintained that it had valid grounds for terminating the Appellant's employment.

- 2.5. The Court noted that the ELRC had accepted the Appellant's contention and held that his resignation had been influenced by the Respondent's request that he resign or face termination and therefore amounted to constructive dismissal. However, the ELRC had also found that the Respondent had a valid reason to terminate the Appellant's employment, namely his negligence in the discharge of his duties as the Managing Director of CIC Asset Management Ltd.
- 2.6. Upon reviewing the record, the Court of Appeal disagreed with the ELRC's conclusion. The Court found that it was common ground that the Appellant had misinformed the Respondent's Board and Group Chief Executive Officer regarding the Respondent's exposure to Imperial Bank. During the disciplinary proceedings, the Appellant acknowledged that proper reconciliations would have identified the discrepancy, admitted that he had not been regularly monitoring the Respondent's exposure to banks, accepted responsibility for presenting inaccurate information to the Board,

and pleaded for leniency. The Court further noted that these matters fell within the Appellant's responsibilities as Managing Director and Principal Officer of CIC Asset Management Ltd, which included overseeing investments and ensuring that appropriate internal controls and procedures were implemented and adhered to.

- 2.7. In light of the foregoing, the Court held that it was not persuaded that the Appellant had been constructively dismissed. The Court stated that "the record shows that his employment was due for termination owing to his own undoing, but he chose the easier alternative of resigning." The Court further observed that the Appellant's resignation letter did not in any way demonstrate that he had been forced to resign by the Respondent.
- 2.8. Accordingly, the Court held that the learned Judge had misdirected herself in finding that the Appellant had been constructively dismissed. The Court therefore set aside that finding, held that the Appellant was not entitled to the remedies sought, save for payment of his unpaid salary for the twelve (12) days worked in February 2016, partly allowed the Respondent's cross-appeal, and ordered that each party bear its own costs.

## Key Contacts

---



**Anne Muema**  
Advocate / Managing Partner

Email: [amutheu@mutieadvocates.com](mailto:amutheu@mutieadvocates.com)



**Maureen Kubai**  
Associate

Email: [mkubai@mutieadvocates.com](mailto:mkubai@mutieadvocates.com)

### About Mutie Advocates

Mutie Advocates is a Nairobi-based law firm with a strong focus on legal compliance, data protection and privacy law, complemented by a broad range of legal services. Built on a foundation of legal excellence, the firm provides expert support in corporate and commercial law, employment and labour relations, intellectual property, litigation, dispute resolution and regulatory compliance. Known for its practical and client-centered approach, Mutie Advocates helps organizations navigate complex legal and regulatory landscapes through data audits, policy development and strategic legal advisory. The firm serves a diverse clientele, including individuals, corporates, non-governmental organizations and public institutions, delivering timely, effective and solution-oriented legal services.

Website: [www.mutie-advocate.com](http://www.mutie-advocate.com)

Phone: +254 768 042 180

E-mail: [info@mutieadvocates.com](mailto:info@mutieadvocates.com)

Address: Assi Centre, School Lane, Westlands

P O Box 211-00621, Nairobi

### Disclaimer:

*The views expressed in this article are for general guidance and should not be interpreted as legal advice. Mutie Advocates shall not be held liable for any reliance placed on this information without formal legal consultation. Always seek professional advice tailored to your situation.*