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RESIGNATION AND CONSTRUCTIVE DISMISSAL - A CASE STUDY OF MWAURA V CIC INSURANCE GROUP LTD (CIVIL APPEAL 548 OF 2019) [2026] KECA 250 (KLR) (13 FEBRUARY 2026) (JUDGMENT)

Brief Facts

The appellant, Peter Mutarura Mwaura, was the Managing Director of CIC Asset Management Ltd. Following the placement of Imperial Bank under receivership in 2015, the respondent (CIC Insurance) sought to know its financial exposure. The appellant provided a figure of approximately Ksh. 334 million, which later turned out to be inaccurate; the actual exposure was approximately Ksh. 605 million.

The respondent issued a notice to show cause, alleging the appellant had misled the Board and exceeded authorized deposit limits. After a disciplinary hearing on February 12 2016, the Board resolved to terminate the appellant's employment but offered him the option to resign due to his long service. The appellant submitted a two-line resignation letter that same day.

History of the Matter Before the High Court (ELRC)

The appellant filed a claim in the Employment and Labour Relations Court (ELRC) seeking declarations that his resignation was coerced and should hence be held as a constructive dismissal.

The Trial Judge (H. S. Wasilwa, LJ.) held that:

- The appellant was constructively terminated because his resignation was influenced by the threat of termination.
- However, the respondent had a valid reason for termination in this case, negligence of duty.
- Consequently, the court dismissed the appellant's claim but made no order as to costs.

Issues for Determination before the Court of Appeal

The Court of Appeal identified three primary issues:

1. Whether the appellant was constructively dismissed.
2. Whether the appellant was entitled to the reliefs sought; and
3. Whether the respondent was entitled to costs of the claim and the appeal.

Analysis, Holding, and Reasoning

- On Constructive Dismissal: The Court held that the appellant was not constructively dismissed. Guided by judicial precedents, the Court reasoned that constructive dismissal requires a repudiatory breach by the employer or intolerable conditions that force an employee to leave. Here, the appellant's employment was already due for termination because of his own negligence in providing misleading data, and he simply chose the easier alternative of resigning to avoid summary dismissal. The Court also noted the circumstances leading to the resignation which included: admission of negligence, regret that he presented wrong information, pleading for leniency, request for earlier retirement and failure to indicate in his resignation that it was under protest.

- On Valid Reason for Termination: The Court agreed that the appellant admitted to not regularly checking exposure levels and failing to conduct proper reconciliations. This constituted a valid reason for the respondent to end the employment relationship with the appellant.

- On Reliefs: Since the termination was not unfair or constructive, the appellant was not entitled to damages for loss of employment or notice pay.

- On Unpaid Salary: The Court found the appellant was entitled to pay for the 12 days he worked in February 2016 prior to his resignation, as the respondent's counsel had conceded that this was payable.

Key Takeaways

- **Resignation vs. Constructive Dismissal:** Choosing to resign to avoid a justified summary dismissal does not constitute constructive dismissal.

- **Evidence of Coercion:** To prove forced resignation, a senior employee is expected to resign under protest or state the involuntary nature of the act at the time, rather than waiting months to raise the claim.

- **Employer Discretion:** Offering a resignation option in lieu of termination for a senior employee who has committed a fair ground for dismissal is a valid administrative action, not necessarily a form of coercion.

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What we do

At **CM Advocates LLP**, we assist clients in matters involving resignation and alleged constructive dismissal, particularly where employees are faced with disciplinary action or offered the option to resign in lieu of termination.

We evaluate employment histories, board decisions and evidence surrounding the circumstances of the resignation as well as advise on statutory and contractual rights.

We also prepare and file claims and/or responses before the ELRC, ensuring that both employees and employers understand their obligations and available remedies.

For employers, we provide corporate advisory services to help employers implement lawful disciplinary procedures and exit strategies, minimizing the risk of disputes. We also support organizations in dealing with any HR queries that may arise from different types of terminations/ separation processes between employers and employees.

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