



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR
RELATIONS COURT AT NAIROBI
CAUSE NUMBER 705 OF 2019

BETWEEN

KELVIN WERE ANYANGOCLAIMANT

VERSUS

BRITISH AMERICAN TOBACCO KENYA PLC..... RESPONDENT

RULING

1. Through the Application dated 8th November 2021, the Respondent seeks to have this Claim consolidated with ***Cause No. 768 of 209, Gerald Odhiambo Wabwire v. British American Tobacco PLC.***
2. The Application is founded on the Affidavit of Eunice Kamau, Respondent's Legal Counsel, sworn on 8th November 2021.
3. She explains that the 2 matters have similar factual background. The Claimant herein resigned in the course of a disciplinary hearing. He was facing charges relating to conflict of interest with one of the Respondent's contractors. Gerald's contract was terminated for failing to declare a conflict of interest with one of the Respondent's contractors.
4. The Claimant herein is opposed to consolidation. He relies on his Replying Affidavit, sworn on 4th December 2021. He states that the facts are not similar. He resigned, while his counterpart was dismissed. He pleads constructive dismissal, while the other Claimant pursues remedies for unfair and unlawful termination. The Claimants are witnesses in each other's causes. There will be confusion if the matters are consolidated.
5. It was agreed between the Parties, that the Application is considered on the strength of their Affidavits and Submissions. Ruling was scheduled for 6th April 2022 which regrettably coincided with the Judges' Annual Conference.

The Court Finds: -

6. Consolidation of Claims is regulated under Rule 23 of this Court's Procedure Rules, 2016.
7. It is allowable where some common question of fact or law arises; or where it is practical and appropriate to proceed with the issues raised in the Claims simultaneously.
8. The Court is of the view that the two Claims subject matter of this Ruling, cannot be appropriately dealt with under consolidation.
9. One Claimant left employment upon dismissal, while the other resigned, and claims he was constructively dismissed. The Claimants propose to be each other's witness. The proceedings are not likely to be tidy, where evidence for a Claimant is recorded and the same Claimant gives further evidence as a Witness for the Co-Claimant simultaneously. The proceedings are clearer, where evidence is recorded separately, with clear lines drawn between a Claimant and a Witness for the Claimant.
10. The factual background is similar on certain aspects, but also significantly dissimilar on other aspects.

IT IS ORDERED: -

a. The Application for consolidation is declined.

b. The Claims to be prosecuted individually.

c. No order on the costs.

DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY, UNDER THE MINISTRY OF HEALTH AND JUDICIARY COVID-19 GUIDELINES, AT CHAKA, THIS 28TH DAY OF APRIL 2022.

JAMES RIKA

JUDGE