



**Kihara v Ekaterra Tea Kenya Plc (Cause E007 of 2024)
[2025] KEELRC 2537 (KLR) (26 September 2025) (Judgment)**

Neutral citation: [2025] KEELRC 2537 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KERICHO
CAUSE E007 OF 2024
J RIKA, J
SEPTEMBER 26, 2025**

BETWEEN

WALTER KIHARA CLAIMANT

AND

EKATERRA TEA KENYA PLC RESPONDENT

JUDGMENT

1. The Claimant filed his Statement of Claim, dated 22nd April 2024.
2. He states that he was employed by the Respondent as a Manufacturing Manager, on 1st January 2021.
3. He was confirmed as Plant Manager, Mabroukie factory in Limuru, after completion of probation period.
4. He worked for 3 years, before the Respondent constructively dismissed him.
5. He was diligent, attaining a 100% performance review, in 2021-2022. His salary was increased. A project he headed, A3, was selected as a success story during the world quality week 2022.
6. Despite his exemplar performance, the Respondent maliciously placed him on performance improvement plan [PIP], effective 5th December 2023.
7. He nevertheless completed the PIP exercise successfully, achieving a score of 90%. He expected that he would be allowed to resume duty uninterrupted.
8. On 19th December 2023, before resumption of duty, he received a notification of poor performance from the Respondent.
9. He was issued a letter to show cause why he should not be disciplined, for not achieving a score of 100% in the PIP exercise.



10. Out of 3 Managers, only he and Tabitha Kiarie were placed on PIP. The other Manager Edith Misik was spared, showing discrimination on the part of the Respondent, against the Claimant.
11. A score of 100% was unattainable, because the Respondent refused to procure a cutting, tearing and curling machine [CTC]; refused to supply the Claimant with sufficient labour as approved; and refusal to approve weigh feeder and continuous fermenting unit, despite an express requisition and justification.
12. PIP was procedurally irregular. Section 18.3.1 of the human resource manual was flouted.
13. The Respondent's Business Integrity Officer had a well-orchestrated scheme against the Claimant. He was hostile against the Claimant. The details of hostility are: -
 - a. Brutal verbal harassment on 8th May 2023.
 - b. Accusation by the Integrity Officer that the Claimant was aware about a bribery incident.
 - c. Accusation of failure to declare conflict of interest.
 - d. Accusations that the Claimant practiced workplace discrimination and tribalism.
14. These false accusations made the Claimant's work environment hostile, compelling him to resign.
15. His prayers are: -
 - a. Declaration that he was constructively dismissed.
 - b. Damages for unfair constructive dismissal equivalent of 12 months' salary at Kshs. 3,693,880.44.
 - c. 2 months' salary in lieu of notice at Kshs. 615,646.74.
 - d. 22 days of pending annual leave, at Kshs. 259,633.
 - e. Certificate of Service.
 - f. Costs.
 - g. Interest.
16. The Respondent filed its Statement of Response, and Counterclaim, amended on 17th December 2024.
17. It is conceded that the Respondent employed the Claimant, as pleaded in the Claim. His performance, compared with that of the other factory Managers was found unsatisfactory.
18. He had a discussion with the Country General Manager, to understand any challenges he was facing. Weaknesses in his performance were identified. It was recommended that he is offered support to help him improve. The Claimant agreed to participate in PIP. The exercise was not punitive, but aimed at assisting the Claimant improve his overall performance.
19. He was placed on PIP between 6th September 2023 and 5th December 2023. He was given clear targets. PIP was in accordance with the human resource policy. He was taken through monthly and final appraisals.
20. He did not meet the targets. He failed to ensure adherence to process parameters for A3 delivery. He failed to provide leadership, by holding meetings at all levels of the factory. He failed to hold any meeting on factory operating system with Team Leaders, and Shift Managers.



21. He was issued notification of poor performance / notice to show cause, dated 19th December 2023.
22. He replied on 22nd December 2023. He conceded poor performance and expressed deep regret. He undertook to improve. He was given adequate opportunity to defend himself.
23. He however opted to issue the Respondent a letter of resignation on the same date he replied, 22nd December 2023.
24. He explained that his hard work was unappreciated. His dedication was unrecognized. He felt undervalued.
25. Resignation was voluntary, and accepted by the Respondent, in accordance with company policy.
26. The Claimant thanked the Respondent for the opportunity to serve, and expressed his intention to move on to greener pastures. He did not give the Respondent any time, to consider his reply to the letter to show cause. He did not complete PIP successfully as alleged.
27. He was not discriminated against, or subjected to a hostile work environment. He was not constructively dismissed. He resigned voluntarily.
28. His contract bound him to issue a 2 months' notice of termination. He terminated his contract abruptly, without notice, and did not pay the Respondent equivalent of 2 months' salary, in lieu of notice.
29. The Respondent counterclaims 2 months' salary in lieu of notice, at Kshs. 624, 926.
30. It is proposed by the Respondent that the Claim is dismissed, Counterclaim allowed, with costs to the Respondent.
31. The Claimant filed his Response to the Counterclaim, amended on 29th April 2025. He reiterates that the Respondent constructively dismissed him.
32. He gave evidence and closed his case on 5th May 2025. The Respondent's General Manager, Peter Ng'eno, gave evidence on 25th June 2025 closing the hearing. The Claim was last mentioned on 25th July 2025, when the Claimant, confirmed filing and service of his submissions.
33. He relied on his witness statement and exhibited documents marked as [1-28] and [29]. He restated that he was constructively dismissed. He was subjected to a hostile work environment. He resigned with immediate effect He was not paid terminal benefits. The Counterclaim has no merit. He did not have time, to notify the Respondent. Resignation was involuntary.
34. Cross-examined, he told the Court that he was placed on PIP. The period ended on 30th November 2023. He resigned on 22nd December 2023. Review was done on 30th November 2023. He did not receive results of the PIP.
35. He received the letter to show cause. He responded. He resigned, before he received the response. He gave adequate time to the Respondent to consider his reply. The allegations were the same, as had been discussed in a meeting between the Parties, held on 30th November 2023. His emails show the frustrations he was subjected to. He asked for machinery support from the Respondent. It was not forthcoming. Frustrations went beyond machinery support and fermentation.
36. He stated in his letter of resignation that he felt undervalued. He never conceded poor performance. He only apologized, because it was convenient to do so. He expressed his apology, and committed to improve, but resigned immediately.



37. Redirected, he emphasized that there was no feedback on PIP, and that the Respondent had adequate time to give the feedback.
38. General Manager Peter Ng'eno, confirmed in his evidence, that the Claimant was employed as Production Manager, at the Respondent's tea factory, Kiambu County.
39. Ng'eno relied on his witness statement and exhibited documents filed by the Respondent [1-4], in his evidence-in-chief.
40. Cross-examined, he told the Court that the Claimant's performance previously, was good. He was awarded performance signal of 100%. This was for the year 2022. Performance dipped in 2023, compelling PIP. He had performance targets at start of the year 2023. The Respondent did not exhibit these. Challenges on performance improvement, including poor power supply and high cost of fire wood, were discussed. The challenges were not unique to the Claimant's factory.
41. The issues in the letter to show cause were similar to the issues discussed earlier between the Parties. The Respondent did not subject the Claimant to hostile work environment. The Claimant repeated the challenges he was facing, in his response to the letter to show cause.
42. Redirected, Ng'eno told the Court that the parameters of PIP were known to the Claimant. The challenges were discussed, and were within the Claimant's control.
43. The issues are whether, the Claimant was constructively dismissed by the Respondent; whether he merits the prayers sought; and whether, the Respondent's Counterclaim is merited.

The Court Finds: -

44. The Claimant was employed by the Respondent as a Plant Manager at the Respondent's Mabroukie tea factory, in the lush lands of Limuru, Kiambu County.
45. He was employed on 1st January 2021. He worked for about 3 years, resigning in contested circumstances, on 22nd December 2023.
46. On resignation, he indicates that he was a Manufacturing Manager. He also described himself as a Production Manager elsewhere. It was not clear to the Court whether these designations, refer to the same managerial docket.
47. The Claimant's monthly last salary at Kshs. 307,823, is uncontested.
48. The Claimant's position is that he was subjected to unwarranted PIP, and discriminated against. He pleads, but hardly gave evidence, establishing that the Business Integrity Officer hatched and implemented a scheme, to see him exit employment. These events, according to him, resulted in a hostile work environment, compelling him to resign, on 22nd December 2023. He avers that he was constructively dismissed.
49. To assess the correctness of his position on constructive dismissal, an examination of his letter of resignation, and the circumstances preceding it, is necessary.
50. The letter is dated 22nd December 2023. This is the same date the Claimant wrote to the Respondent, replying to the letter to show cause, which issued after the PIP exercise.
51. There was no time given by the Claimant to the Respondent, to assess his reply to the letter to show cause.



52. He essentially opted to run away from any process and outcome, contemplated after his reply to the letter to show cause.
53. He did not know, at the time he resigned, whether the Respondent would, or would not, accept his explanation. He circumvented any decision by the Respondent, following the PIP.
54. There was nothing hostile about the PIP. It was an ordinary process in which the Employer raised concerns about the performance of its Manufacturing Manager, the Claimant herein.
55. The Respondent legitimately sought to improve the performance of the Claimant, and boost its business performance.
56. The Court has not been shown by the Claimant, anything in the PIP exercise, that was in the nature of a hostile work environment, or contrary to the Claimant's contract, and the applicable human resource policy.
57. The tone and tenor of the Claimant's resignation letter, does not betray that he was compelled to resign.
58. He writes that it was time for him to move on to a new chapter in his life. He states that he applied his every sinew and muscle to his job, was dedicated, pouring all his mind and soul to his job, but received no appreciation in return. He felt unreciprocated. He expressed his view that every Employee deserves to feel appreciated and valued by his Employer, regardless of their position in an organization.
59. He writes that he was moving on to another workplace, where he would be recognised and rewarded.
60. He wished the Respondent well, grateful for the challenges he faced, and the experience he gained,
61. He does not mention PIP or discrimination in his letter. He does not state any compulsion to resign.
62. Employers are not legally obliged to appreciate and value their Employees. Lack of appreciation, recognition and reward do not in themselves, constitute a hostile work environment.
63. Nowhere in the employment law, human resource policy and contract applicable to the Parties herein, was the Respondent required to appreciate, recognize and reward the Claimant's service.
64. Ordinarily, appreciation, recognition and reward, as desired by the Claimant, are left to the discretion of the Employer. They are symbols of a good corporate culture, but not always expressed, as enforceable terms, in a contract of employment.
65. Multitudes of Employees everywhere feel disillusioned by lack of appreciation, recognition and reward for their devoted services, but it does not follow that such conduct by Employers, amounts to hostile work environment.
66. Constructive dismissal involves breach of fundamental terms of the contract of employment. The Employee must demonstrate that the Employer has acted in repudiation of fundamental terms of the contract of employment. The Employee must show that the Employer considers himself no longer bound, by the terms of the contract. The Employer's actions must leave the Employee with no alternative but to resign.
67. The Claimant resigned on the same date he replied to the letter to show cause, and strangely, before he received the response, either accepting or rejecting his explanation. He was not short of alternatives to resignation, and did not in any event, establish the existence of a hostile work environment, preceding and justifying resignation.



68. The contents of his letter do not depict a hostile work environment and compulsion to resign, resulting in constructive dismissal.
 69. The principles of constructive dismissal discussed above were established in the leading decision on the matter at the Court of Appeal of Kenya, in *Coca Cola East and Central Africa Limited v. Maria Kagai Ligaga* [2015] e-KLR.
 70. The Claimant has not placed his Claim within these principles, and consequently, his prayers for a declaration that he was constructively dismissed; damages for unfair constructive dismissal; notice; costs; and interest are declined.
 71. He said nothing about pending annual leave in his evidence. The prayer is declined. The Respondent pleads that certificate of service issued, and the Court does not think it necessary to make an order for reissue.
 72. On the Counterclaim, the Claimant does not deny that he resigned abruptly on 22nd December 2023.
 73. His contract made provision for a notice period of 2 months in event of termination by either Party. In lieu, the terminating Party would pay the opposite Party, equivalent of 2 months' salary.
 74. The Claimant did not issue notice or pay to the Respondent 2 months' salary in lieu of notice, as contracted.
 75. He explains rather startlingly, that he did not have adequate time to notify the Respondent, because he was compelled to resign abruptly.
 76. The explanation is rejected.
 77. The Counterclaim is merited and is granted.
 78. Interest on the Counterclaim granted at court rate, from the date of Judgment, till payment is made in full.
 79. No order on the costs.
- In sum, it is ordered:-
- a. The Claim is declined.
 - b. The Counterclaim is allowed at Kshs. 624,926.
 - c. Interest allowed on the Counterclaim, from the date of Judgment, till payment is made in full.
 - d. No order on the costs.

DATED, SIGNED AND DELIVERED ELECTRONICALLY AT KERICHO, PURSUANT TO RULE 68 [5] OF THE E&LRC {PROCEDURE] RULES, 2025, THIS 26TH DAY OF SEPTEMBER 2025.

JAMES RIKA

JUDGE

