



**RAO v Limoke & another (Cause E744 of 2023)
[2025] KEELRC 2485 (KLR) (19 September 2025) (Judgment)**

Neutral citation: [2025] KEELRC 2485 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E744 OF 2023
SC RUTTO, J
SEPTEMBER 19, 2025**

BETWEEN

RAO CLAIMANT

AND

OSCAR LIMOKE 1ST RESPONDENT

PAWA IT SOLUTIONS LIMITED 2ND RESPONDENT

JUDGMENT

1. Through a Memorandum of Claim dated 12th September 2023, the Claimant avers that she was employed by the 2nd Respondent in the position of [Particulars Withheld] and [Particulars Withheld] with effect from 6th September 2021. She was to report to and was supervised by the 1st Respondent who is the 2nd Respondent’s Chief Executive Officer (CEO) and Director/majority Shareholder. According to the Claimant, she discharged her responsibilities with utmost diligence and professionalism.
2. The record bears that the Claimant resigned from employment on 5th May 2023. The Claimant has attributed her resignation from employment to the alleged rape and sexual harassment by the 1st Respondent, the manner in which her complaint was investigated, an unreasonable return to work demand while she was on sick leave, intimidation and harassment of her witnesses and plans to reduce her salary. On the basis of the foregoing, the Claimant prays for judgment jointly and severally against the Respondents for: -
 - a. A declaration that the Claimant suffered constructive dismissal under the hands of the 2nd Respondent.
 - b. A declaration that the 2nd Respondent is vicariously responsible for the acts and actions of the 1st Respondent.



- c. Maximum 12 months' compensation for wrongful termination.
 - d. Costs of this suit with interest thereon.
3. The Respondents countered the Claim by filing a joint Statement of Defence and Counterclaim. The Respondents deny that the 1st Respondent is the majority shareholder of the 2nd Respondent. That further, the Claimant was initially supervised by the 1st Respondent but this changed in January 2022 when she was supervised by the then [Particulars Withheld] Manager. That the reporting line was once again changed in January 2023 to March 2023 when the Claimant was under the supervision of the 1st Respondent.
4. The Respondents further aver that once the Claimant reported the rape and sexual harassment allegations to the Chief Operating Officer (COO) and the Human Resource Director (HR Director) of the 2nd Respondent, the reporting line changed and the Claimant was under the strict supervision of the COO.
5. The Respondents further aver that the COO took all precautions and necessary steps upon learning of the allegations of rape and sexual harassment levelled against the 1st Respondent. The Respondents further contend that recalling an employee from paid leave is within a company's prerogative. The Respondents further aver that at no time was the Claimant subjected to any retaliatory acts intended to force her out of employment.
6. In the Respondents' view, the Claimant tendered a resignation letter without notice on her own volition and was not constructively dismissed as claimed.
7. In its Counterclaim, the Respondents aver that the 1st Respondent did not sexually harass nor rape the Claimant, nor was she constructively dismissed from employment.
8. The 1st Respondent further avers that the Claimant has levelled false allegations against him which have caused him immeasurable anguish and pain. That the allegations have the effect of tarnishing his name and soiling the reputation of the 2nd Respondent.
9. The Respondents further aver that the Claimant was recalled back to work and was expected to report on 14th April 2023 at 9:00 am. That instead of reporting back to work, the Claimant claimed that she was unwell and therefore unable to return to work. That she thereafter resigned from employment without issuing a written termination notice as required under Section 35 of the [Employment Act](#).
10. That the Claimant's resignation has greatly affected the company, as her work was critical in running day to day operations of the company and this action has occasioned great economic loss and disruption of business to the company. To this end, the Respondents pray for judgment against the Claimant with costs for:
 - a. A sum of Kshs 120,000 for resigning without issuing a termination notice.
 - b. A sum of Kshs 6,000,000 for loss and disruption of business.
 - c. A sum of Kshs 500,000 for legal and administrative fees pertaining to the investigations.
11. The Claimant responded to the Respondents' Counterclaim, in which she maintains that she has not made the claim against the Respondents based on falsehood or any intention to soil the reputation of both Respondents. According to the Claimant, her claim is based on actual factual events and evidence.



12. The Claimant further avers that the manner in which she was recalled to work and the manner in which her complaint was handled did not give her the confidence that she would be returning to a conducive work environment which would guarantee her working with no fear of retribution hence necessitating her resignation.
13. In the Claimant's view, the loss attributed to her resignation is nothing but a last-minute desperate attempt by the Respondents to save face.
14. Consequently, the Claimant has asked the Court to dismiss the Counterclaim with costs and to grant the prayers as pleaded in the Statement of Claim.
15. The matter proceeded for hearing on diverse dates during which all parties called oral evidence.

Claimant's Case

16. The Claimant testified in support of her case as CW1 and called three additional witnesses, JL, MN and LMM, who testified as CW2, CW3 and CW4, respectively. The Claimant, who was the first to go, started by adopting the Memorandum of Claim and her witness statement to constitute her evidence in chief. She further produced the list and bundle of documents filed on her behalf, as her exhibits before Court.
17. It was the Claimant's evidence that her working relationship with the 1st Respondent was cordial and professional until he sent her a link to an article titled "What happens when you stop having sex" on WhatsApp on 17th September 2022. According to the Claimant, she found this highly disconcerting given the power dynamics between her and the 1st Respondent, who was CEO of the company, and also her supervisor.
18. The Claimant averred that she reached out to a colleague who advised her to proceed with caution, adding that a former colleague who had also been a recipient of such texts and who had reacted harshly was frustrated to quitting almost a month later.
19. The Claimant further averred that the second incident of inappropriate and unwelcome sexual conduct happened on 10th January 2023 when they were from a meeting a client with the 1st Respondent. That on the ride back to the office, the 1st Respondent asked why she had been so silent in the meeting and hardly participated. He stated that her (Claimant's) silence and limited input did not augur well and it might have been inferred by the clients that she was his "side chick", as opposed to his professional colleague.
20. The Claimant averred that the 1st Respondent offered to drop her off as he headed home. She accepted his offer. On the ride home, he pressed further on why she was making 'many avoidable mistakes' at work.
21. The 1st Respondent insisted that there was more to it than just anxiety and stated, quite uncharacteristically, that she was free to tell him whatever the matter was without fear or worry of it coming between her work. He asked to demonstrate how free she was to discuss any matter with him and suddenly grabbed her by the back of her head and kissed her without her consent. He then stated, "There, now tell me what's on your mind, without fear."
22. According to the Claimant, the 1st Respondent disclosed that the reason the company had decided not to hire a [Particulars Withheld] Manager and have her take over these duties was the fact that he considered her a high-potential employee.



23. The Claimant averred that she called a colleague on the same night and disclosed to her the events of the night. She confided in her and expressed her concern that this incident of unwarranted, unprovoked, and uninvited intrusion might reflect on her work.
24. The Claimant averred that she went to work the following day and at around 8:28 pm, the 1st Respondent sent her a TikTok video of a vulgar ohangla dance that was covert with sexual innuendo.
25. The Claimant further stated that on 14th January 2023, after a client meeting at the office, plans were made for a night out for drinks with the client at the Orchid Club at the RFUEA grounds on Ngong Road. She (Claimant) joined the 1st Respondent with the client in his car, and they set off for the club's grounds. They were later joined by other colleagues with whom they reveled the night away.
26. The Claimant averred that she sought to leave the club at around 2:30 am and head home with a colleague and share a cab. She requested the 1st Respondent to let her pick up her bag from his vehicle.
27. According to the Claimant, the 1st Respondent escorted her and, as she was picking up her bag from his vehicle, he came up behind her, groped her breasts and forcefully removed her pants and raped her.
28. She believes the 1st Respondent took advantage of the fact that she was tipsy and raped her. The Claimant averred that it is because of this state of moderate intoxication that she was unable and inhibited from either fighting back or screaming for help. A few moments later, the colleague with whom they were to share a cab found her after restlessly waiting for her at the entrance of the club's grounds. She was upset, shocked and crying. On the trip home, she disclosed to her colleague what had happened.
29. The Claimant averred that her colleague escorted her to St. Peter's hospital in Muthiga but she was not attended to as she was first required to report the matter to the police station and have a P3 form.
30. The Claimant averred that she was hesitant to record a statement with the police, given that she was still extremely distressed from the occurrences.
31. According to the Claimant, she is the sole provider for her siblings and her parents, and the weight of bearing with the rape looked bearable as compared to the very real possibility of losing her job and the uncertainty that would ensue in this tough economy. She would later get treatment at Coptic Hospital the next day.
32. The Claimant averred that the 1st Respondent had left several unanswered messages on her WhatsApp and after these went unresponded to for a long while, he called her. In the phone conversation, he asked whether anything was going on and stated that he was worried about her.
33. The Claimant averred that she informed the 1st Respondent that she was still recovering from the previous night's events. He sought to go over the events of the previous night and she cut him short and told him that they would proceed as if nothing had happened. According to the Claimant, she gave this response since she was not in a mentally or emotionally stable position to unpack all that had happened. He then asked why her mind had been willing, yet her body was sending a different message.
34. The Claimant averred that she resumed work, albeit with much difficulty as her mental, emotional, and psychological well-being were greatly affected. Her work relationship with the 1st Respondent was tense and uncomfortable. She decided to seek help from counsellors at Usikimye, to help her cope.
35. The Claimant further averred that on 19th January 2023, the 1st Respondent sent her yet another set of work-unrelated memes.



36. That further, on 3rd February 2023, the 1st Respondent sent her a text stating that she had left her lipstick in his vehicle. He also asked why she had ghosted him after what he referred to as a 'one-night stand'. He then asked her whether his sexual performance was so dismal that she resorted to ghosting him. She informed him that she had not lost any lipstick in his vehicle and that they had agreed to move on with life as if nothing had happened.
37. The Claimant further stated that on the morning of 22nd February 2023, she was unwell. She notified the 1st Respondent, being her supervisor, that she would report to work late and needed to pass by the hospital. Upon returning to the office and notifying him of her return, he proceeded to comment, quite unprofessionally, that “kama umenimiss sema tu.” He then sent her money and said that it was cab fare for her to go home and rest. It was the Claimant’s testimony that this was not a standard procedure at the company and further went to show that her treatment at the company was no longer that of a standard employee but was pegged on the sexual and arbitrary instincts of the 1st Respondent.
38. The Claimant averred that after months of therapy, she learnt that she could not simply move on from the experience and that she had to confront her abuser, hence she made a formal complaint against the 1st Respondent to the COO/HR Director, Ms. S via email on 28th March 2023.
39. The Claimant averred that moments after she sent her complaint, Ms. S and the 1st Respondent stepped outside the office and proceeded to a meeting area outside the office where they conversed for a while. They then got back to the office and Ms. S called her (Claimant) to her office. According to the Claimant, Ms. S appeared anxious and infuriated.
40. The Claimant averred that Ms. S prodded further whether she had any evidence supporting her claim. According to the Claimant, she (Ms. S) seemed to be on the defensive, and after much back and forth, she (Claimant) informed her that she would not make any further statement or produce any additional statement in the absence of her advocates. The Claimant averred that she felt threatened and in fear of physical violence during that meeting.
41. She further stated that Ms. S informed her that the company would place her on leave to conduct investigations. The Claimant averred that she followed up the meeting conversation with an email to Ms. S on 29th March 2023.
42. She further averred that, to her shock, she was kicked out of the official communication channels at work. These included the company's WhatsApp group, email, and Slack channel. She was also placed on immediate compulsory paid leave for a period of 28 days, within which period she was assured that the investigations would take place and she would be furnished with the results of the investigations.
43. The Claimant averred that she made a further response to Ms. S's response in an email dated 31st March 2023, in which she brought out several issues which were pertinent to the proceedings of the investigation. She also sought confirmation of the lack of conflict of interest, given that Ms. S is also the 1st Respondent’s wife.
44. The Claimant averred that Ms. S responded to her email of 31st March 2023 and requested that she deliver correspondence, medical reports, and a list of witnesses. That Ms. S further made a commitment that once this had been done, she would share the same with the 1st Respondent who would also be given an opportunity to respond and that his response would be shared with her. In the said email, Ms. S also responded to her concerns over being locked out of the company's communication channels and insisted that that had been done to guard her mental well-being for the time being. The Claimant was informed of her right to have an advocate or preferred employee attend the hearing.



45. According to the Claimant, the explanation tendered surrounding her removal from work communication channels was not satisfying, given that it had been made clear that she was on leave and not fired.
46. The Claimant averred that she sent her documentary evidence and list of witnesses on 4th April 2023. She received a response from Ms. S dated 5th April 2023 in which she was informed of the appointment of Mr. Edwin Thiongo as lead investigator and the firm of Maina & Mwiti Advocates as the representatives of the 2nd Respondent and coordinators of the process. She subsequently sent her witnesses' written statement on 12th April 2023.
47. That on the same day, the Claimant wrote a further email dated 12th April 2023 appointing the firm of Munyao-Kayugira & Co. Advocates to represent her in the investigation process.
48. The Claimant averred that she received an email from Edwin Thiong'o, the lead investigator, which communicated that parties were not allowed to have legal representation during the investigation process. This was contrary to the previous email by Ms. S which had indicated that parties were free to take on the services of counsel and have them present at the hearing of the investigations.
49. The Claimant averred that in the same email, the independent investigator stated that he would be sending the parties a Non-Disclosure Agreement, which was meant to 'protect the victim and the witnesses'. According to the Claimant, she interpreted it as an attempt to gag her, as opposed to an attempt to protect her.
50. That her suspicion was made worse by the fact that she had already signed a Non-Disclosure Agreement when she joined the company, which agreement had sought to protect the company and its activities. According to the Claimant, the Non-Disclosure Agreement laid out little to no obligations on the company, or her accused abuser and only placed unreasonable and unexpected conditions on her. The Claimant averred that she decided against signing the Non-Disclosure Agreement.
51. The Claimant further stated that her advocates on record wrote to the advocates appointed by the company, Maina & Mwiti Advocates LLP, and raised a number of issues, among which was the determination by the lead investigator, Mr. Edwin Thiong'o that parties to the rape and sexual harassment investigation did not have the benefit of legal representation during the hearing of the complaint.
52. Her advocates sought an adjournment of the hearing owing to the conflict in their calendars. They proposed various dates on which they would be available. This request was rejected flat out by the overseers of the matter, Maina & Mwiti Advocates LLP.
53. The Claimant averred that, ironically, the same advocates adjourned the times of commencement unilaterally, owing to a conflict in their calendar.
54. The Claimant further stated that she received a letter from the company, dated 31st March 2023, sent via email on 12th April 2023, asking her to resume work. The letter did not give a reasonable allowance for her to reorganize and go back to work, it just plainly stated that "we expect to see you on Friday the 14th of April at 9:00 am".
55. According to the Claimant, the recall from leave was abrupt and sudden. It further placed worry in her, given the manner in which the investigation had been conducted.
56. On the date scheduled for the hearing, owing to the pressure and anxiety she was experiencing, she was unwell and sought medical attention. She wrote to Ms. S early morning and informed her of her



- illness. Ms. S responded by saying that she was still expecting her and that she had to report to work unless she had been given a day off.
57. Despite informing Ms. S that she was unwell, and, in the hospital, she would later call her together with the investigator seeking to ask her some questions. She responded by telling Ms. S that she was in the hospital and asked her to send an email. In the Claimant's view, it was grossly insensitive that Ms. S would still seek to question her even after telling her that she was unwell and in hospital.
 58. The Claimant averred that she was later informed by a colleague that she was roughed up by Ms. S and forced into the boardroom to testify. That this confirmed her suspicion that the investigations were just a ploy to cover up the rape.
 59. The Claimant further stated that despite her communicated unavailability to attend the hearing of the investigation, no effort was made by the company to reschedule the hearing.
 60. She further averred that despite the change in supervision shared in the recall to work letter, this was not assuring, given the relationship between Ms. S and the 1st Respondent, who were spouses.
 61. The Claimant added that she had come across an advert placed on LinkedIn, seeking to recruit a [Particulars Withheld] and Operations Manager for the company. It seemed to her that the process of getting her replacement had already begun.
 62. According to the Claimant, this was done despite the fact that in December 2022, she had been informed, during the salary review, that she had been classified as high potential and earmarked for consideration for accelerated promotion with H1 of 2023.
 63. The Claimant further averred that she received a letter dated 27th April 2023 communicating the reduction of salary by 30%. According to the letter, this salary cut was necessary to enable the company keep afloat due to the harsh economic challenges. That as per the email that accompanied the letter, there had been a town hall meeting with employees on 24th April 2023 on the realignment of the company. She however, did not receive any invitation to the meeting and neither did she receive the minutes of this meeting.
 64. The Claimant further averred that no meeting, virtual or otherwise, had been conducted by Ms. S, seeking to explain to her these drastic changes. All other employees had been met by Ms. S and apprised of these tough decisions, including employees who had been absent during the original town hall meeting.
 65. According to the Claimant, this further confirmed her suspicion that there was malice in the whole process and that the investigation had been skewed in a manner to force her out of her position, whether by hook or crook.
 66. It was the Claimant's testimony that unable to withstand the company's unfair treatment and outright malice, she made the tough decision to resign from her employment.
 67. According to her, the resignation was not voluntary, but had been forced by the actions of the company, the 1st Respondent and Ms. S. That she was apprehensive that she would not resume work on good terms, following her complaint, investigations, and findings of the company, which were never communicated to her.
 68. That the counselling sessions offered to her helped her gain the courage not only to report the harassment and the rape to her employer but to Jamhuri Police Station on 2nd June 2023, for the 1st Respondent to be held criminally liable for his actions. The matter is still pending investigations.



69. Ms. JL, who testified as CW2, similarly adopted her witness statement to constitute her evidence in chief.
70. CW2 averred that she served as the Business Development Manager at the 2nd Respondent company.
71. She further stated that in addition to the Claimant being a former colleague, she was also her friend and confidant in the workplace. They would discuss work affairs and at certain times, their discussions would spill over to issues not-work related.
72. It was CW2's testimony that the Claimant once confided in her that the 1st Respondent had inappropriately touched her thigh as they were leaving a meeting. She told her that the 1st Respondent had rubbed her thighs and commented on how beautiful her breasts looked in the dress she had worn that day.
73. CW2 further averred that on the night of 13th January, 2023, she received numerous calls from the Claimant, urging her to join her as she was the only female in the group, and that she felt uncomfortable. She obliged and later joined the party at the Orchid Club on Ngong Road.
74. They reveled the night away and decided to leave the club at around 01:30 am on 14th January 2023. She mentioned to the Claimant that she was leaving and the Claimant suggested that they carpool.
75. When they reached the parking lot, she could not locate the Claimant. Moments later, the Claimant emerged from the club alongside the 1st Respondent. The Claimant mentioned that she had left her bag in the 1st Respondent's car and that she was going to pick it up. CW2 decided to wait for the Claimant near the exit of the club as she monitored where their cab had reached on her phone.
76. CW2 averred that the Claimant had not yet returned five minutes later and she decided to call her but she (Claimant) did not pick up her phone. She decided to look for her in the parking lot as she assumed that she had probably had too much to drink and could not find her way back. She later found the Claimant sitting with the 1st Respondent in the back seat of his car. She asked the Claimant what was going on and if she was ready to go home.
77. The Claimant stepped out of the car with her bag and started crying as she walked away. CW2 kept asking her why she was crying.
78. When they got into the cab, the Claimant kept sobbing uncontrollably and CW2 could not get her to calm down. She told the cab driver to drop the Claimant home first, then drop her. However, on their way to drop the Claimant, she insisted that they take her to a hospital because she was not okay.
79. They got to St. Peters Orthopedic & Surgical Specialty Centre, and she rushed the Claimant to the ER. The Claimant mentioned to her and the medical staff that she had been sexually assaulted by the 1st Respondent. That this happened in the backseat of the 1st Respondent's car in the parking lot before they left the club.
80. CW2 averred that she asked the Claimant why she did not scream for help, but she mentioned that she could not. They asked whether she had been threatened by the 1st Respondent and she said no. The medical staff mentioned that it was procedure to have an OB form from the police before they could proceed with any medical tests or treatment, as this was a rape claim, which is treated as a criminal offence.
81. The Claimant was reluctant to record a statement with the police and persuaded the medical staff to give her Prep medication and antibiotics, whereafter she would go home and be fine.



82. According to CW2, the Claimant told her that there was nothing she could do to the 1st Respondent and that he would still get away with what he had done even if she reported it to the police. She also mentioned that she was afraid to lose her job, and that is why she could not stop the 1st Respondent from assaulting her.
83. CW2 averred that she called a cab at around 4.00 am and they left the hospital. The Claimant later confided in her that she had sought medical assistance at Coptic Hospital and that she was having challenges with her work. She later began counselling sessions at the same institution.
84. CW2 averred that she later learnt that the Claimant had lodged a complaint with the Human Resource Manager at the company, alleging that she had suffered rape and sexual harassment at the 2nd Respondent Company.
85. She (CW2) received an email from the company advocate on 14th April 2023 that there will be a workplace investigation. During lunch hour, Ms. S approached her and advised that she would be next to testify. CW2 told her she was still having lunch and would go to the Boardroom afterwards.
86. CW2 averred that at about 1:40 pm, Ms. S went to her desk to inform her that the committee was waiting for her. According to CW2, Ms. S then mentioned to her that "you did not provide your written witness statement to Oscar and we are very disappointed" and then made a wry smile.
87. CW2 averred that she had declined to share her statement with the 1st Respondent as she was told that she would be expected to share her statement with the independent investigator only and that her statement would not be disclosed to the 1st Respondent. He (1st Respondent), however, asked her via email to share her statement before she shared it with the investigator.
88. CW2 further averred that Ms. S then walked towards her and started pushing her across the room. She pulled herself away and walked towards her desk. Ms. S then came and asked her, "did he rape her?" to which she (CW2) did not answer.
89. Ms. S grabbed her again and started pushing her and verbally commented that she was being childish and stupid. CW2 expressed her disappointment in her verbal slurs and tried to pull away from her. She averred that Ms. S moved and sat on one of the tables and continued her verbal assault directed at her.
90. It was CW2's testimony that she mentioned to Ms. S several times that she was having an anxiety attack and needed a moment to collect herself, but Ms. S was adamant and told her she was not moving from where she was until she went and testified. CW2 averred that she felt intimidated, threatened and coerced to give a testimony that would favour the 1st Respondent.
91. That Ms. S called the lawyer, who gave her some time to calm down and compose herself. After she testified, she was asked to sign a Non-Disclosure Agreement by the panel that was interviewing her.
92. Ms. MN who testified as CW3, identified herself as a Counselling Psychologist. She stated that she works at Uskimye, an organization that deals with gender-based violence.
93. CW3 proceeded to produce a psychological report as her evidence in chief.
94. It was CW3's testimony that she first met the Claimant on 4th February 2023. That the Claimant was distressed after she had been raped and required their services. They started therapy sessions after the Claimant had visited the hospital and the police stations.
95. CW3 further averred that the Claimant disclosed to her that she had been raped by her boss. They held therapy sessions with the Claimant once a fortnight and thereafter once a month. The last therapy session was on 17th January 2024.



96. It was CW3's evidence that at first, the Claimant was distressed but got better with time. In CW3's view, the counseling was successful.
97. CW3 added that it was not possible to sustain a fake rape allegation for one year. In her view, the Claimant was raped.
98. Ms. LMM who testified as CW4, identified herself as a Clinical Officer working at Coptic Hospital. She told the Court that she has worked at the said Hospital for over 10 years. It was CW4's evidence that the Claimant reported a rape case at the hospital.
99. She further stated that she is the one who filled out the P3 form, which she produced as part of the Claimant's exhibits before Court.
100. That she filled out the P3 form based on the post rape care form.
101. CW4 told the Court that she interacted with the Claimant, although she is not the one who attended to her.

Respondents' Case

102. The Respondents called oral evidence through Oscar Limoke (1st Respondent), EGT and BS who testified as RW1, RW2 and RW3 respectively.
103. Mr. Limoke, who is the 1st Respondent, identified himself as the CEO and Co-founder of the 2nd Respondent. Similarly, he adopted the Respondents' joint Defence and Counterclaim, his witness statement, the initial list and bundle of documents and the supplementary list and bundle of documents filed on behalf of the Respondents to constitute his evidence in chief.
104. It was RW1's evidence that during the Claimant's employment at the Company, he communicated with her often on both formal and informal channels of the workplace. That he shared instructions, concerns and even shared educational and entertaining resources that he stumbled across in his work, personal and social spaces in the spirit of promoting a culture of openness which is part and parcel of the founding principles of the Company.
105. RW1 further averred that they shared hundreds of chats with the Claimant before she accused him of sexually harassing and raping her.
106. It was RW1's evidence that on 28th March 2023, the COO and HR Director of the Company called him aside and informed him that she had received allegations of rape and sexual harassment against him from one of the Company's employees.
107. According to RW1, he was extremely shocked when he was informed of these allegations. It was his testimony that as a line manager and a human being, he has a strategy of maintaining communications in a way that is informal, fun and makes use of joke innuendos, current lingo, and trends. That he likes to converse with people in a fun and easy way, even in work settings.
108. RW1 was categorical that his working relationship with the Claimant has always been professional and cordial. He denied all the allegations of rape and sexual harassment levelled against him by the Claimant.
109. RW1 further averred that on 17th September 2022, he sent a link to several people, the Claimant included, which he found interesting from WebMD (a medical website) to their WhatsApp. The Claimant replied to that text message with delight and even added emoticons in her reply.



110. RW1 further averred that he also sent the exact link on the same day at around the same time, to others including his wife and other close friends in batches. According to him, he may have added the Claimant to the batch and sent her the link in error.
111. RW1 further stated that the utterances he made to the Claimant on 10th January 2023 have been completely taken out of context. And were intended to lighten the mood so that he could emphasize to the Claimant that she was present in the meeting as an employee by merit and not by chance.
112. That as a result, on their way back to the office from the meeting, they had a discussion with the Claimant on her performance in a bid to encourage and assure her that she had his full confidence in her role at the Company, a fact that he vocalized and did so on different occasions.
113. RW1 added that the discussion was also prompted by the fact that he had noted that the Claimant's work had been deteriorating and he wanted her to help him understand why her work was suffering.
114. RW1 further averred that he offered to drop the Claimant closer to her home, as it was in the same direction as his but he denied kissing the Claimant.
115. RW1 further stated that on 11th January 2023, he sent a WhatsApp text message to the Claimant of a popular TikTok video that was making the rounds online titled "L" that was in Dholuo language. That he sent it to the Claimant, as she is called L.
116. The Claimant replied to this text with smiling emoticons, and he believed the conversation to be over. That as he is not Luo, he did not understand the meaning of the song.
117. RW1 averred that he sent the same video to his other Luo friends to keep with the trends. He only learnt later on the song's meaning after being served with the Claimant's demand letter on 4th April 2023. According to RW1, the said text message was in no way connected to the conversation he had with the Claimant the previous day.
118. RW1 added that all other conversations shared and sent to the Claimant were neither meant to sexualize her nor make her feel uncomfortable.
119. It was also RW1's view that the characterization of the events that occurred on the early morning of 14th January 2023 is all false and fabricated.
120. It was RW1's testimony that on the night of 13th January 2023, one of the Company's customer representatives was in Nairobi and asked to pass by the office to have some discussions and general camaraderie.
121. He invited the customer representative to join them for a night out. He also invited three other colleagues to join them. To kill time, they had drinks in the office with the Claimant and the customer representative, after which, they headed to Club Orchid located at the RFUEA Grounds on Ngong Road.
122. He drove the car and the customer representative was seated at the front passenger seat while the Claimant was seated at the back seat on the right, directly behind him.
123. RW1 averred that during the drive to the club, the Claimant touched his ears and head inappropriately several times. He felt awkward at the perception the customer representative might have of him, knowing that he was married and was the CEO of the Company.
124. In RW1's view, any such behavior in any context is inappropriate. He assumed the Claimant was intoxicated, considering she had drunk four Smirnoff Black Ice Guarana at the office.



125. They arrived at the club at around 8.30 pm and the Claimant requested to leave her laptop bag in his car.
126. They got into the club and another colleague arrived shortly thereafter, followed by yet another customer representative. Everyone had a good time at the club and he took pictures and videos which he later shared with all those who were present, the Claimant included. His wife also joined them at the club at around midnight.
127. They continued making merry and having a good time until about 2.00 am in the early morning of 14th January 2023, when people started to leave the club. Four colleagues, the Claimant included, requested to leave around that time. As they were leaving, the Claimant requested him to let her collect her laptop bag which she had left behind in his car. He followed behind them shortly.
128. RW1 averred that as he walked out of the club, he saw the Claimant alone at some spot in the club. They proceeded to his car and walked out of the club and down the stairs together. He noticed that the Claimant appeared to be very intoxicated. That in a seemingly innocent action, she wrapped her hand around his waist and seemed to brush his hand on her bust. He immediately brushed her hand off, but assumed she needed help walking down the stairs.
129. As soon as they stepped out of the doors of the club, the Claimant removed her hand from his waist.
130. RW1 averred that during the walk to his car, the Claimant uttered sexually laced words to him all the way to the parking lot. He assumed that her inappropriate conduct was because she was intoxicated.
131. That on reaching the car, the Claimant asked him to help her retrieve her bag, which was at the back seat of his car. She proceeded to enter the car and instead of picking up her bag, she sat in the car. She was giddy and laughing. He asked the Claimant to pick up her bag and leave. He wanted to get back to the club where his wife and the customer representative were, as he needed to settle the bill.
132. RW1 added that at some point during this small standoff, he entered the car in an attempt to plead with the Claimant to pick up her bag and leave. That the Claimant started touching and fondling him. She was still giddy, laughing and uttering incoherent words. He was startled and immediately exited the car.
133. RW1 denied touching the Claimant. According to him, it was the Claimant who inappropriately touched him repeatedly.
134. The female colleague who had been waiting for the Claimant appeared shortly thereafter. He (RW1) called the colleague and informed her that the Claimant was in his car.
135. RW1 averred that it was impossible to rape the Claimant that night within that short span of time. That this is coupled with the fact that the alleged rape occurred in the back seat of a car, with the doors wide open, in a public parking lot, with the Claimant wearing belted trousers.
136. That the Claimant and the female colleague eventually left together. He neither said goodbye to them nor saw them enter the Uber. That was around 2:10 am. He went back to the club where his wife and the customer representative had been the entire time.
137. RW1 averred that they left the club with his wife and arrived home at around 3:00 am. Before he went to sleep, he sent the Claimant a text at around 3:12 am asking her to inform him when she got home safely. He averred that he was concerned about her well-being as she had left the club very intoxicated.
138. He called the Claimant the next day and inquired about what had happened the previous night. He knew that an unresolved situation that had occurred the previous night would impact his work in one way or the other.



139. The Claimant told him that they were to proceed as if nothing had happened. According to RW1, their working relationship thereafter remained professional.
140. RW1 averred that on 3rd February 2023, he sent a text message to the Claimant through WhatsApp informing her that she had left her lipstick in his car.
141. It was RW1's testimony that his remarks alluding to the night of 13/14th January 2023 was with the intention of making a play of words with the term "1 night stand" and "was it that bad?".
142. RW1 averred that the reason he texted the Claimant and used these terms loosely was because at that period of time, the Claimant was moody, and he had made the correlation that her moodiness was due to her behavior on that particular night. He thought she was concerned about how her inappropriate actions would impact their work relations, and he saw it proper to use the said lingo loosely in order to break the ice.
143. RW1 averred that the Claimant's work performance was declining and it was his hope that humor would get her to open up and talk about what she had said and done on the night of 13th January 2023 at the club in a bid to settle the matter once and for all. The Claimant texted him back and said, "we agreed that nothing happened though". In RW1's view, this clearly connoted that she was aware of her actions and wished not to speak about them. He left it at that.
144. That on the morning of 22nd February 2023, the Claimant informed him through Gmail chat that she was sick. He informed her that she was free to take sick leave immediately to consult her doctor. Later on, the same day at around 2:00 pm, the Claimant showed up at work. He was surprised to see her as she had asked for a sick day off in the morning and he asked the Claimant to go home and rest. That it was against this backdrop that he made the comment, "kama umenimis sema tu".
145. RW1 averred that his intention was to demonstrate and communicate to the Claimant that her presence in the office was uncalled for. He insisted that the Claimant had to go home and out of his prerogative as the CEO, he sent her Kshs 1000/- through the Company's petty cash to facilitate her cab ride home. She acknowledged receipt of the money by giving a positive thumbs-up on the Gmail chat. This action was and is not unique to her nor was it done to favor her as he had sent the same amount of Kshs 1,000/- to a male employee who fell sick the previous day.
146. RW1 averred that on 28th March 2023, the COO/HR Director of the Company pulled him aside and informed him that the Claimant had reported to her a sexual harassment and rape claim against him. He was shocked that the Claimant accused him of sexually harassing and raping her.
147. That given the gravity of the allegations, the COO/HR Director took a raft of measures in a bid to investigate and resolve the matter, including placing the Claimant on temporary paid leave, informing all employees that a workplace investigation was being conducted and removing him and the Claimant from the Company's WhatsApp group.
148. The COO/HR Director then recused herself from the investigation due to conflict of interest and the Company appointed an independent investigator to investigate the matter.
149. That on 6th April 2023, the lawyer coordinating the investigation sent him the Claimant's formal complaint through email and asked him to respond to it by giving his written statement and providing his witnesses by 12th April 2023.
150. He formally requested the employees who had been invited to attend the night out with the customer representative on 13th January 2023 through email, to write a witness statement as to the events of that night and generally, of his persona and his communication style.



151. On 11th April 2023, he sent his response to the Claimant's complaint, together with documentary evidence he had disproving the allegations levelled against him to the coordinating lawyer's email address.
152. On 12th April 2023, he received an email from the independent investigator relaying his investigation style and further informed all parties that they could seek independent legal advice but that they could only appear for the interviews in person. The independent investigator asked all parties to sign a Non-Disclosure Agreement for the sake of all parties and witnesses who had to participate in the investigations.
153. On 14th April 2023, he received an email from the coordinating lawyer, informing him that the interview with the independent investigator had been rescheduled to noon on the same day. He was called in at 4:00 pm to be interviewed.
154. On 26th April 2023, he was called to a meeting with the independent investigator, the COO/HR Director of the Company and the coordinating lawyer. He was informed by the independent investigator of the findings of the investigation.
155. The independent investigator found that the claim by the Claimant for sexual harassment at work had failed since the allegations levelled against him did not establish a case of sexual harassment and rape against the Company's policy.
156. That he has never been summoned by the police, neither has a criminal charge of rape nor any form of criminal offence been preferred against him.
157. RW1 was of the view that the post rape care form produced by the Claimant was an afterthought since the alleged rape was reported to the police almost five months later, on 4th June, 2023.
158. Mr. EGT testified as RW2. He identified himself as an Advocate of the High Court of Kenya and the Managing Partner of K&A Consulting LLP, a firm registered with the Institute of Human Resource Management, offering Human Resource and Employment Law Advisory services. Equally, RW2 adopted his witness statement to constitute his evidence in chief.
159. It was RW2's evidence that on or around 5th April 2023, he received instructions from the 2nd Respondent to undertake workplace investigations based on allegations of sexual harassment brought forward by the Claimant, against the 1st Respondent. The allegations were of both physical and non-physical sexual harassment.
160. RW2 averred that he proceeded to review written statements from the Claimant, the 2nd Respondent and the witnesses provided. He then invited the Claimant and the 1st Respondent, together with the witnesses involved in the matter, for interviews, which he conducted on 4th and 17th April 2023.
161. Neither the Claimant nor her witness presented themselves on both days of the investigation interviews. He proceeded to hear representations from the 1st Respondent and the other witnesses.
162. Upon conclusion of the interviews, he proceeded to write a report analyzing the facts collected and thereafter presented a summary of findings.
163. According to RW2, he pointed out that his responsibility was not to determine whether the facts took place as they were narrated by the parties. His mandate was simply to evaluate all facts as presented with a view to objectively determining if the facts supported the claim of sexual harassment as per the company policy.



164. He completed the report and found that the Claimant failed to establish a case of sexual harassment as per the company policy and the allegations of physical harassment, as claimed by the Claimant, was not proved.
165. Ms. BS testified as RW3. She identified herself as the 2nd Respondent's Co-founder, COO and HR Director. Similarly, RW3 adopted her witness statement to constitute her evidence in chief.
166. It was RW2's testimony that on 28th March 2023, she received an email from the Claimant, detailing that she was a victim of rape and sexual harassment at the Company. She named her alleged abuser as the 1st Respondent.
167. Upon receiving and reading through the email, she called the 1st Respondent aside and informed him that she had received grave allegations of rape and sexual harassment against him from one of the Company's employees. She asked him if the allegations were true and he told her that they were not.
168. She called the Claimant to her office and asked her if the allegations levelled against the 1st Respondent were true as they were very serious. She confirmed that they were true. She then asked her to share any proof that she may have that would corroborate her allegations. The Claimant shared with her a business card of her lawyer, whom she said she (RW3) should contact.
169. According to RW3, the Claimant's action of referring her to her lawyer was antagonistic on her part since there was no action by the Company warranting the engagement with her legal advisor. She advised the Claimant to go home on paid temporary leave and informed her that during the temporary leave, she would not be required to do any work. She also advised the Claimant to leave all her work tools at the office.
170. It was RW3's testimony that she needed to separate the Claimant from her alleged abuser and to relieve her of stress, since her letter implied that she had suffered a lot of emotional distress and asking her to go home and decompress seemed like the humane thing to do.
171. RW3 added that the Claimant worked in the critical [Particulars Withheld] docket, which was integral in the day-to-day operations of the Company and her work systems such as her telephone and email had critical information that enabled the Company's business processes to run without interruption. That it is for this reason that she temporarily disabled the Claimant's work account and transferred to herself access to this critical information for business continuity.
172. That further, since the Claimant frequently interacted with the 1st Respondent and their communication platforms were interconnected, she disabled the Claimant's work account, her work Google Workspace account (Work email) and Slack. She however, did not disable the 1st Respondent's work accounts as he is the CEO of the Company, and his presence is critical for the running of the business operations of the Company. According to RW3, disabling the 1st Respondent's work accounts would basically mean disabling the Company.
173. RW3 further averred that she also removed both the Claimant and the 1st Respondent from the Company's unofficial WhatsApp Group at the same time with the aim of separating them from any virtual interaction.
174. That on 29th March 2023, at around 10:20 am, she received an email from the Claimant appreciating how courteously she had handled her during their conversation the previous day. She, however, excluded the instance where she advised that she should contact her lawyer.



175. RW3 averred that she commenced the search for an investigator who would carry out the workplace investigation of the matter. This was with an aim of removing any bias as the 1st Respondent is her spouse.
176. She formally acknowledged receipt of the Claimant's harassment complaint on 30th March 2023, via email and requested her to tender her evidence to the Company, reiterating that she was on temporary paid leave and that the investigations regarding the matter would run for an estimated 28 days.
177. RW3 averred that the Claimant responded to her email sent on 30th March, 2023, the following day and asked for several things. The Claimant further reiterated that she (RW3) had been courteous during the entire process and thanked her for that.
178. The Company eventually settled on K&A Associates to run the investigations as they were the most reputable and professional in handling this sensitive matter.
179. RW3 averred that she responded to the Claimant's letter dated 31st March 2023 and informed her that the Company was identifying an independent party to investigate the matter. She also informed her that her advocate and/or an employee of her choice would be welcome at her hearing during the investigation and that since she had not been in a work-from-home arrangement, she was not required to log in to her work-related platforms. Additionally, she (RW3) informed her that she should send her responses within two days as requested.
180. On 4th April 2023, the Claimant responded with her documentary evidence and list of witnesses, and she (RW3) took this as her willingness to participate in the investigative process.
181. On 5th April 2023, she informed the Claimant via email that the Company had appointed Edwin Thiongo of K&A Associates as the investigator in the matter and informed her of what the independent investigator required from her.
182. The Claimant sent an email on 12th April 2023, to the appointed investigator informing him that she had appointed the firm of Munyao-Kayugira & Co. Advocates to represent her in the matter and to handle her complaint.
183. In an email dated 12th April 2023, sent to all the parties, the investigator reiterated that, as per the [Employment Act](#), workplace investigations are not formal hearing forums and clarified that all parties were entitled to seek independent legal advice but were expected to appear in person throughout the investigation.
184. The investigator also stated that the investigations were to be kept confidential by all parties to protect the Claimant and all witnesses.
185. RW3 averred that the only time her advocates on record were involved in this matter was when it became a legal issue after the Claimant sent them her demand letter on 8th August 2023.
186. On 12th April 2023, the Claimant's advocates emailed the coordinator requesting for the 1st Respondent's response to the Claimant's complaint, a reorganization of the investigative hearing, the independent investigator's credentials, and a neutral location to conduct the investigations.
187. The coordinator responded to this letter and stated that the investigator was not an adjudicator, but an independent party requested to review the complaint at the behest of the Company to prevent the supposed bias alluded to by the Claimant. The coordinator also informed the Claimant's advocates that the Claimant would be interviewed at the Company's offices on 14th April 2023 at 10.00 am.



188. On 12th April 2023, she (RW3) sent the Claimant a notice, via email, which she mistakenly dated 31st March 2023 and recalled the Claimant from paid leave.
189. The Claimant's presence at the Company was essential to facilitate the completion of the investigation and to enable her to resume her work assignments reporting to her (RW3). In the letter, she instructed her to report to work on Friday, 14th April 2023.
190. The Claimant's advocates sent an email to the coordinator the following day, insisting that they were to be present during the interview with the independent investigator and further stated that their absence during the interview would only serve to delay the completion of the matter, as it would have to be adjourned in that scenario. In RW3's view, this was bad faith on the part of the Claimant.
191. The Claimant had been expected to give her evidence during her hearing on the morning of 14th April 2023 at 10:00 am but at around 8:50 am, she sent her an email stating that she was unwell and unable to report to work.
192. RW3 averred that in two separate emails sent the same day to the Claimant, she informed her that as she had not been granted sick off, she was expected to report to work after receiving treatment and most importantly, she was to have the employee notice sick form filled in at her treatment facility. This was to confirm to the Company that indeed she had sought treatment for an ailment on the very same morning when her hearing was to commence.
193. At around 5:00 pm, the same day, the Claimant sent her an email informing her that the Company should contact Coptic Hospital for any clarifications. She also attached a sick note from the hospital, which stated that she had been on follow-up at the facility since 14th January 2023 and was still undergoing counselling sessions and was thereby unable to resume work pending review on 5th May 2023.
194. According to RW3, the Claimant's response raised a couple of concerns as she was asking for an additional 15 days of sick leave in addition to the 11 days of paid leave she had already been granted. In RW3's view, this was a clear demonstration of the Claimant using a technicality to evade the investigation.
195. That further, it was unclear why the Claimant needed more time off to attend counseling sessions, as she hadn't made such a request before and even then, counseling sessions do not last the entire day.
196. That the Claimant only reached out to her on the morning of 24th April 2023 at around 9:00 am, reiterating that she was still on sick off and was due for another assessment by a clinical officer on 5th May 2023.
197. RW3 added that on the morning of 24th April 2023, she had set a meeting for a town hall for all employees of the 2nd Respondent. The town hall was held to inform the Company's employees that the Company was under financial strain. All employees present in the town hall meeting were presented with the option of either taking a pay cut or, if they were not agreeable, taking a voluntary separation package.
198. That as the Claimant had repeatedly informed her that she was on off sick, including the morning of the town hall meeting, she thought it best not to invite her to the meeting since they had previously invited her for other administrative processes which had been diarized, but she had declined to attend.
199. RW3 averred that on 27th April 2023, she sent the Claimant an email detailing what was discussed during the town hall and informing her of the people who were present and absent during the meeting.



- This constituted the minutes of the town hall meeting. RW3 added that the letter received by the Claimant was like what all other employees received.
200. RW3 was categorical that the Claimant was not the only employee impacted by a 30% pay cut. That two employees received a 55% pay cut, while the remainder of the employees received 20% and 5% pay cuts.
 201. RW3 averred that the Claimant did not respond to this communication.
 202. That on 26th April 2023, the Company received the final report and findings on the matter from the investigator. Before they could send the Claimant the report, she was required to sign the confidentiality agreement, which was sent by the coordinator on 28th April 2023 to all parties.
 203. The Claimant was required to sign the Non-Disclosure Agreement, as confidential information pertaining to the investigation had been shared by multiple parties, some of whom were not the Company's employees. The Claimant did not sign the Non-Disclosure Agreement.
 204. RW3 averred that following the investigation, several recommendations were made to the Company to adhere to, to ensure that the Company was a safe working environment.
 205. RW3 added that the Company has in place a sexual harassment policy that clearly defines what sexual harassment is. She added that the Company's permanent employee count is less than 20.
 206. RW3 further averred that the Claimant's performance prior to her report of sexual harassment on 28th March 2023, was lackluster following a promotion in December 2022.
 207. RW3 further averred that the Claimant's job position was never advertised. That the Company was seeking a [Particulars Withheld] Manager and this was the position that was being advertised.
 208. According to RW3, the next time she heard from the Claimant was when she filed her notice of resignation on 5th May 2023 on account of constructive dismissal. In her notice, she stated that she was resigning effective immediately and did not serve the company with a termination notice.
 209. She confirmed receipt of the Claimant's resignation notice on 8th May 2023 and informed her that her final wages and dues would be remitted in accordance with her employment contract and relevant laws. The Claimant did not object to these terms.
 210. With respect to the assertions by CW2, RW3 averred that the workplace investigation over the Claimant's allegation of rape and sexual harassment was scheduled for 14th April 2023. At around 1:00 pm on the same day, she was requested by the independent investigator handling the investigation to ask CW2 to make her way to the boardroom so that she could provide her oral statement in the matter.
 211. She found CW2 at the workplace breakout area having lunch with her colleagues. She informed her that she was up next to give her oral statement. About 45 minutes later, she found CW2 sitting at her desk, which is in the open-plan office area. Concerned, she asked CW2 why she was still at her desk while people were waiting for her. She did not respond and RW3 got frustrated as it seemed that CW2 was not taking the investigative process seriously.
 212. She then asked her why she did not send her written statement to the 1st Respondent who had requested her to send him her statement as per the instructions of the investigator. She once again didn't answer.
 213. RW3 averred that she later found out that CW2 had directly sent her written statement to the investigator without informing the 1st Respondent. According to RW3, she was unaware of this development. In her view, CW2 was trying to frustrate the investigative process.



214. RW3 averred that when she told CW2 to go to the boardroom to give her statement to the independent investigator, she informed her that she had been suffering from a lot of anxiety and looked like she wanted to cry. RW3 averred that, already frustrated at that point, she told CW2 she was being childish and told her to go to the boardroom.
215. She realized that she was losing her calm and she called the company coordinator and asked her to escort CW2 to the boardroom so that she could give her oral testimony to the independent investigator.
216. RW3 was categorical that she never insulted CW2.
217. That on 24th April, 2024, CW2 requested to have a meeting with her, which request she accepted. CW2 confronted her about the events of the afternoon of 14th April 2023. She listened to CW2 and apologized for her actions, which apology she accepted.
218. RW3 averred that she had a follow-up with the independent investigator at the conclusion of the workplace investigation when it was brought to her attention that due to the major discrepancies between CW2's prior written statement and her oral statements during the hearing of the workplace investigation of the events that occurred on the night of 13th/14th January 2023, he had to nullify her statement. Therefore, her statement could not be used in the investigation to establish a timeline of events that unfolded that night.

Submissions

219. On behalf of the Claimant, the Court was urged to find that the testimony of the 1st Respondent was laced with nothing but lies and an attempt to clutch onto non-existent straws. Referencing the case of Ooko & another v SRM & 2 others (Civil Appeal 195 & 197 of 2019), it was submitted that the 1st Respondent sexually harassed the Claimant as he channeled unwanted verbal, non-verbal and physical conduct of sexual nature that served the purpose of violating her dignity and creating an intimidating, hostile, degrading, humiliating and offensive environment for her.
220. In the same vein, the Court was urged to find that there cannot be a justification for the 1st Respondent's actions as "his easy-going nature at work."
221. To bolster these submissions, the Court was invited to consider the case of P O v Board of Trustees A F & 2 others 2014 KEELRC 623(KLR).
222. It was further submitted that the conduct and language of the 1st Respondent to the Claimant was discriminatory, as it was solely directed at her and no other employees.
223. It was the Claimant's further submissions that the 2nd Respondent outrightly failed to provide a conducive work environment free from sexual harassment.
224. Citing the case of CAC v CS Limited [2016] KEELRC 977 (KLR), the Claimant further submitted that the lack of a solid Sexual Harassment Policy as required by the law resulted to a lack of a clear procedure on how she could make her complaint against the 1st Respondent and this resulted in a blatant unfair hearing and handling of her sexual harassment complaint. In further support of this position, the Claimant sought to rely on the case of Kenya Union of Commercial, Food and Allied Workers v Meru Central Dairy Co-operative Union Limited [2015] KEELRC 102 (KLR).
225. It was further submitted that the 2nd Respondent, by failing to provide and adopt a Sexual Harassment Policy, signaled systemic negligence and disregard for workplace safety standards. According to the Claimant, they enabled a culture of lack of accountability that resulted in the 1st Respondent acting with impunity and silencing her through intimidation and uncertainty.



226. In further submission, the Claimant argued that the actions of the 2nd Respondent upon receiving the rape complaints were inequitable, unjust and resulted in additional emotional distress upon her and consequently resulted in her resignation. In support of her position, the Claimant referenced the case of *Coca Cola East & Central Africa Limited v Maria Kagai Ligaga* [2015] eKLR.
227. On the part of the Respondents, it was submitted that the 2nd Respondent's actions of engaging an independent investigator, placing the Claimant on temporary paid leave and openly communicating with the Claimant as regards the investigative process, reflected its adherence to fair labour practices as enshrined in Article 41(1) of *the Constitution* and to procedural fairness under Article 47 (1) of *the Constitution* as read with the provisions of the *Fair Administrative Action Act*. In support of this position, the Court was invited to consider a number of precedents, including *Kilima v Centre for Rights Education and Awareness* 2024 eKLR, *Paul Wanyangah v Market Development Trust t/a Kenya Markets Trust* [2017] KEELRC 378 (KLR) and *Jennifer Osodo v Teachers Service Commission* [2013] KEELRC 518 (KLR).
228. The Respondents further submitted that the Claimant's initial restriction of access to work platforms was both reasonable and proportionate in the circumstances and cannot be construed as evidence of constructive dismissal.
229. Referencing the case of *Catherine Mugure v Hillcourt Hotel & Spa Limited* [2019] eKLR, it was submitted by the Respondents that the Claimant's unilateral and extended absence from duty taken without obtaining any form of approval for the excess period, amounted to a breach of her contractual obligations. According to the Respondents, the Claimant's absence disrupted the 2nd Respondent's operational planning and left it without recourse. That this was despite the Claimant having been offered a compromise that balanced health needs with workplace accountability.
230. In the Respondents' view, the 2nd Respondent's request for the Claimant to return to work was lawful, reasonable and within the bounds of their managerial prerogative under both the contract and the law. The Respondents maintained that it cannot be construed as oppressive or retaliatory.
231. It was further submitted that the proposed salary cuts was a lawful operational measure necessitated by the company's financial position at the time that affected all employees, including the 1st Respondent and Ms. S. To augment this position, the Respondents placed reliance on the case of *Emmanuel Wambua Muthusi & 6 others v Khoja Shia Ithna Ashari Education Board t/a Jaffery Academy* [2020] KEELRC 574 (KLR) and *Muga v G. North & Son Limited* [2025] eKLR.
232. It was further submitted that the 2nd Respondent does not condone sexual harassment and that, despite having less than 20 employees, it has in place policies and guidelines which are regularly updated.
233. In the same breath, the Respondents submitted that once the Claimant reported the sexual harassment and rape allegations to Ms. S, the 2nd Respondent took appropriate action and the Claimant was apprised of the process at all times.
234. It was the Respondent's position that the Claimant resigned on her own volition and not because of frustration by the 2nd Respondent. To this end, the Respondents argued that the Claimant is contractually liable to pay the 2nd Respondent one month's salary in lieu of notice.
235. It was further posited by the Respondents that as a result of the Claimant's refusal to resume work and her eventual resignation, the 2nd Respondent's operations did not run at optimum levels and the Company failed to collect due revenues and to meet its financial obligations to third parties. That this disruption had a direct and adverse impact on its financial standing, thus occasioning economic loss.



Analysis and Determination

236. Flowing from the record, the Court has singled out the following issues for determination:
- a. Whether the Claimant has proved that she was constructively dismissed from employment;
 - b. Whether the Respondents' Counterclaim has merit; and
 - c. Whether the Claimant is entitled to the reliefs sought in the Claim.

Constructive dismissal?

237. It is the Claimant's case that her resignation from the 2nd Respondent's employment was not voluntary. In her letter of resignation, the Claimant highlighted a number of reasons that led to her decision to tender her resignation.
238. The primary reason raised by the Claimant in her letter of resignation is the alleged sexual harassment and rape by the 1st Respondent. The other reasons cited by the Claimant are the manner in which investigations into her complaint of sexual harassment and rape were handled, her recall to work after being placed on temporary paid leave following the sexual harassment and rape complaint and a proposed 30% salary reduction. Indeed, it is notable that, save for the salary reduction, the latter reasons are secondary and flow from the sexual harassment and rape allegations.
239. Refuting the claim for constructive dismissal, the Respondents have contended that upon learning of the allegations of sexual harassment and rape by the Claimant against the 1st Respondent, RW3, who is the 2nd Respondent's COO/HR Director, took all precautions and necessary steps, including placing the Claimant on paid leave. That further, the 2nd Respondent hired an independent investigator to investigate the matter to eliminate any bias and to ensure the investigation was transparent and objective.
240. The 2nd Respondent has further contended that it had the prerogative to recall the Claimant from paid leave. With respect to the proposed salary cut, the Respondents aver that the Claimant was not the only employee impacted.
241. The critical question that this Court must now determine is whether the Claimant has proved that she was constructively dismissed from employment.
242. The Black's Law Dictionary (10th Edition, p. 561) 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.”
243. In essence, constructive dismissal occurs when an employee resigns due to intolerable working conditions created by their employer, making the resignation effectively involuntary. In this regard, the employee can bring a claim against the employer for wrongful termination of employment.
244. It should also be appreciated that constructive dismissal is a legal remedy designed for extreme situations, where the workplace has become hostile, toxic and intolerable.



245. According to the Claimant, all was well in the employment relationship until 17th September 2022, when she received an unusual text message from the 1st Respondent. The message contained a link to an article titled, “What happens when you stop having sex.”
246. In his testimony, the 1st Respondent averred that he sent out the same message to a number of people, including his wife and other close friends. He suspected that he may have sent the message to the Claimant in error.
247. The Claimant further cited another incident in which she claims that on 10th January 2023, the 1st Respondent kissed her without her consent while he gave her a ride home. The 1st Respondent denied these assertions.
248. Another incident cited by the Claimant was that on 11th January 2023, the 1st Respondent sent her a vulgar TikTok video of an ohangla dance that was covert with sexual innuendo.
249. In his testimony, the 1st Respondent averred that he sent the video to the Claimant, as it was titled “L” and the Claimant is called L. He went on to state that, as he is not Luo, he did not understand the meaning of the song. He added that the Claimant replied to his message with smiling emoticons and he believed the conversation was over.
250. In terms of Section 6(1) of the *Employment Act*, an employee is sexually harassed if the employer of that employee or a representative of that employer or a co-worker—
- (a) directly or indirectly requests that employee for sexual intercourse, sexual contact or any other form of sexual activity that contains an implied or express —
 - (i) promise of preferential treatment in employment;
 - (ii) threat of detrimental treatment in employment; or
 - (iii) threat about the present or future employment status of the employee;
 - (b) uses language whether written or spoken of a sexual nature;
 - (c) uses visual material of a sexual nature; or
 - (d) shows physical behaviour of a sexual nature which directly or indirectly subjects the employee to behaviour that is unwelcome or offensive to that employee and that by its nature has a detrimental effect on that employee’s employment, job performance, or job satisfaction.
251. And further, the Black’s Law Dictionary (10th Edition, p. 1584) defines Sexual harassment to mean “a type of employment discrimination consisting in verbal or physical abuse of a sexual nature, including lewd remarks, salacious looks and unwelcome touching”.
252. Under the International Labour Organization (ILO) framework, the Violence and Harassment Convention, 2019 (No. 190), defines the term “violence and harassment” in the world of work to refer to a range of unacceptable behaviours and practices, or threats thereof, whether a single occurrence or repeated, that aim at, result in, or are likely to result in physical, psychological, sexual or economic harm, and includes gender-based violence and harassment.



253. Further, the Convention defines the term “gender-based violence and harassment” to mean violence and harassment directed at persons because of their sex or gender, or affecting persons of a particular sex or gender disproportionately, and includes sexual harassment.
254. With these definitions in mind, the Court will now proceed to consider whether the claims of sexual harassment and rape raised by the Claimant against the 1st Respondent are valid as to form a basis of constructive dismissal.
255. On the face of it, the first message sent by the 1st Respondent to the Claimant on 17th September 2022 is sexually explicit and too inappropriate to send to a junior colleague. According to the 1st Respondent, he sent the message to his wife (RW3) and other close friends. He did not indicate or suggest that any of these friends were his colleagues. This further confirms that the kind of message contained in the said article was not for dissemination to colleagues, more so, those junior to him.
256. The foregoing applies to the TikTok video of the ohangla song, the 1st Respondent sent to the Claimant. It is notable that the WhatsApp text bearing the song in question is accompanied by a translation of the lyrics in English. This, therefore, discounts the 1st Respondent’s testimony that he did not know the meaning of the song. Evidently, the song contains sexual innuendos.
257. The text messages sent by the 1st Respondent to the Claimant, when considered alongside the definition of the term sexual harassment, lead me to conclude that the same constitute sexual harassment.
258. Bearing in mind that the Claimant was at the time reporting to the 1st Respondent, it was imperative that he maintain professionalism. The 1st Respondent’s action of sharing the kind of messages described above with the Claimant, no doubt crossed the professional line and breached Section 6(1) of the *Employment Act* and ILO Convention No. 190.
259. If I may say, the Claimant’s response to the message by way of emoticons is not a valid defence for the 1st Respondent’s actions. The bottom line is that the 1st Respondent should not have shared the message with the Claimant in the first place. The Claimant’s reaction does not validate the 1st Respondent’s actions.
260. Suffice to say, the messages sent by the 1st Respondent to the Claimant were highly inappropriate and went beyond the boundary lines and the relationship that was expected between him and the Claimant.
261. The final incident cited by the Claimant relates to the events that transpired on the morning of 14th January 2023. It is the Claimant’s case that the 1st Respondent raped her in his car at the RFUEA grounds on Ngong road as she leaned over to retrieve her bag from the back seat of his car.
262. Disputing the Claimant’s version of events, the 1st Respondent has contended that the Claimant appeared very intoxicated and that on their way to the parking lot from Orchid Club, she had put her hand on his waist and was uttering sexually laced words to him. He categorically denies ever touching the Claimant on that night. According to the 1st Respondent, it was the Claimant who was behaving inappropriately as she fondled and touched him.
263. The 1st Respondent further avers that he could not have raped the Claimant within a short span of time, coupled with the fact that the alleged rape occurred in the back seat of a car with the doors wide open in a public parking lot while the Claimant was wearing belted trousers.
264. CW2, who was present at the Orchid Club with the Claimant and the 1st Respondent, testified that she went through the parking lot of the club looking for the Claimant as she was getting tired of waiting



- for her and was not picking her calls. According to CW2, she found the Claimant seated with the 1st Respondent at the back seat of his car. That the Claimant stepped out of the car and started crying.
265. It was CW2's further testimony that on the way home, the Claimant insisted that they go to a hospital first before going home. That it is upon reaching St. Peters Orthopedic & Surgical Specialty Centre in Muthiga that the Claimant disclosed to her and the medical personnel that she had been sexually assaulted by the 1st Respondent. However, the Claimant was not attended to as she did not have an OB from the police.
266. According to the Claimant, she received treatment from Coptic hospital the following day. In support of her case, the Claimant exhibited a post rape care form which was filled out on 14th January 2023 at Coptic Hospital at 1647 hours.
267. I highly doubt that the Claimant would make a fun trip to St. Peters Hospital in Muthiga in the wee hours of the morning of 14th January 2023 and subsequently, Coptic Hospital in the afternoon. On a balance of probabilities, this Court is persuaded that there was a sexual encounter between the Claimant and the 1st Respondent in the period preceding the hospital visits.
268. This is coupled by the WhatsApp message the 1st Respondent sent to the Claimant on 3rd February 2023, in which he stated as follows: "And you ghosted me after 1 night stand. Was it that bad?" In response, the Claimant stated as follows: "We agreed that nothing happened, though." To which the 1st Respondent responded, "Oooh yes. I forgot."
269. According to the 1st Respondent, the choice of his language in the above conversation was meant to humor the Claimant and make her open up and talk about what she had said and done on the night of 13th January 2023. He further testified that he wanted to break the ice, hence his choice of words.
270. The Concise Oxford English Dictionary (12th edition, p. 1000) defines the expression "one one-night stand" to mean a sexual relationship lasting only one night. Further, the Oxford Advanced Learners Dictionary (5th edition p. 809) defines a "one-night stand" to mean a sexual relationship that lasts for a single night.
271. The above definitions, when considered alongside the 1st Respondent's message to the Claimant with respect to the "one-night stand", and the Claimant's subsequent response, leave no doubt in my mind that the 1st Respondent was referring to a sexual encounter with the Claimant.
272. Why would the 1st Respondent use that kind of language just to humour the Claimant and break the ice if indeed there was no sexual encounter between them? Indeed, there are many words and phrases in the English language that the 1st Respondent could have used if his intention was just for humour and breaking the ice, as he puts it. Certainly, using the term "one night stand" followed by "was it that bad" is not the appropriate language to employ in humoring and breaking the ice with a junior colleague.
273. Needless to say, the 1st Respondent's defence in that regard does not hold.
274. CW3, a Counselling Psychologist, testified that the Claimant attended therapy sessions at their organization, Usikimye. To this end, she produced a psychological report dated 5th April 2023, which indicates that the Claimant had complained of sexual assault by her boss. As per the psychological report, the Claimant was to undergo approximately 8-10 counselling sessions.
275. In light of the actions taken by the Claimant following the events of the morning of 14th January 2023, it is highly probable that the sexual encounter was not consensual. If at all the sexual encounter was consensual, why would the Claimant proceed to the hospital, immediately thereafter and have a post rape care form filed out, then undergo counseling sessions?



276. No doubt, the actions of the 1st Respondent against the Claimant depict the worst form of gender-based violence at the workplace.
277. It should also be appreciated that in this case, the Claimant did not have to prove beyond reasonable doubt that the 1st Respondent had sexual intercourse with her without her consent. All she needed to do was prove her claim on a balance of probabilities.
278. The Court is satisfied that in this case, the Claimant has proved on a balance of probabilities that the 1st Respondent sexually assaulted her, contrary to the provisions of Section 6(1) of the [Employment Act](#) and ILO Convention No. 190.
279. Bearing in mind that at the material time the Claimant was working directly under the supervision of the 1st Respondent hence their interactions were inevitable, it is more than probable that the Claimant's work environment had become hostile, intolerable and uncondusive.
280. This was further compounded by the inappropriate messages the 1st Respondent had initially shared with the Claimant.
281. The ILO Convention No. 190 recognizes that violence and harassment in the world of work is a human rights violation, a threat to equal opportunities, unacceptable and incompatible with decent work. The Convention further recognizes the right of every person to a world of work free from violence and harassment, including gender-based violence and harassment.
282. Further, under the [Employment Act](#) and ILO Convention No.190, an employer is enjoined to take steps to prevent sexual harassment and respond effectively whenever a complaint of sexual harassment is raised at the workplace.
283. It thus follows that the 2nd Respondent was required by law to ensure that its workplace was free of sexual harassment and gender-based violence. In the same breath, the Claimant was protected under the law from any form of sexual harassment and gender-based violence.
284. In his testimony, the 1st Respondent stated that as a line manager and human being, he has a strategy of maintaining communications in a way that is informal, fun and makes use of joke innuendos, current lingo and trends.
285. Regardless of his personality and his manner of interactions with people, the 1st Respondent was bound to observe professional boundaries. By all means, making fun and using joke innuendos should not have included sharing sexually explicit material and texts with the Claimant, who was his junior colleague and direct report. That was conduct that was simply not acceptable in the workplace.
286. Revisiting the definition of constructive dismissal, it is apparent that the 1st Respondent's actions towards the Claimant had created a work environment that was hostile, intolerable and uncondusive and she had no option but to resign from the 2nd Respondent's employment.
287. The above finding is further informed by the position of the 1st Respondent in the 2nd Respondent company. The 1st Respondent was no ordinary employee. Besides, being the Claimant's line manager, he is the CEO, Co-founder, Director and Shareholder of the 2nd Respondent. Therefore, the 1st Respondent and Claimant were not similarly situated in the sense of being employees in the company. Whatever the case, the 1st Respondent was not going to be dismissed from employment on account of the allegations of sexual harassment.
288. Granted, RW3 initiated investigations through an independent investigator. Be that as it may, it is not in doubt that the working relationship between the Claimant and the 1st Respondent had by then



- become strained. Either way, the working relationship would not be the same moving forward. On this score, the Court does not doubt the Claimant's assertions that following her resumption of work after the incident, his work relationship with the 1st Respondent was tense and uncomfortable.
289. Indeed, RW3 appeared to acknowledge this in her letter dated 30th March 2023 to the Claimant, as she placed her on temporary paid leave pending resolution of the matter.
290. The Claimant has further taken issue with the manner in which the investigations were undertaken. On this aspect, it is unclear to the Court why RW3 was displeased with the fact that CW2 had not shared her statement with the 1st Respondent and instead had opted to send it directly to the investigator.
291. If indeed the investigations were to remain objective and devoid of any interference, why would it concern RW3 that CW2 had not shared her statement with the 1st Respondent? Her concern should have been to ensure that CW2 had sent her statement to the independent investigator as opposed to the 1st Respondent.
292. Needless to say, the foregoing casts doubt on the objectivity of the investigations.
293. In her resignation letter, the Claimant further cited her recall to work from the temporary paid leave as one of the grounds for her resignation from employment. The Court does not find the said recall to be unreasonable, as to result in the Claimant's resignation from employment, seeing that she had been sent on paid leave at the behest of the 2nd Respondent.
294. As such, the company had a managerial prerogative to recall her. In any event, when the Claimant indicated her inability to resume work on account of ill health, RW3 forwarded to her a notice sick form to be filled out at the treatment facility. Indeed, this action was in consonance with Section 30(1) of the *Employment Act*. Further, there is no evidence that after forwarding the filled-out sick form, RW3 sustained the recall to work.
295. Further, the Court does not find the proposal to reduce the Claimant's salary by 30% to be a ground for resignation. Here is why. First, it is evident that there was a town hall meeting with the 2nd Respondent's employees to discuss the Realignment of the 2nd Respondent Company. Second, RW3 shared with the Claimant the outcome of the town hall meeting through her email of 27th April 2023, in which she informed the Claimant that she was willing to have the same conversations with her, outlining the contents of the meeting at her request. Third, RW3 forwarded to the Claimant a Notice of Intent, which she was to execute. This implies that the terms of the Realignment could only be effected with the Claimant's consent. There is no evidence of an arbitrary action on the part of the 2nd Respondent to reduce the Claimant's salary without her express consent.
296. The foregoing notwithstanding, the Court finds that the 1st Respondent's actions had made the Claimant's continued employment with the 2nd Respondent intolerable and unconducive. Consequently, the Claimant was entitled to leave the 2nd Respondent's employment on that basis with or without notice.

Counterclaim?

297. The Respondents seek to recover from the Claimant the sum of Kshs 120,000/- being notice pay, Kshs 6,000,000/- being loss and disruption of business and Kshs 500,000/- being legal and administrative fees pertaining to the investigation.
298. As the Court has found that the Claimant was entitled to leave the Respondent's employment on the basis of a hostile, intolerable and unconducive working environment, the Counterclaim is disallowed.



On account of the working environment created by the 1st Respondent, the Claimant did not have to give any notice. Consequently, the claim for salary in lieu of notice is unsustainable.

299. Further, the loss of business worth the sum of Kshs 6,000,000/- has not been justified. In any event, the Court has found that the Claimant was entitled to leave the 2nd Respondent's employment on account of the 1st Respondent's actions. Therefore, the Respondents cannot claim for loss of business as a result of the Claimant's sudden resignation.
300. Similarly, the Respondents' claim of Kshs 500,000/- being legal and administrative fees pertaining to the investigation, collapses as the Court has found that the Claimant has proved to the requisite standard that she was sexually harassed by the 1st Respondent. As such, her complaint of sexual harassment cannot be termed as flimsy or frivolous.

Reliefs?

301. As the Claimant's claim for constructive dismissal has succeeded, the Court awards her one (1) month's salary in lieu of notice and compensatory damages equivalent to ten (10) months of her gross salary.
302. In issuing this award, the Court has taken into account the length of the employment relationship, coupled with the circumstances leading to the termination of employment. Further, the Court has considered the Claimant's assertions that she has suffered emotional, physical, mental and social stress as a result of the 1st Respondent's actions. Indeed, ILO Convention No. 190 acknowledges that violence and harassment in the world of work affects a person's psychological, physical and sexual health, dignity, and family and social environment.
303. In the present case, there was evidence by CW3 that the Claimant underwent therapy and counselling as a result of her ordeal occasioned by the 1st Respondent. Therefore, the Court has no reason to doubt the Claimant's assertions of emotional suffering and mental stress.
304. The Claimant's claim for general damages in the sum of Kshs 5,000,000/- is declined, seeing that the Court has awarded her compensatory damages. In so holding, the Court is guided by the principle of "a fair go all round" which enjoins the court to balance the interests of the employer and those of the employee.

Orders

305. Against this background, the Court makes the following final orders:
- a. The claim for constructive dismissal succeeds and the Claimant is awarded the sum of Kshs 120,000.00 being one (1) month's salary in lieu of notice.
 - b. The Claimant is awarded the sum of Kshs 1,200,000.00 being compensatory damages equivalent to 10 (10) months of her gross salary.
 - c. The total award is Kshs 1,320,000.00.
 - d. Interest on the amount in (c) at Court rates from the date of Judgment until payment in full.
 - e. The Counterclaim is disallowed.
 - f. The Respondents shall bear the costs of the Claim and Counterclaim.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 19TH DAY OF SEPTEMBER 2025.

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STELLA RUTTO

JUDGE

In the presence of:

For the Claimant Mr. Wainaina instructed by Ms. Kayugira

For the Respondents Ms. Masaki

Court Assistant Millicent

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

