



**Rombosia v Pharmaccess Foundation (Cause E486 of 2022)
[2024] KEELRC 1926 (KLR) (26 July 2024) (Judgment)**

Neutral citation: [2024] KEELRC 1926 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E486 OF 2022**

**B ONGAYA, J
JULY 26, 2024**

BETWEEN

DR. KEVIN WEKESA WAFULA ROMBOSIA CLAIMANT

AND

PHARMACCESS FOUNDATION RESPONDENT

JUDGMENT

1. The claimant filed the memorandum of claim on 12.07.2022 through Muma Nyagaka & Company Advocates. The claimant prayed for judgment against the respondent for:
 - a. General damages for mental torture and anguish.
 - b. Damages for breach of contract.
 - c. Loss of job opportunities.
 - d. Costs of the claim.
 - e. Interest at Court rates.
 - f. Certificate of service.
 - g. Any other relief that the Honourable Court may deem fit and just to grant.
2. The claimant pleaded as follows:
 - a. He is a medical doctor dully qualified to practice as such.
 - b. He was employed by the respondent in 2021as the Director of SafeCare & Accreditation at the foundation. The particulars of the claimant’s role are pleaded and being about ten (10) roles.



- c. He successfully served the probationary period and expected a performance appraisal report but whose results were not disclosed to him. He was confirmed in appointment but not given a job description.
- d. The claimant alleged he was frustrated while in respondent's service. The pleaded particulars of frustration included failure to cause end of probation period performance review or appraisal; unqualified staff of respondent one Ms. Nathalie Houben intimidated, interfered, and harassed the claimant even before staff working under the claimant; deducting Kshs.12,000 on claimant's February, 2022 without claimant's consent; failure to provide a signed job description; extending the probationary period from three months to 6 months until 22.02.2022 without a performance appraisal based on job description despite the claimant's making a follow up.
- e. The claimant alleged that because of the frustrations he resigned from employment by the email dated 22.01.2022. He wrote as follows:

“ Notice of Resignation

Dear Ms. Christine,

I hereby, most humbly, give my notice of resignation dated today 22/1/2022.

People management is central cog-wheel in achieving organisational growth. It is entirely arduous, bordering on impossible on my part to effectively drive a team – powered 360* SafeCare business vertical. It is stifling for my team and we'll surely miserably fail at achieving our deliverables.

I am entirely thankful and immensely appreciative for the opportunity, albeit brief, to have served in SafeCare leadership and will be most available to facilitate a seamlessly smooth transition to the next leadership. You have my gentleman's word on that.

Kind regards,

Dr. Kevin Rombosia

Director SafeCare & Accreditation

Pharmaccess Kenya”

3. The claimant testified that he discussed the resignation with the Human Resource Manager and he voluntarily agreed to withdraw it. He then subsequently resigned in March 2022. The notice of resignation is dated 25.03.2022. It raised the pleaded particulars of frustration. The respondent accepted the resignation by the letter and asked the claimant to handover by 08.09.2022. He would be paid one-month in lieu of notice any other contractual dues less liabilities.
4. The respondent filed the statement of response dated 30.08.2022 through Anne Babu & Company Advocates. The respondent prayed that the suit be dismissed with costs. The respondent admitted that it employed the claimant as pleaded for the claimant. The respondent further admitted that the claimant resigned in writing. The respondent further pleaded as follows:
 - a. The resignation was voluntary.
 - b. Constructive dismissal was denied and the contract was not breached at all.



- c. The contract confirms he was provided with a job description. His performance was reviewed with the supervisor and was confirmed in employment. Alleged grievances were not raised with the respondent formally or informally. He was a high performer.
5. The claimant testified to support his case. The respondent's witness (RW) was the Country Director, Dr. Wasunna Owino. Final submissions were filed for the parties. The Court has considered the material on record and the parties' respective cases and returns as follows:
 - a. The parties are in mutual agreement that they were in a contract of service. The Court returns as much.
 - b. The contract of service terminated upon the claimant resigning in writing per the email quoted earlier in this judgment.
 - c. While the claimant alleges breach of contract, none appears to have been established. The claimant has at paragraph two of the statement of claim acknowledged that he worked per directions issued by the Country Director and has set out in detail the job description or duties. The Court finds that the claimant was well aware of his role throughout the employment. Further, the claimant lamented that he was not appraised or was not informed of the results of the appraisal results. However, while his probationary period was extended by 3 months, the same appears to have been within the provisions of the contract and the minimum statutory provisions on such extensions. The important point was that the claimant was confirmed in appointment. In view of that confirmation and the claimant having condoned the extension, it cannot be said that the extension was unfair as amounting to a fundamental breach of the contract as a repudiation on the part of the respondent. The claimant confirmed he was never informed that his performance was poor. The claimant testified that RW was his newly appointed supervisor and he communicated that he could not appraise him and he was subsequently confirmed in appointment. The Court considers failure to have a formal appraisal did not prejudice the claimant. In absence of an established fundamental breach, there is no established constructive termination.
 - d. It was urged by the claimant that under-qualified colleague antagonised his performance by interfering with the claimant's team members. It appears that the issues were discussed and the claimant accepted to recall the initial resignation. He invoked the grievance procedure verbally with the Country Director and the Human Resource office in Amsterdam but the timelines are not given. Due to recalling the initial resignation, the Court considers that the claimant's grievances were therefor discussed and resolved. The grievance on deduction of Kshs. 12,000.00 was resolved when the respondent paid the same on 10.03.2022 – a payment that was made prior to resignation.
6. The Court finds that in the circumstances, the parties separated when the claimant wrote to resign. Constructive unfair termination is not established in the instant case. The reliefs sought are found unjustified. The Court has considered all circumstances of the case and there will be no orders on costs.

In conclusion, the claimant's suit is hereby dismissed with no orders on costs.

SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS FRIDAY 26TH JULY 2024.

BYRAM ONGAYA

PRINCIPAL JUDGE

