



Viloko v Cuisine & another (Employment and Labour Relations Petition E017 of 2025) [2025] KEELRC 2688 (KLR) (2 October 2025) (Judgment)

Neutral citation: [2025] KEELRC 2688 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS PETITION E017 OF 2025
HS WASILWA, J
OCTOBER 2, 2025**

BETWEEN

FAITH VILOKO PETITIONER

AND

GRAND CAFÉ INDIAN CUISINE 1ST RESPONDENT

GHAG SANJAY BABAN 2ND RESPONDENT

JUDGMENT

1. By a Petition dated 10th February 2025, the Petitioner sought for the following orders; -
 - i. That this honourable court be please to declare that the actions of Respondents violated the Petitioner’s Right to Dignity as enshrined under Article 28 of *the Constitution* of Kenya.
 - ii. That this honourable court be pleased to declare that the actions of Respondents violated the Petitioner’s Freedom from degrading treatment as enshrined under Articles 25 (a) & 29 (f) of *the Constitution* of Kenya.
 - iii. That this honourable court be pleased to declare that the actions of Respondents violated the Petitioner’s Freedom and Security of The Person as envisaged under Article 29 (c), (d) of *the Constitution* of Kenya.
 - iv. That this honourable court be pleased to declare that the actions of the 1st Respondent violated the Petitioner’s Right to Privacy as enshrined in Article 31 of *the Constitution* of Kenya.
 - v. That this honourable court be pleased to declare that the actions of the Respondents violated the Petitioner’s Right to Fair Labour Practices as provided for under Article 41 of *the Constitution* of Kenya.



- vi. That this honourable court be pleased to declare that the actions and or inactions of Respondents were in contravention of Sections, 6(1)(b), 6(2), 6(3) of the Employment Act.
- vii. That this honourable court be pleased to declare that the Respondent's constructively dismissed the Petitioner herein.
- viii. That this honourable court be pleased to award the Petitioner general, exemplary and punitive damages on i, ii, iii, iv, v, vi & vii hereinabove against the Respondents jointly and severally.
- ix. That this honorable Court be pleased to award the Petitioner with one-month notice pay in lieu of Notice.
- x. That this honorable Court be pleased to award the Petitioner 12 month pay, for wrongful termination.
- xi. That this honourable court be pleased to award the cost of this suit to the Petitioner.
- xii. That this honourable court be pleased to make any other or further orders as it deems fit and appropriate.

Petitioner's Case

2. The Petitioner avers she was employed by the 1st Respondent in 2022 as a waiter. While in employment, she attended evening classes to train as a barista, after which she was promoted to that position. Additionally, she occasionally performed the duties of a cashier as required. Throughout her tenure, her remuneration has always been Kshs. 15,000.
3. The Petitioner avers that she worked diligently and with dedication and she often worked long hours of overtime without additional pay to meet her employer's expectations. Throughout her three years of service, she had never received a warning letter nor was she subjected to any disciplinary proceedings.
4. The Petitioner avers that following a minor misunderstanding on 5th February 2025, the 2nd Respondent erroneously believed that she was gossiping about him with other employees; she was summoned to the manager's office where the 2nd Respondent forcefully grabbed her by her collar and attempted to slap her, an act she instinctively dodged. He then proceeded to swear at her in Hindi, a language she did not understand, after which she left his office.
5. Shortly after the attempted assault, the 2nd Respondent summoned her back to his office. Before complying, the Petitioner discreetly placed her phone in her front apron pocket, set it to record, and proceeded to his office.
6. Once inside, the 2nd Respondent subjected her to severe sexual harassment, and threats of sexual assault by repeatedly threatening that the next time she opened her mouth, he would put his "dick" in it. He further called her a prostitute and hurled a series of other degrading insults in multiple languages, including Hindi, English, and Swahili.
7. The entire interaction was recorded, and a transcript of the same is provided in the pleadings.
8. The Petitioner avers that throughout the interaction, she was in tears, visibly distressed, and struggling to defend herself. From the recording, she could be heard crying and protesting against the insults and threats of sexual assault that were being hurled at her, repeatedly asserting that she is not a prostitute, as was being alleged. She further questioned the manager on why he would subject her to such degrading treatment.



9. The Petitioner avers that she was subjected to the degrading treatment in full view of other employees, with the manager clearly being heard warning them to stop laughing.
10. It is the Petitioner's case that the 2nd Respondent characterized by both physical intimidation, threats and verbal abuse amount to gross sexual harassment. The repeated threat that he would put his "dick" in her mouth constituted crude, degrading, and sexually explicit language intended to humiliate and exert power over the petitioner.
11. The Petitioner avers that immediately after, she reported the incident to Mr. Abdirahman Yussuf Abdi, a director and shareholder of the 1st Respondent, seeking intervention and redress. She presented video evidence of the incident, hoping that he would take appropriate action.
12. Shockingly, Mr. Abdirahman Yussuf Abdi instructed her to delete the video evidence which she did under duress and out of fear further victimization.
13. Mr. Abdirahman Yussuf Abdi then took her phone and proceeded to search through its contents, including her gallery and the deleted items folder to ensure that the video had been permanently erased. This not only further violated the Petitioner's privacy but also demonstrated an intentional effort to cover up the incident rather than address the serious allegations of sexual harassment, abuse, and assault. This violated her right to privacy under Article 31 of *the Constitution*.
14. The Petitioner avers that prior to being forced to delete the video, she had shared it and the same can now be used as evidence of the threats of sexual assault, intimidation and harassment she endured at the hands of the 2nd Respondent under the watch of the 1st Respondent. She proceeded to Kilimani police station to report the incident and the same was recorded under the Occurrence Book No. 46/05/02/2025.
15. The Petitioner avers that after the incriminating video of the incident began circulating on social media platforms, the 1st Respondent's management summoned her and questioned her about the video's exposure. They went ahead to offer her Kshs. 93,000 as compensation in an apparent attempt to silence her. Upon her refusal, the management increased their offer to Kshs. 200,000.
16. The Petitioner avers that the Respondents informed her that if she did not want to settle the matter amicably, and wanted to "waste her time" appearing in court every other week, she could proceed to escalate the matter. The Respondents equally informed her that they have enough money to bribe both the police and the judge to make sure this matter does not proceed. The Petitioner was then dismissed and asked not to report to work until she was summoned.
17. The Petitioner avers that the 2nd Respondent's actions violated her freedom against degrading treatment enshrined under Article 25(a) of *the Constitution*. The threats and physical aggression were not merely acts of harassment but deliberate efforts to degrade and dehumanize her.
18. It is the Petitioner's case that 2nd Respondent's reference to the Petitioner as malaya (prostitute) was a deliberate and contemptuous attempt to strip her of her dignity and personhood. Such language is not only offensive but also deeply demeaning, reducing the Petitioner, a diligent employee, to a mere harlot. The verbal attack was intended to humiliate her thereby violating her right to dignity under Article 28 of *the Constitution*.
19. The Petitioner avers that the 2nd Respondent's explicit threats of sexual violence, stating that he would force himself upon the Petitioner by putting his genitalia in her mouth amount to psychological violence under Article 29(d).



20. It is the Petitioner’s case that her right to fair labour practices as enshrined under Article 41 of *the constitution* and encapsulated by the *Employment Act* under Sections 6(1)(b), 6(2), 6(3) and 45 was violated.

Respondents’ Case

21. In response to the petition, the Respondents filed a replying affidavit dated 24th March 2025 sworn by the 2nd Respondent.
22. The Respondents denied the Petitioner’s allegations and aver that no such occurrence happened but instead the Petitioner absconded work and abandoned her job duties and failed to turn up for work by giving false and personal unverifiable reasons.
23. The Respondents aver that the Petitioner was used to breaking the 1st Respondent’s rules and was constantly neglecting her duties as per the duty roster arranged by the Respondent thereby disrupting the flow of work schedule and loss of income.
24. The Respondents aver that the Petitioner was never issued with a termination letter to date.
25. It is the Respondents’ case that the Petitioner’s conduct and behavior is nothing short of someone with mental issues who needs to be assessed and or evaluated by psychological doctor/facility to give a report of the same since she has abandoned work on her own accord and created a story for this court to feel remorse.
26. The Respondents aver that the claim is an attempt at using this court to extort money from the 1st Respondent. The petition is not justified and the monetary claims as stipulated is a mere sham and should be dismissed.

Petitioner’s Submissions

27. The Petitioner submitted on five issues: whether the 2nd Respondent sexually harassed the Petitioner; whether the 1st and 2nd Respondents violated the Petitioner’s constitutional and fundamental human rights; whether the 1st Respondent is vicariously liable for sexually harassing the Petitioner; whether the termination of the Petitioner’s employment amounts to constructive dismissal; and whether the Petitioner is entitled to the reliefs sought.
28. On the first issue, the Petitioner relied on the definition of sexual harassment from the Black’s Law Dictionary, Tenth Edition, as; “a type of employment discrimination consisting in verbal or physical abuse of a sexual nature, including lewd remarks, salacious looks and unwelcome touching”. Additionally, Section 6(1) of the *Employment Act* provides for sexual harassment, and states;

- “(1) (1) 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;
- (iii) or 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."

29. It is the Petitioner's submission that the 2nd Respondent's repeatedly threatened to orally rape her and force his genitalia into her mouth, which is a dehumanizing statement that falls within the definition of sexual harassment under Section 6(1)(b) of the *Employment Act*. Moreover, the 2nd Respondent physically grabbed her by the collar and attempted to slap her, acts which, when coupled with sexually explicit threats, amount to offensive physical behaviour under Section 6(1)(d). These actions were clearly unwelcome, deeply humiliating, and had a detrimental effect on the Petitioner's sense of safety and well-being in the workplace.
30. The Petitioner submitted that the 2nd Respondent's use of language of a sexual nature and unwelcome physical behaviour towards her amounts to sexual harassment. She placed reliance in *N M L v Peter Petrausch* [2015] KEELRC 890 (KLR) in which the court relied in the definition of sexual harassment in *Vishaka & Others v. the State of Rajasthan & Others* [JJ,1997] [7] [SC 384] as- "unwelcome determined behaviour, whether direct or indirect, such as physical contact and advances, sexual favours, sexually coloured remarks, showing of pornography, and other verbal and non-verbal conduct of a sexual nature that is unwelcome or humiliating to the woman."
31. On the second issue, the Petitioner submitted that the 2nd Respondent's verbal threats, particularly the explicit statements of sexual violence were not merely acts of harassment, but constituted deliberate efforts to degrade, humiliate and dehumanize the Petitioner. The 2nd Respondent made crude remarks threatening to force himself upon the Petitioner and subject her to acts of oral rape when he stated- "Next time you open your mouth, I will put my dick inside your mouth."
32. The Petitioner submitted that the graphic and explicit nature of these threats was designed not only to intimidate but to instill fear, demean, and exert dominance over the her. This was compounded by the public nature of the abuse and the failure by the 1st Respondent to take any disciplinary against the 2nd Respondent. The Respondents conduct fall within the meaning of degrading treatment prohibited under Article 25 of *the Constitution*.
33. The Petitioner submitted that Respondents violated her right to dignity under Article 28 of *the Constitution*, through acts of sexual harassment, threats of oral rape, physical aggression, and the deliberate suppression of evidence. The 2nd Respondent's incessant reference to the Petitioner as a "Malaya" (prostitute) was a deliberate and contemptuous attempt to strip her of her dignity and personhood.
34. The Petitioner submitted that the Respondents violated the her right to freedom and security of the person as guaranteed under Article 29(c) and (d) of *the Constitution*. This includes the right not to be



- subjected to any form of violence from public or private sources, and the right not to be subjected to torture in any manner, whether physical or psychological. The Petitioner was physically grabbed by the collar, nearly slapped, and subjected to sexually violent threats that caused significant psychological trauma.
35. The Petitioner further submitted that the 2nd Respondent's explicit threats of sexual violence amounts to grave psychological violence under Article 29(d). Further, the repeated use of demeaning and sexually explicit language, including calling her a "Malaya" (prostitute), violated the Petitioner's right to freedom and security in the workplace.
 36. The Petitioner submitted that the Respondents violated her right to fair labour practices under Article 41 of *the Constitution*. This right confers upon every employee the right to reasonable working conditions free from sexual harassment, assault, and threats. The Respondent failed in their duty to provide same to the Petitioner and in turn fostered hostile and toxic working conditions that inevitably led to the sexual harassment towards her.
 37. On the third issue, the Petitioner submitted that the law is clear that an employer may be held vicariously and/or jointly liable for the wrongful acts of its employees or agents committed in the course of their employment. The 1st Respondent as the 2nd Respondent's employer is vicariously liable for sexually harassing the Petitioner.
 38. The Petitioner submitted that the 1st Respondent failed to put in place a sexual harassment policy and take the sexual harassment complaints seriously and is thereby severally liable for sexually harassing the Petitioner.
 39. The Petitioner submitted that Section 6(2) of the *Employment Act* imposes a statutory duty on the employers to develop and implement a sexual harassment policy in the workplace, in which the 1st Respondent failed to do. Therefore, the 1st Respondent is not only vicariously liable for sexually harassing the Petitioner, but also directly liable for negligence and failure to implement a sexual harassment policy to protect the Petitioner.
 40. It is the Petitioner's submission that the 2nd Respondent being in an employment relationship with the 1st Respondent; and the act of sexual harassment against her being committed within the scope of said employment, the 1st Respondent is vicariously liable for the sexual harassment. She relied in the Court of Appeal case of *Teachers Service Commission v WJ & 5 others* [2020] KECA 741 (KLR).
 41. On the fourth issue, the Petitioner submitted that the constructive dismissal of her employment by the 1st Respondent amounts to unfair termination under Section 45 of the *Employment Act*, as it was a result of her incapacity or misconduct in the course of her employment. Prior to the events of 5th February 2025, the Petitioner had been a steadfast and diligent employee for three years; and during her period of service, she had never received a warning letter or was subject to any disciplinary proceeding.
 42. The Petitioner submitted that upon the Respondents' actions of sexually harassing her, their failed attempt to silence her, the 1st Respondent her employment and instructed not to report to work until she was summoned.
 43. On the final issue, the Petitioner submitted that entitled to the reliefs sought in this Petition, including general, punitive, and exemplary damages, as well as compensation under the *Employment Act*; these remedies are warranted as restitution for the harm suffered. The Petitioner endured egregious violations of her constitutional and statutory rights and additionally the Respondents' conduct not only caused her emotional and professional harm but also undermined the rule of law and the protections afforded to workers.



44. The Petitioner submitted that she entitled to general damages for pain, suffering, and reputational injury, as well as compensation for unfair termination under Section 45 of the *Employment Act*, including one-month salary in lieu of notice and the maximum 12 months' salary for unlawful termination.
45. It is the Petitioner submitted that the dispute is not only a matter of employment law, but one that implicates her fundamental constitutional rights, including the right to dignity, freedom from degrading treatment, and fair labour practices under Article 41. In such cases, the statutory limit of 12 months' salary is inadequate to fully redress the gravity of the violations. Therefore, the court should go beyond statutory remedies and grant substantial constitutional damages to vindicate the rights breached and deter such conduct in the future.

Respondents' Submissions

46. The Respondents submitted that as per Article 50 of *the Constitution* and Section 107 of the *Evidence Act*, the burden of proof rests with the Petitioner to establish the alleged violations and claims on a balance of probabilities. Additionally, in *Mumo Matemu v Trusted Society of Human Rights Alliance & 5 others* [2013] eKLR, the Court of Appeal underscored that constitutional petitions must be pleaded with precision and supporting evidence, and not rely on mere generalities.
47. The Respondents submitted that the Petitioner's allegations that her right to dignity and freedom from degrading treatment under Articles 28 and 25(a) of *the Constitution* stems from an alleged private exchange that lacks independent corroboration, and which she claims to have recorded but later deleted. Her narrative is not supported by verifiable and original audio or video evidence.
48. It is the Respondents' submission that no conduct amounting to sexual harassment or degrading treatment occurred. Even if offensive language was used, which is denied, isolated verbal misconduct does not rise to the level of constitutional violation. They relied in *David Gichana Omuya v Mombasa Maize Millers Ltd* [2014] eKLR, wherein the court emphasized that not every act of miscommunication or managerial reprimand constitutes harassment or a violation of dignity.
49. The Respondents submitted that th Petitioner has not provided medical, psychological, or third-party testimony to support claims of mental distress, fear, or physical threat. The alleged encounter, even if tense, does not meet the threshold of "torture, cruel or inhuman treatment" envisaged under Article 29 of *the Constitution*. They cited *Milkah K Kiwala v Director, Kenyatta National Hospital* [2022] eKLR, in which the Court held that for a claim under Article 29 to succeed, the complainant must provide compelling, objective, and credible evidence of the cruelty or psychological harm.
50. On the right to privacy under Article 31 of *the Constitution*, the Respondents submitted that the Petitioner's version of events regarding her mobile phone being searched remains unsubstantiated. The Respondents assert that no such act occurred and no forensic report or witness has validated that the 1st Respondent's management deleted evidence from her phone.
51. The Respodents submitted that the Petitioner was not terminated or dismissed. She absconded duty after lodging her complaint and declined the Respondent's internal offer to resolve the matter through mediation. She was never issued with a dismissal letter nor formally discharged thus her allegation that her right to fair labour practices was violated is unfounded.
52. It is the Respondents' submission that constructive dismissal must be proven by showing that the employer's conduct made continued employment intolerable. The Petitioner fails this test which was set out in *Kenneth Kimani Mburu & another v Kibe Muigai Holdings Limited* [2014] eKLR, the court



held that a claim of constructive dismissal must show that the employer's conduct left the employee no option but to resign.

53. On sexual harassment, the Respondents submitted that Section 6 of the *Employment Act* provides specific conditions under which sexual harassment is deemed to occur. The Petitioner has not shown a pattern of conduct, a written complaint, or failure by the employer to act on such complaints. Additionally, the 1st Respondent had an open-door HR policy and no prior complaints were ever lodged against the 2nd Respondent or any member of staff, including by the Petitioner.
54. The Respondents submitted that the *Employment Act* places obligations on employers with 20+ employees to issue a policy statement on sexual harassment. The 1st Respondent had fewer than 20 full-time employees thus Section 6(2) was not applicable. They placed reliance in *Ann Njeri Mwangi v United Nations* [2021] eKLR, in which the court was held that the absence of a formal policy on harassment does not, on its own, constitute sexual harassment unless the conduct complained of is proven and egregious.
55. On constructive dismissal, the Respondents submitted that the Petitioner has not demonstrated the legal threshold established in *Kenya Airways Limited v Aviation & Allied Workers Union Kenya & 3 others* [2014] eKLR, where the Court held that: "A constructive dismissal occurs when an employee resigns because their employer's conduct has made it impossible for the employee to continue working."
56. It is the Respondents' submission that the Petitioner did not resign; no termination letter was issued; and there is no evidence that the Respondents created an intolerable working condition. Therefore, her absconding duties was without any formal complaint to internal HR or management mechanisms.
57. On reliefs, the Respondents submitted that the Petitioner has not demonstrated loss of income, mental trauma through expert evidence, or reputational injury warranting exemplary damages. They cited *Nicholas Kipkemboi Arap Korir v Attorney General* [2011] eKLR, wherein the court held that exemplary damages are awarded in limited cases involving abuse of power or deliberate wrongdoing, which must be strictly proved.
58. It is the Respondents' submission that the Petition is brought in bad faith with the intent of damaging the reputation of the 1st Respondent and extorting money from its management. Additionally, the Petitioner's conduct of secretly recording the alleged conversations in manipulated context and circulating defamatory content on social media, is indicative of an ulterior motive.
59. I have examined all the averments and submissions of the parties herein. The issues for this courts determination are as follows:
 1. Whether the respondents breached the petitioners rights under *the constitution* of Kenya 2010
 2. Whether the petitioner is entitled to the remedies sought.

Rights
60. On issue no 1, the petitioner has averred that her rights under *the constitution* were breached by the respondents. In her evidence through her supporting affidavit, she narrated the events leading to her termination starting from 5/2/2025 when the 2nd respondent allegedly attempted to slap her and hurled insults at her.
61. She averred that the 2nd respondent also subjected her to severe sexual harassment and threats of sexual assault and calling her a prostitute in multiple languages including Kiswahili, English and Hindi. She



- averred that the entire interaction was recorded and the petitioner presented before court the flash disc and transcription record of the events that unfolded.
62. In their defence, the respondents denied any culpability and they aver that the petitioner's evidence is a lie and that she is akin to someone with mental illness.
63. From the submissions filed herein, the petitioner aver that she was treated to degrading treatment. The respondents did not respond to the issues of sexual harassment of the petitioner and in particular the abuse and threats as per the recorded conversation between the petitioner and the 2nd respondent. They aver that even if offensive language was used which they deny this is not a constitutional violation. Whereas the respondent deny culpability it is evident from the audio record as to the conversation between the petitioner and 2nd respondent where the 2nd respondents hurled insults against the petitioner calling her a prostitute and issuing threats against her.
64. Article 28 of *the constitution* of Kenya provides as follows:
Every person has inherent dignity and the right to have that dignity respected and protected.
65. It is apparent that the insults and threats demeaned the petitioner. It is also true that the words used against the petitioner were laced with connotation of sexual harassment which fits in the definition of sexual harassment whereby the 2nd respondent used language of a sexual nature and threatened some physical conduct towards her as held in *Vishaka & Others vs the State of Rajasthan & Others* (supra) .
66. Article 41(1) of *the constitution* also state as follows:
SUBPARAGRAPH 1.
Every person has the right to fair labour practices.
67. The events occurred at the respondent's workplace where the petitioner was indeed entitled to fair labour practice including being treated with dignity. The petitioner was indeed denied this right and it is my finding that the petitioner's rights under *the constitution* including the right to dignity, right not to be treated in an inhumane and degrading manner and right to labour rights under article 25 (a), 28 and 41 of *the constitution* of Kenya 2010 were flouted.

Issue No 2

68. Having found as above, I find for the petitioner and award her damages for breach of her constitutional rights equivalent to kshs 1 million. The petitioner left work after this incident which in my view amounts to constructive dismissal and for this, I award her compensation equivalent to 10 months' salary for the unfair dismissal= 10x15,000= kshs150,000/-
TOTAL AWARDED = kshs 1,150,000/- less statutory deduction.
69. The respondents will pay costs of this petition plus interest at court rates with effect from the date of this judgment.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 2ND DAY OF OCTOBER 2025.

HELLEN WASILWA

JUDGE

