



**Mwinamo v Shoppers Sacco Society Ltd (Cause 727 of 2018)
[2025] KEELRC 2962 (KLR) (30 October 2025) (Judgment)**

Neutral citation: [2025] KEELRC 2962 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 727 OF 2018
S RADIDO, J
OCTOBER 30, 2025**

BETWEEN

SHARON MWINAMO CLAIMANT

AND

SHOPPERS SACCO SOCIETY LTD RESPONDENT

JUDGMENT

1. Sharon Mwinamo (the Claimant) sued Shoppers Sacco (the Respondent) on 16 May 2018, alleging unfair termination of employment and breach of contract.
2. The Respondent filed a Response on 14 June 2018. The Claimant filed an Amended Memorandum of Claim on 25 October 2024, introducing an action for breach of contract.
3. The Cause was heard on 14 May 2025 and 9 June 2025.
4. The Claimant and the Respondent's acting Chief Executive Officer testified.
5. The Claimant filed her submissions on 8 July 2025, and the Respondent on 22 September 2025.
6. The Court has considered the pleadings, evidence and submissions.
Unfair termination of employment/Constructive dismissal
7. The Respondent issued a show cause to the Claimant on or around 18 November 2018. The show cause requested that the Claimant respond by 11:00 a.m.
8. The Claimant responded, and the same day, the Respondent suspended her for 14 days on half-pay pending an appearance before the Board for a hearing.
9. On 23 November 2018, the Respondent invited the Claimant to appear before the Board on 26 November 2018, a Saturday.



10. On 5 December 2018, the Claimant resigned, wherein she stated:

...

I have currently been faced with a myriad of various challenges that are making it extremely difficult to effectively deliver at full potential as a Human Resource Manager. I am also finding that my relationship with certain employees in the organisation may not favour optimal performance in my role or theirs.

11. Before the Court, the Claimant, a Human Resource and Development Manager, testified that in August 2016, the Respondent's then Chief Executive Officer started frustrating her by taking all staff files, transferring the role of monitoring staff attendance to the ICT department and denying her access to the payroll system.
12. The Claimant also testified that in October 2016, the Chief Executive Officer unilaterally imposed on her marketing duties contrary to her job description and forced her to go and recruit members from Naivas supermarket without any training, and that on 17 November 2016, the Chief Executive Officer ambushed her to attend a training at 5.00 pm while other staff had been notified of the training a day earlier and that this led to a show cause when she did not attend the training.
13. The Claimant further stated that the show cause gave her limited time to respond and that after responding she was invited to attend a Board meeting on a Saturday without being informed of the agenda of the meeting and that despite the lapse of the suspension, she was not informed of the outcome of the Board meeting, prompting her to resign on 5 December 2016.
14. The Respondent's witness joined the Respondent long after the Claimant had separated from the Respondent, and his testimony did not give any insights to rebut the Claimant's testimony.
15. To succeed in an action for constructive dismissal, the Claimant must provide evidence that the employer created a hostile work environment, causing him or her to leave with or without notice.
16. The Court of Appeal addressed the question of constructive dismissal in *Coca Cola East & Central Africa Limited v Maria Kagai Lugaga* (2015) eKLR, wherein it stated:
- The key element in the definition of constructive dismissal is that the employee must have been entitled to or have the right to leave without notice because of the employer's conduct. Entitled to leave has two interpretations, which give rise to the test to be applied. The first interpretation is that the employee could leave when the employer's behaviour towards him was so unreasonable that he could not be expected to stay - this is the unreasonable test. The second interpretation is that the employer's conduct is so grave that it constitutes a repudiatory breach of the contract of employment- this is the contractual test.....
17. The Claimant was a Human Resources and Development Manager. The Respondent gave her marketing functions without consultation as demanded by section 10(5) of the *Employment Act*, 2007. The Claimant testified that the then Chief Executive Officer took staff files away from her, though she was in charge of the human resource docket. She was denied access to the payroll system.
18. At the level of the Claimant, one would have expected a harmonious work relationship with her superior, the Chief Executive Officer. The evidence on record suggests otherwise.
19. The Court is satisfied that the Respondent created a hostile work environment, warranting the Claimant to resign and assert constructive dismissal.



Compensation

20. The Claimant served the Respondent for about 3 years, and the Respondent offered her certain terminal dues.
21. Considering the above factors, the Court is of the view that the equivalent of 4 months' gross salary as compensation would be appropriate (gross monthly salary was Kshs 105,000/-).

Pay in lieu of notice

22. The Respondent deducted the equivalent of 1 month's salary from the Claimant's dues on account of 1 month's pay in lieu of notice.
23. With the conclusion on constructive dismissal, the Court will award the Claimant this head of the claim.

Severance pay

24. The Claimant did not separate from the Respondent on the ground of redundancy. She is not entitled to severance pay.

Breach of contract

Withheld pay in November 2016

25. The Claimant was suspended on half-pay. The Respondent did not disclose the source of the power to suspend the Claimant on half-pay, and the Court will allow the head of claim in the sum of Kshs 52,500/-.

Loan recovery

26. The Claimant contended that the Respondent had over-recovered loans she had taken to the tune of Kshs 286,027/- and that the Respondent had declined to provide her with a statement of account.
27. The computations by the Claimant were based on suppositions, and the best option for the Court would be to order the Respondent to provide the statement of account and reconcile the same together with the Claimant.

Violation of rights to dignity and privacy

28. The Claimant pleaded to be awarded general damages because the Respondent used her image for promotional advertisements on Citizen TV without her consent from 31 October 2016.
29. The Claimant did not place before the Court any evidence to prove the use of her image, and the Court finds this head of the claim was not proved.

Certificate of Service

30. A Certificate of Service is a statutory entitlement, and the Respondent should issue one to the Claimant if it was not issued.



Conclusion and Orders

31. The Court finds and declares that the Respondent constructively dismissed the Claimant, and that the Respondent was in breach of contract.
32. The Claimant is awarded:
 - i. Compensation Kshs 420,000/-
 - ii. Pay in lieu of notice Kshs 105,000/-
 - iii. Withheld salary Kshs 52,500/-TOTAL Kshs 577,500/-
33. The awards to attract interest at court rates from the date of judgment.
34. The Respondent to issue a Certificate of Service within 21 days.
35. The Claimant to have costs.

DELIVERED VIRTUALLY, DATED AND SIGNED IN NAIROBI ON THIS 30TH DAY OF OCTOBER 2025.

RADIDO STEPHEN, MCIARB

JUDGE

Appearances

For Claimant A. Thuo Kanai Advocates

For Respondent Keengwe & Co. Advocates

Court Assistant Wangu

