

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT
NAIROBI
CAUSE NO. E147 OF 2024

Jael Adhiambo OkothCLAIMANT

VERSUS

BDO EAST AFRICA
KENYA.....RESPONDENT

JUDGMENT

1. The Claimant states that she was employed by the Respondent effective 17th November 2014, initially serving as a Senior B-2 in the Secretarial Department before subsequently rising to the position of Manager within the same department.
2. The Claimant avers that on 31st July 2023, while diligently performing her duties, she was summoned by the Respondent’s Managing Partner, who accused her of engaging in activities deemed contrary to company policy.
3. The Claimant further states that she was subsequently informed by one, Sandeep Kharpe, that she would be summarily dismissed.

4. The Claimant contends that one, Robert Mwaura, thereafter prepared a resignation letter, an affidavit, and an irrevocable discharge document. She asserts that, feeling frightened, intimidated, and confused, she succumbed to pressure and signed the resignation letter dated 31st July 2023, together with the accompanying affidavit affirming her resignation. She avers that she was also compelled to sign the discharge document, which she later discovered barred her from pursuing any claims or rights against the Respondent.
5. The Claimant maintains that her resignation was not voluntary and adds that, under her employment contract as a manager, she was required to give three months' written notice of resignation. She avers that the purported resignation was accepted on the same day, contrary to standard procedure.
6. In light of the foregoing, the Claimant seeks the following reliefs against the Respondent:
 1. ***A declaration that the Claimant's summary dismissal guised as resignation vide a resignation letter dated 31st July, 2023 was unjustifiable, malicious, illegal and amounted to unfair termination.***

7. In response to the Statement of Claim, the Respondent avers that on 31st July 2023, the Claimant reported to work as usual and, to the Respondent's surprise and dismay, tendered her resignation through a letter of even date.
8. The Respondent asserts that it had enjoyed a mutually beneficial working relationship with the Claimant and therefore felt a loss following her departure.
9. The Respondent further contends that the Claimant's resignation took immediate effect and that she did not provide any reasons for her decision. It is the Respondent's position that it later discovered the Claimant had been headhunted by a rival organization.
10. The Respondent avers that following her resignation, the Claimant appeared to have a change of heart and subsequently issued a demand letter dated 28th August 2023, seeking to justify her resignation as an unlawful summary dismissal.
11. The Respondent maintains that the Claimant's employment was not unlawfully terminated, asserting that she voluntarily resigned. Consequently, the Respondent urges the Court to dismiss the Claim in its entirety.

12. The matter proceeded for hearing on 16th June 2025, during which both parties adduced oral evidence in support of their respective cases.

Claimant's Case

13. The Claimant testified in support of her case as CW1 and, at the outset, she sought to adopt the Amended Memorandum of Claim and 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 the Court.

14. The Claimant testified that on 31st July 2023, one Mr. Sandeep Khapre informed her that she was being summarily dismissed. Mr. Khapre then summoned Mr. Robert Mwaura and instructed him to call the firm's counsel to provide directions regarding the dismissal. The Claimant was further directed to begin clearing her office as they awaited the counsel's arrival.

15. After approximately 15 minutes, Mr. Mwaura went to the Claimant's office and instructed her to collect her belongings and wait at the lounge for the firm's counsel. She was later called to Mr. Mwaura's office, where she was informed that there had been a change of mind, and instead of being summarily dismissed, she would be required to resign.

16. Mr. Mwaura then hastily prepared a resignation letter, an affidavit, and an irrevocable discharge document.

17. The Claimant testified that she was subjected to pressure, coercion, and undue influence to sign the said documents. She stated that she signed them out of fear, confusion, and intimidation, as she was being pressured by three of her superiors.

18. Upon signing the documents and surrendering all firm property in her possession, she was issued with a certificate of service. She added that this was done without any discussion regarding her terminal dues or accrued leave days.

19. The Claimant further stated that she was not afforded an opportunity to explain her conduct, nor did the Human Resource Manager provide any explanation for the sudden coercion to resign.

20. It was the Claimant's position that the purported resignation process was unlawful and orchestrated by Mr. Sandeep Khapre and Mr. Robert Mwaura in that her resignation was allegedly accepted on the same day, contrary to her employment contract, which required a three-month written notice. Moreover, as a manager, it was standard firm policy that she hands over her accounts to her immediate supervisor and obtain departmental clearance before her

resignation could take effect, a process she averred was not followed in her case.

21.The Claimant further averred that due to the hasty nature of the purported resignation, her dues were never computed, contrary to standard firm procedure and the requirements of the clearance process.

22.She also stated that in her capacity as a manager, she had taken on additional responsibilities on behalf of the Respondent by being appointed as a director in several companies incorporated by the firm, duties which, she maintained, fell outside her job description and for which she was never compensated.

Respondent's Case

23.The Respondent's case was presented through **Clifford Ah Chip** and **Robert Mwaure** who testified as RW1 and RW2, respectively. Mr. Ah Chip, who was the first to go, identified himself as the Respondent's Managing Director. RW1 adopted his witness statement to constitute his evidence in chief.

24.RW1 testified that the Claimant gave the Respondent the impression that she no longer wished to continue in its employment, citing undisclosed personal reasons that were not specified in her resignation letter.

25.He further stated that the Claimant was the author of her own circumstances, having voluntarily resigned from her position with effect from 31st July 2023. He added that by failing to provide the requisite notice, the Claimant was in breach of her employment contract.

26.RW1 maintained that the Claimant was neither unlawfully terminated nor dismissed, as alleged. He was categorical that her resignation was voluntary, free from any form of coercion or undue influence, and that no summary dismissal took place.

27.RW1 further testified that upon the Claimant's formal resignation, the employer–employee relationship was immediately severed. He added that since there had been no issues with the Claimant's performance or conduct prior to her resignation, there was no basis for initiating any disciplinary process.

28.In RW1's view, the Claimant had failed to establish any valid cause of action against the Respondent.

29.Mr. Robert Mwaura who testified as RW2, identified himself as the Respondent's Human Resource Manager. Similarly, RW2 adopted his witness statement to constitute his evidence in chief. He proceeded to produce the list

and bundle of documents filed on behalf of the Respondent as his exhibits before the Court.

30.RW2 testified that the Respondent duly respected the Claimant's decision and accordingly processed her resignation.

31.He further stated that the allegations raised in the Claimant's demand letter were an afterthought, intended to portray her voluntary resignation as a case of forced termination, which was not the case.

32.RW2 also contended that the Claimant breached her employment contract by resigning without giving the required three months' notice or paying the Respondent three months' salary in lieu of notice.

33.RW2 was categorical that the Claimant voluntarily resigned from her employment and that there was neither undue influence nor any form of summary dismissal involved.

Submissions

34.The Claimant submitted that, based on her own testimony and that of the Respondent's witnesses, it was evident that she did not resign voluntarily. She contended that she had proved a case of constructive dismissal and relied on the

decision in **Coca Cola East & Central Africa Limited v Mary Kagai Ligaga [2017] eKLR** in support of her position.

35. The Claimant further argued that the Respondent breached her employment contract by compelling her to resign without issuing the requisite three months' notice. She further argued that the Respondent's witnesses admitted to preparing the affidavit, irrevocable discharge, staff clearance form, and certificate of service on 31st July 2023; hence, according to her, this conduct demonstrated the Respondent's intent to have her resign and vacate its premises immediately. She therefore maintained that she had proved the essential elements of constructive dismissal.

36. Accordingly, the Claimant urged the Court to find that her resignation was not voluntary but amounted to constructive dismissal.

37. On the other hand, the Respondent contended that the Claimant resigned voluntarily and of her own volition. The Respondent argued that she had failed to produce cogent evidence demonstrating that her resignation was involuntary or that she was coerced into resigning, as alleged.

38. The Respondent further submitted that, having pleaded coercion in challenging the validity of her resignation letter, the Claimant bore the burden of proving

the nature and extent of the alleged coercion. In the same vein, the Respondent argued that it behooved the Claimant to demonstrate that she was placed under such duress or reasonable apprehension of harm that a reasonable person in her position would have felt compelled to resign.

39. Referring to the case of **Coca Cola East & Central Africa Limited v Maria Kagai Ligaga (supra)** and **Apudo v Azure Hotel Limited (Cause 816 of 2018) [2024] KEELRC 321 (KLR)**, the Respondent submitted that the burden of proof lies squarely on the Claimant to establish the alleged constructive or summary dismissal.

40. The Respondent added that the Claimant had not produced a shred of evidence showing that it had committed a repudiatory breach of the employment contract, either by act or omission, that rendered the employment relationship untenable. In support of this position, reliance was also placed on **Ayonga v Falcon Signs Ltd** and **Simecheri v Trattoria Limited (Cause 1675 of 2017) [2022] KEELRC 12738 (KLR)**.

41. Consequently, the Respondent urged the Court to find that the Claimant's resignation was voluntary and that she was neither summarily nor constructively dismissed.

Analysis and Determination

42. Flowing from the record, the Court has singled out the following issues for determination;

- a) Whether the Claimant's resignation was procured through coercion by the Respondent; and***
- b) Whether the Claimant is entitled to the reliefs sought.***

Whether the Claimant's resignation was procured through coercion by the Respondent

43. The Claimant contends that her resignation was not voluntary, asserting that she was coerced and unduly influenced by her superiors to sign a resignation letter, an affidavit affirming her resignation, and an irrevocable discharge document. She maintains that it was RW2 who drafted the resignation letter on her behalf and coerced her to sign it. The Respondent, denies these allegations and has consistently maintained that the Claimant voluntarily resigned from her position.

44. While the Claimant has generally alleged that she was coerced and unduly influenced into signing the resignation letter dated 31st July 2023, she failed to provide specific particulars of the alleged coercion upon which the Court could rely. This omission was contrary to **Order 2 Rule 10(1) of the Civil Procedure Rules, 2010**, which provides that:

*“Subject to subrule (2), every pleading shall contain the necessary particulars of any claim, defence or other matter pleaded including, without prejudice to the generality of the foregoing—
(a) particulars of any misrepresentation, fraud, breach of trust, wilful default or undue influence on which the party pleading relies.”*

45. In addressing the evidentiary threshold for proving allegations such as coercion, the Court of Appeal in **Patel & another v MJC & another (Suing as the guardians of PJP) (Civil Appeal 182 of 2019) [2022] KECA 364 (KLR)** held as follows:

“It should also be appreciated that apart from specifically pleading undue influence, coercion and fraud, the same has to specifically be proved by cogent evidence and not on the balance of probabilities as wrongly held by the trial court. Proof has to be higher than on the balance of probabilities but slightly lower than proof beyond reasonable doubt.”

46. Similarly, in **Wenslaus Oduki Odinga v Kenyatta National Hospital Board** [2013] eKLR, the Court held as follows:

“Apart from the general claim of duress, the Claimant did not adduce any particulars. An employee alleging duress or inducement to sign a document in a non-custodial environment must provide details of such duress or inducement. It is not enough to say ‘I was forced or I was confused.’ The Claimant failed to provide any such details and his claim that he was forced to sign the admission is therefore rejected.”

47. In addition to the foregoing, since the Claimant alleged coercion, the burden of proof squarely lay on her to establish that fact. **Section 107(2) of the Evidence Act** provides that *“When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.”*

48. From the record, the Claimant did not adduce any credible evidence showing that she was subjected to force, intimidation, or undue influence prior to signing the resignation letter.

49. What's more, the Claimant did not clarify the specific nature of the alleged coercion or threat she faced from the Respondent at the time she signed the resignation letter. In an employment context, the most severe action an employee might face is termination. Therefore, I cannot help but question what other form of threat the Claimant was facing that compelled her to resign, especially considering the fact that by signing the resignation letter, she effectively ended her own employment.

50. Further to the foregoing, the Claimant was not a junior employee but an experienced manager. It is, therefore, implausible that she could have been coerced into resigning in a non-custodial setting without any protest or resistance.

51. Additionally, had the Claimant's resignation indeed been procured through coercion or duress, it was reasonably expected that she would have repudiated the same at the earliest opportunity. However, she did not take any such step, nor did she disown the resignation letter in her subsequent email dated 22nd August 2023.

52. In view of the foregoing, the Court finds that the Claimant has failed to prove, to the required standard, that her resignation was procured through coercion or duress. Consequently, there is no basis for finding that her employment was unlawfully terminated.

53. To this end, the reliefs sought by the Claimant are unsustainable.

Orders

54. In the final analysis, the Claimant's claim fails in its entirety and is hereby dismissed, with an order that each party shall bear its own costs.

DATED, SIGNED and DELIVERED at NAIROBI this 31st day of October 2025.

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**STELLA RUTTO
JUDGE**

In the presence of:

For the Claimant	Ms. Mbugua
For the Respondent	Mr. Gachugi
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