



**Weche v African International University (Cause E198 of 2024)
[2025] KEELRC 3021 (KLR) (30 October 2025) (Judgment)**

Neutral citation: [2025] KEELRC 3021 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E198 OF 2024
CN BAARI, J
OCTOBER 30, 2025**

BETWEEN

SOLOMON WECHE CLAIMANT

AND

AFRICAN INTERNATIONAL UNIVERSITY RESPONDENT

JUDGMENT

Introduction

1. For determination is the Claimant's Statement of Claim dated 15th March, 2024, wherein, the Claimant seeks the following reliefs as against the Respondent: -
 - i. A declaration that his resignation was involuntary and consequently he was constructively dismissed by the Respondent which amounted to unfair unprocedural, illegal and unlawful termination.
 - ii. A declaration that his rights to fair labour practices and fair administrative action was breached.
 - iii. Aggravated damages for the mental anguish, emotional turmoil, anxiety and humiliation
 - iv. Payment of terminal dues.
2. The Respondent filed a Response to the Statement of Claim dated 21st May, 2024 and subsequently, the Claimant filed a Reply to the Response dated 10th June, 2024.
3. The Claimant's case was heard on 5th December, 2024 when the Claimant (CW1) testified in support of his case. He adopted his witness statement dated 12th March, 2024 and produced his list and bundle of documents dated 15th March, 2024 as exhibits in the matter.
4. The Respondent's case was heard on 28th April, 2025. The Respondent's witness Lorine Atieno (RW 1) testified in support of the Respondent's case. She adopted her witness statements dated 10th August,



2024 and produced the Respondent's list and bundle of documents evenly dated as exhibits in the matter.

5. Submissions were filed for both parties.

The Claimant's Case

6. The Claimant's case is that he was employed by the Respondent as an Administration and Human Resource Manager effective 1st March 2022 on permanent and pensionable terms, earning a gross salary of Kshs.221,833. It is his case that the salary was later increased to Kshs.236,833 through an addendum dated 13th April 2023 that introduced an extraneous allowance.
7. It is his case that he performed his duties diligently until January 2024, when he received an invitation to a HR & Finance Committee meeting on 23rd January 2024. He avers that although he was ordinarily the Secretary of this Committee, responsible for preparing agendas and minutes, he was excluded from planning and documentation of this particular meeting.
8. It is his case that during the meeting, the Vice Chancellor (VC) introduced staff restructuring proposals that substantively altered the Claimant's duties without consultation. He states that the next day (24th January 2024), he received an email redeploying him to the School of Business and Economics as a Lecturer, a role for which he was not qualified, and which constituted a demotion from Job Grade H to F.
9. The Claimant states that he appealed the decision several times vide his emails dated 25th, 26th, 30th January, and 1st February 2024, arguing that the redeployment was outside his area of expertise (Human Resource Management), violated his employment terms, and contravened the University Charter, which reserved re-deployment powers to the University Council, and not the VC.
10. The Claimant avers that his access to HR systems was revoked, and his approval rights were transferred to a Ms. Catherine Mwikali, who had already resigned and was on terminal leave. He states that the work environment became hostile, leading to emotional distress.
11. It is the Claimant's further case that on 5th February 2024, after being instructed by the VC to handover within one hour and report to the Academic Division, he felt humiliated and coerced into resigning, and he submitted his resignation letter dated 6th February by mistake, but was received on 5th February.
12. The Claimant avers that after his resignation, he was issued a Show Cause letter, which he views as evidence of malice. He states that his resignation was accepted by the VC on 6th February 2024.
13. The Claimant asserts that his redeployment was unlawful, and his resignation forced, amounting to constructive dismissal. It is his position that he suffered economic hardship as the family breadwinner and due to a loan repayment obligation of Kshs.87,640 per month to the employer's SACCO.
14. The Claimant states that he was owed 18 leave days, unpaid salary for January 2024, and five days' pay for February 2024.
15. It is his prayer that the court allows his claim.

The Respondent's Case

16. The Respondent's case is that Solomon Weche, the Claimant herein, was employed on 24th January 2022 as the Administration and Human Resource Manager under a written contract dated 27th January 2022. The Respondent avers that the Claimant's initial gross salary was Kshs.221,883, and which later increased in April 2023 with a Kshs.15,000 taxable allowance, bringing his gross pay to Kshs.236,883.



17. It avers that the Claimant was issued a job description, but the Vice Chancellor reserved the right to alter or assign other duties after due consultation per Clause 5 of his contract.
18. It states that the Claimant's initially performed well, but after his confirmation on 8th September 2023, his attitude and performance deteriorated. It avers that the Claimant was habitually late, absented himself from duty, and was non-committal to duties.
19. It is the Respondent's case that it issued several verbal and written warnings to the Claimant, some of which have been produced in evidence.
20. It avers further that on 23rd January 2024, the Human Resource and Finance Committee met with the Claimant present, and discussed staff review and redeployment. It states that the Committee proposed redeploying the Claimant from HR Manager to Lecturer in the School of Business and Economics. It avers further that the Claimant was assured of support and retooling for his new teaching role.
21. The Respondent states that the Claimant was served with a redeployment letter the same day, maintaining his basic salary (Kshs.221,883) but losing the Kshs.15,000 allowance.
22. It states that on 24th January 2024, the Claimant emailed the Vice Chancellor seeking reconsideration of the redeployment and later appealed to the University Council on 30th January 2024. It states further, that on 2nd February 2024, a meeting was scheduled to discuss his concerns, but he failed to attend and absconded duty.
23. It states that a show cause letter dated 5th February 2024 was issued, which he refused to collect and was later emailed to him.
24. The Respondent states that on 5th February 2024, the Claimant submitted a resignation letter dated 6th February 2024, indicating he had already decided to leave, and that the Vice Chancellor accepted his resignation and stated that it nullified his appeal to the University Council.
25. It is the Respondent's position that the Claimant resigned voluntarily before his appeal could be heard, hence cannot claim constructive dismissal. It states further, that the redeployment was a lawful administrative measure aimed at improving service delivery, and not punishment.
26. The Respondent argues the Claimant anticipated disciplinary action for his misconduct and resigned to avoid it. It further contends that the Claimant breached confidentiality by attempting to use confidential internal documents as evidence.
27. The Respondent maintains that the Claimant failed to exhaust internal dispute resolution mechanisms before moving to court, and that his resignation was voluntary, not coerced or constructive dismissal.
28. The Respondent asks the Court to dismiss the claim for lack of merit, procedural non-compliance, and bad faith.

The Claimant's Submissions

29. It is the Claimant's submission that he was never consulted in making the decision that moved him from his position as Human Resource Manager to a Lecturer. He submits that the redeployment, substantively and materially altered the terms of his contract, and was a unilateral decision made by the Respondent. He sought to rely in the case of Elizabeth Kwamboka Khaemba Vs BOG Cardinal Otunga High School Mosochi & 2 others [2014] eKLR to buttress this position.
30. It is his submission that not only did the Respondent breach essential terms of his Contract of employment without consultation, but also their conduct after doing so, made it impossible for



the Claimant to continue discharging his duties, as they frustrated and pushed him to the point of resignation. He submits that such conduct by an employer amount to constructive dismissal.

31. The Claimant submits that the Respondent's actions in unilaterally redeploying him to a role for which he lacked both the requisite qualifications and training, constituted a direct violation of his constitutional and statutory right to fair labour practices as protected under Article 41(1) of *the Constitution* of Kenya.
32. It is his submission that by bypassing this legal requirement, the Respondent acted in bad faith and failed to accord the Claimant procedural fairness, amounting to a clear breach of both statutory duty and the principles of natural justice. He placed reliance in *Melisa Akinyi Ayoyi v Claudio Benaglia t/ a Royal Tulia Resort* [2018] eKLR for the holding that:-

“The *Employment Act* does not allow for unilateral change in contracts of employment to enable employers achieve their financial objectives. The employee must be notified and consulted about the change. The mantra in employment and labour relations is never 'take it or leave it'. There is always an obligation to consult on change in terms and conditions of employment more so when the proposed change, results in an inferior salary to the employee”.
33. The Claimant submits that the redeployment was also a demotion that led to a change in job group and a reduction to his gross salary without any justified cause. He submits further, that the Respondent ignored his multiple appeals/attempts to be heard for their unilateral decision that would technically change his career path.
34. The Claimant finally submits that the court should find in his favour and grant the prayers sought in the statement of claim.

The Respondent's Submissions

35. The Respondent submits that pursuant to Clause 5 of the Employment Contract which was executed by both parties, the Respondent reserved the right to alter, amend, add to, substitute and/or assign duties to the Claimant at the Vice Chancellor's discretion, within reason and upon due consultation. It submits that the Claimant was well aware of this provision emanating from the contract that he willingly signed without any form of coercion and was bound by all the terms emanating therefrom.
36. It is the Respondent's submission that in assigning the Claimant new roles, the Vice Chancellor exercised his powers in line with the provisions of the contract.
37. It is its submission that during the meeting that was held on 23rd January 2024, the Claimant was adequately informed about the Respondent's intention to redeploy some of its staff members, and that it comprehensively explained the reasons behind the redeployment, including retiring of some of its staff members and the financial position of the Respondent.
38. The Respondent submits that it granted an opportunity for the members to be affected by the redeployment proposal to comment on the issue before implementation, and that the Claimant's only reservation was that he needed retooling before taking up his new responsibilities as a Lecturer in the School of Business.
39. It submits further that the Claimant effectively acquiesced to the redeployment subject to his conditions, and submits that the Claimant was adequately informed of the decision to redeploy him pursuant to his employment contract as expounded hereinabove.



40. The Respondent submits that the Claimant was never subjected to a hostile working environment which could have affected his work performance following his redeployment to a different department. It submits that the working tools in the Human Resource Department were not relevant to his new role and therefore being denied access to the same can in no way be characterized as hostility in his working environment.
41. The Respondent submits that the Claimant had voluntarily submitted himself to its grievance resolution procedure, but resigned prematurely before his appeal could be heard and determined. It submits further that the Claimant did not explain why he considered resignation before his appeal could be heard and determined, and did not contend that the internal process was biased, ineffective or would not offer a meaningful resolution towards the grievances he had raised in his appeal.
42. It is the Respondent's submission that the Claimant failed to establish how his right to fair administrative action was infringed, the allegation being inconsistent with the facts leading up to his voluntary resignation.
43. The Respondent finally submits that the Claimant's claim is premature, malicious, and unsubstantiated to the required threshold, and should be dismissed with costs.

Analysis and Determination

44. I have considered the pleadings, the witnesses' testimonies and the rival submissions. The issues for determination are: -
 - i. Whether the Claimant was constructively dismissed
 - ii. Whether the Claimant was subjected to unfair labour practices
 - iii. Whether the Claimant is entitled to the remedies sought.

Whether the Claimant was constructively dismissed.

45. In Kenya today, there is no law defining with clarity when a constructive dismissal should be deemed to have occurred. Constructive dismissal has however been largely applied by courts tied to the law of contract under the doctrine of discharge by breach.
46. In the case *Osman Eggae Egaal versus John Philip Tilley & Others*, Petition No.90 of 2012 and *David Potter versus New Brunswick Legal Aid Services Commission*, Supreme Court of Canada, 2015 SCC 10, J held that:-

“The test for constructive dismissal has two branches. The court must first identify an express or implied contract term that has been breached and then determine whether that breach was sufficiently serious to constitute constructive dismissal. ... first, the employer's unilateral change must be found to constitute a breach of the employment contract and, second, if it constitutes such a breach, it must be found to substantively alter an essential term of the contract....”
47. The Claimant contends that on 22nd January 2024, he was invited by email to attend a HR & Finance Committee meeting that was scheduled for 23rd January 2024, and that contrary to established practice, he was excluded from preparing the agenda, minutes, or materials for this meeting.
48. He asserts that during the meeting, the Vice Chancellor (VC) tabled a proposal for staff restructuring which directly affected his role without prior consultation, and subsequent to the meeting, he received



an email on 24th January 2024, and a redeployment letter reassigning him to the School of Business and Economics as a Lecturer.

49. It is his position that though he protested through several emails asserting that he was unqualified for the Lecturer position, that the redeployment was a demotion from Job Grade H to F, and that the decision violated the University Charter, which reserves redeployment powers to the University Council, not the VC, the VC summoned him and ordered him to handover within one hour, and report to the Academic Division.
50. The Claimant contends that feeling humiliated, frustrated, and coerced, he tendered his resignation letter dated in error as 6th February 2024, but received on 5th February 2024, hence the claim of constructive dismissal.
51. On its part, the Respondent contends that on 24th January 2024, the Claimant emailed the Vice Chancellor seeking reconsideration of his redeployment, and later appealed to the University Council on 30th January 2024 against the redeployment. It avers that it scheduled a meeting on 2nd February 2024, to discuss the Claimant's concerns, but he failed to attend and instead, absconded duty.
52. It states that a show cause letter dated 5th February 2024 was issued to the Claimant for absconding duty, but which he refused to collect and was later emailed to him.
53. The Respondent states that on 5th February 2024, the Claimant submitted a resignation letter dated 6th February 2024, indicating he had already decided to leave, and that the Vice Chancellor accepted his resignation. It is the Respondent's position that the Claimant's resignation nullified his appeal to the University Council.
54. The question then is whether the foregoing circumstances leading to the Claimant's resignation constitute constructive dismissal.
55. The Claimant confirmed on cross-examination that he was aware that he was one of the staff to be affected by staff reviews. He told this court again on cross-exam, that his redeployment was pursuant to clause 5 of his employment contract, further explaining that the Respondent could alter his role as the same was not absolute.
56. The Claimant further confirmed that his salary was retained after his redeployment, save for the Kshs.15,000 extraneous allowance. It is his further evidence that there was no substantial change to his contract going by the letter of redeployment.
57. The Claimant admitted that he could not be given rights to the Respondent's ERP system as someone else had taken over from him, and he was no longer holding the position of Human Resources & administration officer and the rights were reserved for the holder of that office.
58. In the case of *Coca Cola East & Central Africa Limited v. Maria Kagai Ligaga* (2015) eKLR, the Court of Appeal held that constructive dismissal arises when the employer's conduct amounts to a fundamental breach of the contract, the breach shows that the employer no longer intends to be bound by the essential terms of the contract and the employee resigns in response to the breach, and not for other reasons.
59. For starters, there is no doubt that the Claimant attended the meeting where his redeployment was discussed, hence his argument that he was not consulted does not arise. The consultation envisaged under Section 10 (5) of the *Employment Act*, 2007, does not have to result in concurrence.



60. Further, though the Claimant questions his not being involved in the setting of the day's agenda as the committee secretary, it is obvious that being the subject of discussion, he would naturally be conflicted, hence the decision to have a different officer as secretary of that particular meeting.
61. The Claimant's assertion is that the work environment became difficult upon his redeployment as he could not access working tools, such as the payroll system as his rights to the system had been revoked. The Claimant confirmed in his own words, that since he no longer held the HR and administration position, he could not be granted rights to the ERP system. It is also his evidence that the redeployment was done within the terms of his contract, specifically clause 5 of his employment contract. It is further confirmed that the Claimant's salary was not affected by the redeployment, having only lost the extraneous allowance that was tied to the position he previously held.
62. In the case of *Elizabeth Washeke & Others v. Airtel Networks (K) Ltd* (2013) eKLR, the court found no constructive dismissal where redeployment was within contractual rights and did not fundamentally alter the terms of the contract.
63. Further, going by the principles set by the Court of Appeal in *Coca Cola East & Central Africa Limited v. Maria Kagai* (Supra), nothing shows that the Respondent no longer intended to be bound by the essential terms of the contract as to justify the Claimant's resignation.
64. It is also not lost on this court that the Claimant tendered his resignation on 6th February, 2024, upon receipt of a show cause notice sent to him on 5th February, 2024. The resignation in my view, seemed more an escape from disciplinary action than a response to the Respondent's conduct.
65. In the end, I conclude that the Claimant has not proved a case of constructive dismissal.

Whether the Claimant was subjected to unfair labour practices

66. An employee is said to have been subjected to unfair labour practices when an employer's conduct violates the employee's constitutional or statutory rights or fails to meet standards of fairness, equality, and dignity at work.
67. Article 41 of *the Constitution* provides thus on Fair Labour Practices:-
 - “ Every person has the right to fair labour practices.
 - (2) Every worker has the right—
 - (a) to fair remuneration;
 - (b) to reasonable working conditions;
68. The Claimant's contention is that the Respondent made the working environment difficult citing the same grounds he proposed constituted his constructive dismissal.
69. The Respondent's position is that the Claimant failed to establish how his right to fair administrative action was infringed, the allegation being inconsistent with the facts leading up to his voluntary resignation.
70. In my considered view, the Claimant did not specifically plead how his rights to fair labour practices were infringed upon. It is also true, that the issues raised as being in breach of the Claimant's contract have all been addressed under the claim for constructive dismissal.
71. This claim cannot therefore hold.



Whether the Claimant is entitled to the reliefs sought

72. The Claimant sought a declaration that his resignation was involuntary and consequently he was constructively dismissed by the Respondent which amounted to unfair, unprocedural, illegal and unlawful termination, a declaration that his rights to fair labour practices and fair administrative action was breached, aggravated damages for the mental anguish, emotional turmoil, anxiety and humiliation and payment of terminal dues.
73. With the holding that the Claimant's resignation did not amount to constructive dismissal, the only prayer that warrants further consideration, is the one on payment of terminal dues.
74. The Claimant sought an order for payment of January 2024 salary, Salary for the five days worked in February, 2024 and Payment in lieu of 18 accrued leave days.
75. It is not disputed that the Claimant resigned from the service of the Respondent on 6th February, 2024. The Respondent has not led any evidence to show that the Claimant's salary for January, and the 5 days served in February, 2024 was paid. The Respondent has also not controverted the claim for leave, and did not tell court why it did not pay the Claimant's terminal dues even after accepting his resignation.
76. The Claims in respect of terminal dues thus succeeds and is awarded as prayed.
77. In the final analysis, the Claimant's claim partly succeeds in terms of the following orders:-
- a. Salary for the Month of January at Kshs.236,833.00
 - b. Salary for the 5 days worked in February Kshs.56,390.00
 - c. 18 days accrued leave Kshs.203,000.00
 - d. The Respondent shall bear the costs of the suit.
78. Judgment of the Court.

SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS 30TH DAY OF OCTOBER, 2025.

C. N. BAARI

JUDGE

Appearance:

Ms. Achieng h/b for Mr. Asitiva for the Claimant

Mr. Simiyu present for the Respondent

Ms. Esther S- C/A

