

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT NAIROBI
CAUSE NO. E846 OF 2022**

**LEVI SEAN WASWA
CLAIMANT**

v

**TRIDEM PHARMA KENYA LTD
RESPONDENT**

**EMPLOYMENT AND LABOUR RELATIONS COURT
JUDGMENT**

1 Levi Sean Waswa (the Claimant) sued Tridem Pharma Kenya Ltd (the Respondent) on 21 November 2022, and he stated the Issues in Dispute as:

(i) Whether the Claimant's termination from employment amounted to *constructive dismissal*?

(ii) Whether the Claimant is entitled to his terminal dues?

(iii) Whether the Claimant's constitutional rights were violated?

2. The Respondent filed a Response on 30 March 2023, and the Cause was heard on 6 March 2024, 13 May 2024, 28 May 2024, and 5 May 2025.

3. The Claimant and the Respondent's Country Manager and Human Resources and Administration Manager testified

4. The Claimant filed his submissions on 9 May 2025, and the Respondent on 11 June 2025.

5. The Claimant set out the Issues in contention in his submissions as:

(i) Whether the Claimant's resignation from employment amounted to *constructive termination* and therefore unlawful and unfair?

(ii) Whether the Claimant's Constitutional rights under Articles 27(1), 32 and 41(1) of the Constitution were violated?

(iii) Whether the Claimant is entitled to the remedies sought?

(iv) Who should bear the costs of this suit?

6. The Claimant filed evidentiary material with the submissions, and since the material was not subjected to scrutiny during the hearing, the Court

will not consider the material at all.

7. The Respondent identified the issues for determination in its submissions as:

(i) Whether the Claimant was *constructively dismissed* from employment?

(ii) Whether the Claimant is entitled to the reliefs sought?

8. The Court has considered the pleadings, evidence and submissions.

NAIROBI

Common background

9. The Respondent employed the Claimant as a Business Supervisor through a letter dated 2 January 2020, and around October 2020, the Respondent restructured its market into 3 regions

and assigned the Claimant to the Nairobi region 1, comprising half of Nairobi, Mombasa and Eldoret.

10. On 1 April 2021, the Respondent notified the Claimant of a salary increment for his commitment to work.

11. On 2 September 2021, the Respondent called upon the Claimant to explain certain expense irregularities said to have been detected the previous month.

12. On or around 1 October 2021, the Respondent issued a show cause to the Claimant. The Claimant responded to the show cause on 2 October 2021.

13. In the response, the Claimant raised fears that he was unlikely to get a fair hearing because he had not been given certain reports/data and approvals from his immediate supervisor.

14. The Claimant contended that the show cause was precipitated by his raising concerns previously on doctor/patient confidentiality, taking of photos of

doctors at Kenyatta National Hospital, marketing of products without proper licenses, delay in payment of salaries and field allowances, violation of COVID-19 protocols, nepotism in employment and discrimination in the workplace.

15. A disciplinary hearing was held on 4 October 2021, and the parties agreed on some way forward.

16. The same month, the Respondent restructured and created 3 regions and assigned the Claimant to one of the regions, Nairobi. Previously, the Claimant had covered the whole country.

17. On 24 November 2021, the Claimant wrote to the Respondent expressing misgivings that the agreements during the disciplinary hearing had not been implemented (providing him with resources/funding).

18. On 2 December 2021, the Respondent demanded that the Claimant submit explanations for discrepancies in his expenses for November 2021 and in a response on 6 December 2021, the

Claimant explained that the discrepancies were due to late validation because of a problem with his iPad.

19. On 6 December 2021, the Respondent gave the Claimant a last warning on expense irregularities.

20. Around 28 January 2022, the Respondent informed the Claimant of the establishment of a new organogram and that he, the Claimant was being put in charge of the division, but on 3 January 2022, he registered his concerns about the timing and creation of the new division. The Claimant drew the attention of the Respondent to the misgivings he had raised in October and November 2021.

21. The Claimant and Respondent and other supervisors met on 10 January 2022 to discuss the issues raised by the Claimant.

22. The Claimant was not content with the discussions on 10 January 2022, and he sent another email to the Respondent on 16 January 2022 stating that

Medical Representatives had the marketing responsibilities assigned to his division. The Claimant also raised concerns about compliance with Kenyan laws and marketing ethics and urged the Respondent to reconsider, otherwise his role would be untenable.

23. The Respondent reverted on 17 January 2022, reiterating the discussions of 10 January 2022. On 19 January 2022, the Respondent regretted that the Claimant had not brought any new business.

24. And on 22 January 2022, the Respondent brought to the attention of the Claimant alleged failings in his new division and advised him that he would be removed from all WhatsApp groups and that he creates a WhatsApp group for his new division

25. On 27 January 2022, the Respondent informed the Claimant that from February 2022, it had been decided that he would work without a vehicle and that his monthly mileage allowance had been removed for the next 3 months because of his

performance and that the decision was not made in bad faith.

26. The Claimant replied the same day, insisting that the changes were not lawful and constituted unfair labour practice because he had been in the new division for only 4 weeks.

27. On 28 January 2022, the Claimant raised concerns with the Respondent's marketing pricing and Tour Plan for February 2022. The Claimant also expressed a lack of support and victimisation.

28. The Claimant gave notice of resignation on 1 February 2022, and he gave the reasons he had given in his previous communication to the Respondent. The Respondent acknowledged the resignation on 2 February 2022.

Unfair termination through *constructive dismissal*

29. *Constructive dismissal* is not a creature of statute in Kenya, but it has been accepted by the Courts in this

jurisdiction as well as in other jurisdictions. It is a development of the common law.

30. The English Court of Appeal defined the contours of what constitutes *constructive dismissal* in *Western Excavating (CC) Ltd v Sharp* (1978) ICR 221, where it stated:

EMPLOYMENT

If the employer is guilty of conduct which is a significant breach going to the root of the contract of employment or which shows that the employer no longer intends to be bound by one or more of the essential terms of the contract, then the employee is entitled to treat himself as discharged from any further performance. If he does so, then he terminates the contract by reason of the employer's conduct.

31. Here at home, the Court of Appeal discussed the concept of *constructive dismissal* in *Coca-Cola East & Central Africa Limited v Maria Kagai Lugaga* (2015) eKLR.

32. The Court of Appeal 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 gives 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.....

33. The Claimant asserted *constructive dismissal* on the basis that the Respondent unilaterally restructured his role and stopped paying him mileage allowance, which was necessary for him to perform his duties.

34. In this regard, the Claimant testified that the Respondent placed him in a new division on 2 January 2022 without prior consultation; stopped paying him car allowance on 27 January 2022, and delayed the payment of his salary.

35. The Claimant also contended that the Respondent forced him to take pictures of his engagements/prescriptions with doctors while performing his duties, and this ran contrary to the principle of doctor/patient confidentiality.

36. According to the Claimant, despite formally raising concerns to the Respondent, the concerns were ignored.

37. The Respondent denied creating a hostile work environment. Its witness testified that in 2020, it decided to create additional market regions, and this led it to appoint the Claimant to head one of the regions, and that it facilitated the Claimant to conduct his duties within its policies and without any discrimination against the Claimant.

38. The Claimant was employed by the Respondent on 2 January 2020 as Business Supervisor.

39. In October 2021, the Respondent created 3 market regions and assigned the Claimant to supervise Nairobi region One, which comprised half of Nairobi, Mombasa and Eldoret.

40. The Claimant raised his concerns with the Respondent through email on 2 October 2021, but instead of addressing the same, he was invited to a show cause hearing on 4 October 2021.

41. On 24 November 2021, the Claimant sent an email to the Respondent raising the same concerns, but there was no response from the Respondent.

42. The next thing the Claimant heard from the Respondent was a WhatsApp message on 31 December 2021 on changes to the management structure. The Respondent followed the WhatsApp message with an email on 2 January 2022 informing the Claimant that he was being assigned a new division in the Sales department.

43. On 27 February 2022, the Respondent notified the Claimant of the withdrawal of his car allowance.

44. The Respondent took the position that the Claimant resigned voluntarily and that the reasons leading to the resignation lacked a factual basis and did not meet the legal threshold for *constructive dismissal*.

45. The Claimant was a marketer. He had been facilitated to move around. The Respondent withdrew the facilitation through an email of 27 January 2022 (car and mileage allowance).

46. The Respondent required the Claimant to take photos of his marketing activities and this included engagements with doctors.

47. The Claimant questioned this expectation and was soon called to show cause. There was no disclosure from the Respondent that it had the consent of the institutions that the Claimant engaged with had given consent to the taking of photos.

48. The Court is satisfied that the Respondent created a hostile work environment, thus prompting the Claimant to resign.

49. The Claimant proved *constructive dismissal*.

Compensation

50. The Claimant served the Respondent for about 2 years, and in consideration of the length of service, the Court is of the view that the equivalent of 3 months' gross salary as compensation would be appropriate (gross monthly salary was Kshs 75,600/-).

Pay in lieu of notice

51. The Claimant resigned at the instance of the Respondent, and the Court will allow the claim for 1 month's pay in lieu of notice in the sum of Kshs 75,600/-.

Breach of contract

52. The Claimant claimed Kshs 336,000/- and Kshs 88,000/-, being mileage allowance for the years 2021 and 2022, respectively.

53. These heads of the claim was in the nature of special damages. The Claimant's contract did not provide for the payment of a mileage allowance. If the Respondent had a written policy on the payment of a mileage allowance, the same was not placed before the court.

54. The parties produced a copy of an email of 27 January 2022 advising the Claimant that, with effect from February 2022, he would work without a car or payment of a mileage allowance and that, going forward the field work policy (without a car) would apply to him.

55. The Claimant did not disclose the rate of the mileage allowance. The allowance was facilitative. The Claimant did not indicate whether he used his resources and how much to perform the work after February 2022.

56. The Court finds that the Claimant did not prove to the requisite standard an entitlement to a mileage allowance.

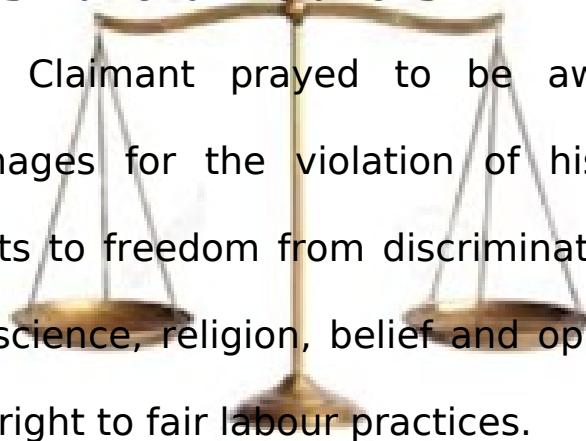
Unpaid incentives and promotional activities

57. Under these heads, the Claimant pitched for Kshs 161,995/- and Kshs 4,000/-.
58. These heads of the claim were also in the nature of special damages. The Claimant did not present sufficient evidence to meet the standard expected of him, and relief is declined.

EMPLOYMENT AND LABOUR RELATIONS COURT

Constitutional violations

59. The Claimant prayed to be awarded general damages for the violation of his constitutional rights to freedom from discrimination, freedom of conscience, religion, belief and opinion as well as the right to fair labour practices.
60. The Claimant did not prove a violation of any of these rights to the required standard.



NAIROBI

Conclusion and Orders

61. The Court finds and declares that the Respondent *constructively dismissed* the Claimant and the Claimant is awarded:

(i)	Compensation	Kshs
	226,800/-	
(ii)	Pay in lieu of notice	Kshs
	75,600/-	
	TOTAL	Kshs

EMPLOYMENT AND LABOUR RELATIONS COURT

62. The other heads of claim are found without merit and are dismissed.

63. The award to attract interest at court rates from the date of judgment.

64. Claimant to have costs.

Delivered virtually, dated and signed in Nairobi on this 20th day of November 2025.

Radido Stephen MCI Arb
Judge

Appearances

For Claimant

Charles Gomba & Co.
Advocates

For Respondent

Kabau & Associates
Advocates

Court Assistant

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EMPLOYMENT AND LABOUR RELATIONS COURT



NAIROBI