

REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO.12 OF 2019

BEN OYUGA ADYANG.....CLAIMANT

-VERSUS-

WRIGLEY COMPANY(EA)LIMITED.....RESPONDENT

CORAM

Before Lady Justice J.W. Keli

C/A Otieno

JUDGMENT

1. The Claimant filed suit against the respondent vide memorandum of claim dated 11<sup>th</sup> January 2018 seeking for the following reliefs-
  - a. **A declaration of the violation of the Claimant's right(s) to fair work practices, which occasioned constructive dismissal triggered by the sole intolerable actions and or omissions of the Respondent;**
  - b. **A declaration of breach of contract in favour of the Claimant;**
  - c. **General damages for violation of the Claimant's right(s) to fair work practices and for breach of contract;**

**d. An Order directing payment to the Claimant of all the following terminal dues arising out of service to the Respondent;**

**1. 3 months' salary compensation for constructive**

**dismissal=Kshs.1,992,305.59;**

**2. A VP Payments to the end of November, 2018 = Kshs. 1,057,268.07;**

**3. Compensation associated with the 9 months loan repayment relief as a result of redundancy-Kshs.2,341,240.74;**

**4. Damages associated with professional mistreatment in the company for 12 months from September, 2017 to**

**September,018=Kh.7,689,222.36**

**SUB-TOTAL =Kshs.13,010,036.76**

**e. Compensation for wrongful dismissal**

**f. Cost of this suit**

**g. Any other relief this honorable court deems fit to grant in the circumstances.**

2. The claimant filed his witness statement in support of the claim, dated 11th January 2018, and a list of documents of the same date, together with the bundle of documents, all filed with the claim on 11<sup>th</sup> January 2019.

3. The claim was opposed by the respondent, who entered an appearance through the law firm of Obura Mbeche & Company advocates and filed a statement of response dated 23rd July 2020 and a list of documents of the same date, together with the bundle of documents and a witness statement of Ferial Ben Ammar, all filed in court on 4<sup>th</sup> August 2020.

### **Hearing and evidence**

4. The claimant's case was heard before me on the 19<sup>th</sup> November 2024 when the claimant testified on oath, adopted as his evidence in chief his witness statement dated 11<sup>th</sup> January 2018, produced documents as C- exhibits 1-12 and was cross-examined by counsel for the respondent, Obura on that day and further on the 17<sup>th</sup> February 2025 and re-examined by his counsel, Jura.
5. The respondent's case was heard before me on the 10<sup>th</sup> July 2025 with the witness of fact being Ferial Ben Ammar who testified on oath and adopted his witness statement dated 23<sup>rd</sup> July 2020 and produced documents for the respondent under list of documents dated 23<sup>rd</sup> July 2020 and was cross-examined by counsel for the claimant, Migele and re-examined by his counsel, Obura.

### **The claimant's case**

6. At all times material to this suit, the Claimant was in the employment of the Respondent within the confines of an employer-employee relationship;
7. In the year 2017, there was a global restructuring and or reorganization and integration between Mars Chocolate and the Respondent;
8. Via letters dated 27th May, 2016 and 14th February, 2018, the Respondent appointed the Claimant to a new position as Strategic Operations Manager and Strategic Sourcing & Operations Manager BTL MEA within the job level T2, with effect from 1st June, 2016 and 15th March, 2018 respectively, from the Claimant's previous position of a Regional Services Buying Manager, which he had held since 14th April, 2014 upon his appointment;
9. The Respondent unilaterally made a fundamental change in the contract of employment and made the situation for the Claimant intolerable. The Claimant would have continued working had the Respondent not created an intolerable work environment which resulted to an involuntary resignation from the Claimant vide letter dated 4th June, 2018, believing that the Respondent company's conduct would not change for the better;

10. The intolerable working conditions for the Claimant included intimidation, witch-hunt', unfair treatment and frustration of the Claimant's good intentions, all evidenced as particularized hereunder:-

**Particulars of intolerable working conditions occasioned by the respondent to the claimant:**

- i. The improper allegation with ulterior motive on tax exposure as reported to the Claimant's Line Manager Ferial Ben Ammar by DMEA CFO;
- ii. The Withholding Tax Management associated with Manpower Networks and other related vendors; lack of trust on the Claimant's point of view despite being the Associate responsible for Contract Terms and Conditions;
- iii. Negative feedback from the Claimant's Line Manager on Support to Finance;
- iv. The DMEA CFO unilaterally passing over the role of Custody of Safe, Cabinet and Cash Box, and;
- v. The Escalation to the Respondent's leadership.

11. The Claimant, having been forced by the above particularized circumstances caused by the Respondent to resign, received a letter from the Respondent acknowledging his resignation and assuring the Claimant that his dues would

be paid, only for the Respondent to backtrack and refuse to duly compensate the Claimant of his contractual dues;

### **On Constructive dismissal**

12. The Claimant contends that but for the conduct of the Respondent which rendered it impossible for the Claimant to continue in employment with the Respondent, the Claimant would have continued working for the Respondent as it had been diligently and dutifully working since 14th April,2014;
13. That it is the actions of the Respondent which amounted to a serious violation (s) of the Claimant's right(s) to fair labour practices including his right(s) not to be dismissed by the Respondent's conduct, that caused the Claimant to leave employment by tendering a resignation vide letter dated 4m June,2018.

### **RESPONDENT'S CASE**

14. The Respondent denies that it is in breach of the contract of service it had with the Claimant and liable to the Claimant in terms of issues listed at paragraph 1,2and 3 of the Memorandum of Claim (hereinafter referred to as "*Memorandum*"). The Respondent contends herein below that the Claimant voluntarily resigned from his employment without undue influence and/or pressure from the Respondent. The Respondent avers that the Claimant was

first employed by the Respondent with effect from 14th April 2014 as the Respondent's Regional Services Buying Manager as confirmed by a copy of the Appointment letter annexed hereto and marked Appendix 1. To this end the Respondent admits the averment at paragraph 6 to the Memorandum that his engagement was within the confines of an employer-employee relationship. It was a term and condition of the Claimant's contract that his duties could be modified or altered from time to time by the Respondent. By a letter dated 27th May 2016, following Global Reorganization of the Respondent's commercial operations the Claimant was appointed Strategic Operations Manager an appointment which he accepted by signing a copy of the letter of appointment which is annexed hereto and marked Appendix 2.

15. The Respondent admits paragraph 7 of the Memorandum to the extent that there was a restructuring and reorganization process of both Mars Chocolate the Respondent in 2017 which led to their merger. However, the reorganization did not affect the role of the Claimant in the Respondent's Regional Strategy Operations Managerial post he had held with effect from 1st June 2016. The Respondent contend that a regional reorganization affecting the Claimant subsequently took place in 2018. It involved the regional commercial team (known as C@MTT) to which the Claimant belonged. The objective of the 2018 reorganization was to merge two regions together that is the legacy

MCTA (comprising Middle East Turkey and Africa) region and legacy Asia Pacific region into one combined APMEA (Asia Pacific Middle East Africa) region. Following the reorganization the Claimant's regional role was impacted favourably as the role was expanded in scope and development. He accepted his new role as per Appendix 3 annexed hereto. The Respondent denies the allegations in paragraph 9 of the Memorandum to the effect that the Respondent unilaterally made fundamental changes to the Claimant's employment contract. On a totally without prejudice basis and in the alternative to paragraph 11 herein the Respondent shall aver that any change in the Claimant's role if at all, was consistent with the contract of service he signed wherein he agreed he was up to the task assigned to him under the new management.

16. The Respondent denies the averments at paragraph 10 of the Statement of Claim and further asserts that allegations of "*witch-hunt*", unfair treatment, and frustration come to the Respondent as a surprise. The Respondent further denies the particulars set out in the same paragraph. The Respondent contends that at no point in time had the Claimant raised the issue of intolerable working conditions alleged in his resignation letter. The Respondent asserts that during the period April/May 2018 the Respondent commissioned Gallup a global survey organization to conduct a level of engagement survey and associates

satisfaction in their work. The Claimant's team comprising five associates turned out to be one of the teams with the highest satisfaction rate. It is pertinent to note that the Respondent had no input in the survey which independently considered both individual and team engagement.

17. In the level of engagement matrix 1 is the lowest score while 5 is the highest. The scores indicated that all members of the Claimant's team scored 5 being the highest level of engagement possible. Annexed hereto and marked Appendix 4 is the survey document.

18. Among the questions which scored 5 out of 5 were:

- In the last seven days I have received the recognition or praise for doing good work.*
- My superior, or someone at work, seems to care about me as a person.*
- There is someone at work who encourages my development.*
- The mission or purpose of my company makes me feel my job is important.*
- I have a best friend at work.*
- In the last six months, someone at work has talked to me about my progress.*
- This last year, I had opportunities at work to learn and grow."*

19. The Respondent maintains that it is normal in any working environment to have a healthy tension amongst employees. The Respondent further asserts

that if at all there was unhealthy working relationship between the Claimant and his associates he was by and large the contributor to those tensions. That is why in his 2018 Development Plan which he discussed and agreed upon with his line manager he placed emphasis on three leadership competencies which he needed to work on in the course of 2018. These were:

(a) Creating Collaborative Relationship-Conflict Management.

(b) Stakeholder and Business Partnering.

(c) Delivery of Consistent Results-Drive for Results. Annexed hereto and marked Appendix 5 is an email the Claimant sent to his Line Manager on 18th December 2017 setting out the above priority areas he wanted to address in the coming year.

20. The Respondent denies that there was any improper allegation or ulterior motive reported by the CFO to the Claimant's Line Manager as alleged at paragraph 10(i).

21. On the allegation at paragraph 10(ii) that there was lack of trust in the Claimant's role in Withholding Tax Management associated with Manpower Networks the Respondent avers that indeed as per the Claimant's terms and conditions of service part of *his* duties were to "*create and implement supply based strategy ensuring effective risk management through robust contracts*

*and monitoring of financial and other KPI's."* Furthermore in his objectives for the year 2018 the Claimant had undertaken to drive a governance culture and actively participate in the governance work stream in Kenya. Bearing in mind his job description and his declared objectives at all times the Claimant engaged with his colleagues on issues affecting his docket and his contributions were taken seriously and he was also advised and guided from time to time according to established protocols of the Respondent.

22. With respect paragraph 10(iii) the Respondent is not aware of negative feedback from the Claimant's Line Managers on Support Finance. What the Respondent is aware of are interactive exchanges leading to consensus on issues or resulting in identifying an ideal solution to a problem. Indeed in the Gallup engagement survey the Claimant responded that at work his opinion counted.
23. Further but without prejudice to the foregoing the Respondent shall aver that in a working environment an employee cannot expect a positive feedback on every issue he needs his boss guidance on. Some feedback will have to be negative otherwise what would be the supervisory role of the immediate boss?
24. In response to paragraph 10(iv) of the Memorandum the Respondent wishes to state that the DMEO CFO did not unilaterally pass over the custody of the safe,

cabinet and cash box to the Claimant. A request was made by the CFO to the Claimant in the presence of and with the agreement of fellow senior management with whom the Claimant worked including the Human Resource Director and the Sales Director that the Claimant takes over that responsibility and he readily accepted to do so without reservations. He subsequently sent an email confirming his acceptance and showed no discomfort. Annexed hereto and marked Appendix 6 is a copy of the said email. The Respondent contends that all the particulars enumerated at paragraph 10 were if true (but which is denied to be so) normal business interactions within the scope of an employment relationship and could not in any way affect the subsistence of a contract of service.

25. The Respondent and in particular the Claimant's immediate Line Manager Ferial Ben Ammar were surprised when the Claimant resigned as it was least expected.
26. The Respondent avers that it has in place an elaborate grievance handling procedure to address an employee's dissatisfaction with any aspect of his/her working condition or environment. The Claimant could have channelled his complaints to his Line Manager and if he had no confidence in his immediate Line Manager to the Line Manager of his immediate Line Manager. He could

have also complained to Managers within the Human Resource Department or the business Partner or People and Organization Director.

27. Besides the above persons with whom the complainant could file his grievances, the Respondent has in place a very robust and unique Ombudsman Programme which is an independent, neutral, confidential and informal channel of communication for all employees. The programme is well publicized and brought to the attention of all associates through posters, email communications and other company literature. The Ombudsman visits the Respondent's units from time to time. Annexed hereto and marked Appendix 7 is the literature on the Ombudsman.

28. At no time did the Claimant raise his alleged concerns with the Management team or the Ombudsman. There is no evidence even remotely that the Claimant was subject to an intolerable working environment which could lead to his resignation. The Respondent has and is always proud to be leading by example when it comes to respecting employees' rights and applying Kenya Labour Laws. The Respondent has in place the "*associate concepts*" which underpins its policy towards its workers that they are considered to be associates in the business and have to be treated fairly, respectfully, equitably and each one of them be he/she in the management cadre or unionisable cadre has a duty to support the other and is valued as individuals and rewarded and developed

throughout their careers within the Company. Annexed hereto and marked Appendix 8 is a document on the "*Five Principles and Associate Concept*".

29. The Claimant tendered his resignation by his letter dated 4th June 2018 in which he gave the Respondent three months notice and which he successfully served. The resignation was accepted as per the Respondent's letter annexed hereto and marked Appendix 9. By a letter dated 20th August 2018 annexed hereto as Appendix 10 the Claimant sought for compensation following his resignation claiming that his rights under Article 41 of the Constitution had been violated. The Respondent responded to those allegations as per Appendix 11. In response to paragraph 14 of the Memorandum the Respondent avers that the circumstances in the present case do not fall within the realm of unfair labour practice envisaged under Article 41(1) and (2) of the Constitution. The Respondent contends that the Claimant served the three months' notice of termination and was paid up to and including 3rd September 2018 as confirmed by Appendix 12. The Respondent helped in the settlement the Claimant's retirement benefits as per Appendix 13. The Respondent contends that it does not owe the Claimant the reliefs sought in the Memorandum or any sums at all.

## **DETERMINATION**

### **Issues for determination**

30. The claimant outlined the following issue for determination in the suit-  
Whether or not claimant has proved his case on a balance of probability.
31. Conversely, the respondent outlined the following issue for determination in the suit-
- a) Whether the Claimant was a victim of constructive dismissal as he alleges.
  - (b) Whether the Claimant is entitled to the reliefs he has sought.
32. The court, on evaluation of the pleadings before the court, found that the issues placed before the court by the parties for determination were-
- a. Whether the claim of constructive dismissal was proved on a balance of probabilities
  - b. Whether the claimant was entitled to reliefs sought

Whether the claim of constructive dismissal was proved on a balance of probabilities

33. Constructive dismissal is a common law doctrine and not provided for in our statutes. The Kenyan courts have adopted the doctrine to apply in our jurisdiction. The application of the doctrine was outlined in landmark case relied on by both parties being Coca Cola East & Central Africa Limited v Maria Kagai Ligaga [2015] KECA 394 (KLR), where the Court of Appeal

stated that; *'The authoritative meaning of constructive dismissal was articulated by Lord Denning MR in Western Excavating (ECC) Ltd. -v- Sharp [1978] ICR 222 or [1978] QB 761, as follows: "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. He is constructively dismissed. The employee is entitled in those circumstances to leave at the instant without giving any notice at all or alternatively, he may give notice and say that he is leaving at the end of the notice. But the conduct must in either case be sufficiently serious to entitle him to leave at once (emphasis ours). (See also Nottingham County Council -v-Meikle (2005) ICR 1)."'* The Court of Appeal further outlined the legal principles relevant to determining constructive dismissal to include the following: a. What are the fundamental or essential terms of the contract of employment? b. Is there a repudiatory breach of the fundamental terms of the contract through conduct of the employer? c. The conduct of the employer must be a fundamental or 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. d. An objective test is to be applied in

*evaluating the employer's conduct. e. There must be a causal link between the employer's conduct and the reason for employee terminating the contract i.e. causation must be proved. f. An employee may leave with or without notice so long as the employer's conduct is the effective reason for termination. g. The employee must not have accepted, waived, acquiesced or conducted himself to be estopped from asserting the repudiatory breach; the employee must within a reasonable time terminate the employment relationship pursuant to the breach. h. The burden to prove repudiatory breach or constructive dismissal is on the employee. i. Facts giving rise to repudiatory breach or constructive dismissal are varied.’’ The court will adopt the foregoing decision in determining whether a case of constructive dismissal was proved on a balance of probabilities.*

34. The claimant produced his resignation letter dated 4<sup>th</sup> June 2018 from employment of the respondent and the letter is reproduced as below- ‘

*RE: RESIGNATION*

*I hereby tender my resignation effective today, 4th June 2018 by giving the contractual 3 months' notice.*

*The reason for my resignation is to protect my integrity and professional standing, which I have successfully maintained over the past twenty years*

*in my multinational career, plus five years as a civil servant in the Government of Kenya.*

*I would like to briefly highlight three reasons which the company can pick up for review;-*

*1. Mars Wrigley Confectionary Integration;*

*It is my fair & informed opinion that the integration is on an auto tactical operational implementation mode. This is manifest by the lack of clear understanding of roles and responsibilities within the organization.*

*This is qualified as follows;-*

*a) Being given the responsibility to manage a company safe whose content no associate is aware of until I intervened for an audit of the content of the safe. During the said handover which I have not signed off since I believe this is not my responsibility, I have realized more keys of which the former responsible associate Indicates is for P&O documents and Sales car keys. I do not have access to the Archive room where the cabinets are kept thus a short term control.*

*b) Responsibility in management of Signing Authority Matrix*

*The current signing authority matrix is contained in document number PR-09569 dated 2nd July, 2015. This document has been under review from February 2017 based on my request. I again passed over the same information to the management in December 2017. in May 2018 the*

*responsibility again shifts to myself with no change in document ownership in nexus or update of the same through any documentation of the company procedure.*

*The advice on withholding tax management of 2nd November, 2017 on Manpower Networks has come to pass vide a mail on 17th April 2018 after 5 months of unnecessary internal and external meetings compounded with late payment to the supplier. The former notwithstanding other open risks on this subject subsequent to the 2017 interpretation.*

*August 2018*

*My overall view is as follows;*

- 1. The business expect me & therefore an associate in my role to execute transactional robotic activities within the organization which violates its own policies, procedures.*
- 2. I do not see the business being receptive of my overall business contribution and advice for the overall strategic success.*
- 3. The business do not continue to practice the principles of Efficiency, Responsibility & Mutuality.*

*The above plus others excluded in this resignation letter but not limited to intimidation, witch- hunt. unfair treatment by verbally or in writing and frustration of my good intentions has made it impossible for me to continue rendering my services to the company. I therefore expect the company to intentionally compensate me up to my intended exit date of end April 2019 before moving into consultancy. This is in line with the Company's mutuality principle.*

*I take this opportunity to thank the company for offering me the chance to serve it, especially seeing it through the process of building The Green Field Factory in Athi River. I also wish the company great success and growth over the years.”*

35. The respondent accepted the resignation as a right of the employee but denied being responsible for the resignation, stating it considered the claimant for long-term service.
36. The burden to prove the claim of constructive dismissal lies with the claimant. The history of the employment was established at cross-examination of the claimant. That the claimant was first employed on 2014 as a regional services buying manager with a condition of the contract that the duties could be

changed from time to time and the claimant accepted the terms. The claimant was appointed with effect from 1st June 2016 as a strategic manager, with the terms and conditions of the initial employment retained. The claimant told the court that on 15th February 2018, following a merger, he signed and accepted Appendix 3 of the respondent's bundle of documents, which was a letter dated 7th February 2018, where he was offered the position of Strategic Sourcing and Operations Manager, BLT MEA. He was reporting to RW1. He told the court that was his last appointment following the merger. He admitted that to the letter were attached his duties and responsibilities, and had 7 days to accept or reject the offer, and accepted on 15th February 2018, having received the letter on the 12<sup>th</sup> February 2018.

37. During the employment, the claimant admitted that a Gallup Survey was done and his department gave an excellent view of the relationship with the respondent. The claimant was referred to his response to the Gallup survey (appendix 4 of the response at page 28), in which he stated that he was fully satisfied with the respondent's performance and relationship. The claimant told the court the survey was post his resignation. The claimant told the court he was not aware of any survey done during his employment. He was asked when he resigned and said 4<sup>th</sup> June with notice of 3 months, thus the last day of work was on 3rd September 2018. The claimant then confirmed that the poll of June

2018 was done during his service. He confirmed the outcome of the poll was that his department was one of the most satisfied.

38. The claimant confirmed in appendix 5(Respondent's documents) he wrote to the boss email giving plan for 2018 and one of the things he wanted to do was work on conflict management with coworkers appreciating there were some things he wanted to improve.
39. The claimant had produced several correspondence both routine and non-routine and confirmed he had not produced any letter to the human resources to effect that he was not satisfied with the work. He confirmed that he had not communicated with the immediate boss about being dissatisfied with the work and wanted to resign. He confirmed that the workplace was an ombudsman, which was for complaints by employees about work. He confirmed Appendix 7 by the respondent was the role of ombudsman and further confirmed that while employed, he never lodged any complaint with the employer's ombudsman. He confirmed that during the 3 months' notice he worked in same atmosphere for the entire period. He was paid a salary for the entire period, and had taken leave and had given instructions on how his benefits were to be treated. The claimant confirmed that the employer expressed surprise he had resigned. He confirmed that he had said he wanted to go to a

consultancy. On re-examination, the claimant said it was not a must for an employee to go to the ombudsman.

40. During cross-examination of RW1, Fenuel Ben Ammar, the line manager working with the claimant, he told the court as follows- that the job description of the claimant was general but was not expressly to include safekeeping of cash boxes and cabinets. He confirmed that he was responsible for allocating duties to the claimant, but the claimant was allocated the safekeeping of the cashbox and cabinet by the chief finance officer. RW1 told the court the extra responsibilities were vide email. He had no evidence of the extra responsibilities to the claimant. RW1 told the court the claimant had raised routine issues during employment and considering his role was conflict management the exchanges were to assist in his job. He confirmed the ombudsmen were published online and available everywhere, including Kenya. He confirmed that the literature on ombudsman had indicated it was unique and some of the employees may have challenges in utilizing the same. RW1 was aware of delayed payment to suppliers and said they addressed the same. He denied that the delay of payment of suppliers may affect the job of the claimant, as part of his job was to take care of the suppliers, and that it was not the claimant's job to pay suppliers. He admitted they had an issue of payment for manpower, and there was an issue of go-slow. During re-examination, RW1

told the court that the claimant voluntarily accepted to take responsibility over the safe and cabinet. The claimant was aware of the ombudsman procedure for grievance but failed to utilize the same. The claimant never raised issue of manpower payment or tax exposure before resignation. The problem of salary payment was on the bank side and not the respondent's.

### **Decision**

41. The Court of Appeal (*Coca-Cola case* above) further outlined the legal principles relevant to determining constructive dismissal to include the following: 'a. *What are the fundamental or essential terms of the contract of employment?* b. *Is there a repudiatory breach of the fundamental terms of the contract through conduct of the employer?* c. *The conduct of the employer must be a fundamental or 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.* d. *An objective test is to be applied in evaluating the employer's conduct.* e. *There must be a causal link between the employer's conduct and the reason for employee terminating the contract i.e. causation must be proved.* f. *An employee may leave with or without notice so long as the employer's conduct is the effective reason for termination.* g. *The employee must not have accepted, waived, acquiesced or conducted himself to be estopped from asserting the repudiatory breach; the*

*employee must within a reasonable time terminate the employment relationship pursuant to the breach. h. The burden to prove repudiatory breach or constructive dismissal is on the employee.* The court, having evaluated the evidence presented by the parties, established that the claimant never raised the issues he stated in the resignation letter during his employment and further failed to utilize the grievance process in place. The claimant confirmed he was aware of the ombudsman for the grievance mechanism. During the hearing, he never raised any challenge he may have faced in utilizing the mechanism despite the literature indicating some of the employees may have challenges in utilizing the same. The claimant confirmed he never raised any issue with his immediate boss during his employment. The court is not the employer. Employees cannot fail to utilize the internal mechanism of the employer for grievance, only to bring the grievances to the court for the first time. The claimant never gave a fair opportunity to the employer to address the issues he raised in the resignation letter. The survey of his department during his service was to assess whether they were satisfied with the performance of the employer. The claimant said he was proceeding to consultancy, meaning he had evaluated his situation as an employee and found being a consultant was a better option. The court finds that there was no demonstration on prima facie basis of the conduct of the employer having been fundamentally or significantly in breach and 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. In the response to the resignation, the employer appeared to the court to have been genuinely surprised by the resignation. The issue of being allocated the duty of safekeeping of the safe and cabinet by a non-line manager did not amount to repudiation of the contract as the claimant voluntarily accepted the role. He never raised a complaint with line manager. Again, the court reiterated it is the employer's place to deal with grievances of employees, which ought to have been raised internally with the employer, and there was no proof of such. The claimant was paid his salary for days worked. The court finds the claimant had found better option than the employment being consultancy. The issues raised did not amount to conduct of the employer amounting to repudiation of the contract as held in Coca Cola case. The claimant did not prove constructive dismissal on a balance of probabilities.

**Whether the claimant is entitled to reliefs sought**

42. The claimant sought for the following reliefs-

- a. A declaration of the violation of the Claimant's right(s) to fair work practices, which occasioned constructive dismissal triggered by the sole intolerable actions and or omissions of the Respondent;**
- b. A declaration of breach of contract in favour of the Claimant;**

**c. General damages for violation of the Claimant's right(s) to fair work practices and for breach of contract;**

**d. An Order directing payment to the Claimant of all the following terminal dues arising out of service to the Respondent;**

**1. 3 months' salary compensation for constructive dismissal=Kshs.1,992,305.59;**

**2. A VP Payments to the end of November, 2018 = Kshs. 1,057,268.07;**

**3. Compensation associated with the 9 months loan repayment relief as a result of redundancy-Kshs.2,341,240.74;**

**4. Damages associated with professional mistreatment in the company for 12 months from September, 2017 to September, 2018=Kh.7,689,222.36**

**SUB-TOTAL =Kshs.13,010,036.76**

**e. Compensation for wrongful dismissal**

**f. Cost of this suit**

**g. Any other relief this honorable court deems fit to grant in the circumstances.**

43. The court found there was no proof on the balance of probabilities of constructive dismissal. All reliefs associated to the resignation are disallowed. The only relief for the court to then determine would be- **A VP Payments to the end of November, 2018 = Kshs. 1,057,268.07; The claimant did not**

**submit on this prayer.** The respondent submitted that -As for the prayer dubbed "A VP payments to the end of November, 2018 - Kshs.1,057,268.07" there has been no explanation at all what it is all about. The claimant in pleadings did not substantiate the basis of the prayer and the court had no basis to consider the same.

### **CONCLUSION**

44. The court held that there was no proof on the balance of probabilities of constructive dismissal or the reliefs sought. The entire claim lacks merit and is dismissed with costs to the respondent.

45. It is so Ordered.

**DATED, SIGNED, AND DELIVERED IN OPEN COURT AT NAIROBI  
THIS 27<sup>TH</sup> DAY OF NOVEMBER, 2025.**

**J.W. KELI,  
JUDGE.**

### **IN THE PRESENCE OF:**

Court Assistant: Otieno

Claimant – Migele

ORIGINAL