

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT
NAIROBI
CAUSE NO. E575 OF 2024

JANE MUTHONI MWATHICLAIMANT
VERSUS
KOKO NETWORKS LIMITED.....RESPONDENT

JUDGMENT

1. It is common ground that the Claimant was first engaged by the Respondent as a Category Commercial Manager under a three-month contract running from 6th June 2022 to 5th September 2022 at a monthly salary of Kshs 280,000/=. It is further uncontested that, upon completion of this initial term, the Claimant was subsequently offered a one-year contract effective September 2022 at a gross monthly salary of Kshs 345,000/=. inclusive of a discretionary performance-based bonus of Kshs 69,000/=.
2. The Claimant avers that throughout her tenure, she performed her duties dutifully, diligently, and faithfully in accordance with the terms of her employment contract.

3. According to the Claimant, there was a shift in her employment when she was placed under a new manager, one Ken Kamau, who allegedly displayed a dismissive attitude towards her and showed no willingness to work with her.
4. The Claimant asserts that the conduct of the Respondent's agents ultimately made her continued employment untenable, amounting to constructive dismissal.
5. On the basis of the foregoing, the Claimant seeks the following reliefs against the Respondent:
 - a) ***Compensation for constructive dismissal- Kshs. 4,140,000 (12x345,000) and/or;***
 - b) ***Compensation for violation of the right to fair labour practices: Kshs. 4,140,000; and/or***
 - c) ***Compensation for violation of the right to equality and freedom from discrimination Kshs.4,140,000;***
 - d) ***Compensation for lost bonus at level 3.5 - Kshs. 828,000 (69000x6);***
 - e) ***Compensation for Emotional Damage and Trauma KES 16,560,000; and***
 - f) ***Interest on the above at court rates from the date of filing suit; and***
 - g) ***Any other relief that this Honourable Court may deem fit to grant.***

6. Opposing the Statement of Claim, the Respondent avers that the Claimant did not serve dutifully, faithfully, or diligently as alleged, adding that she was subjected to disciplinary proceedings for misuse of its Uber platform, an act it said to be in direct breach of company policy. The Respondent further states that the Claimant's performance declined significantly in November and December 2022, necessitating an extension of her probationary period.
7. The Respondent contends that the Claimant resigned voluntarily and without any coercion. The Respondent maintains that it had accommodated the Claimant and was willing to support her in improving her performance, but she opted to resign prematurely to avoid being held accountable for her unsatisfactory performance.
8. In view of the foregoing, the Respondent has urged the Court to dismiss the Claim with costs.
9. The matter proceeded by way of oral testimony and production of documentary evidence.

Claimant's Case

10. The Claimant testified in support of her case as CW1 and called one additional witness, Dr. Fredrick Owiti, who testified as CW2. At the outset, the Claimant

sought to have her two witness statements and all the documents filed on her behalf adopted as her evidence in chief.

11. The Claimant testified that she observed early on that her new line manager, Ken, exhibited a dismissive attitude towards her on several occasions. In this regard, she stated that during the first week of August 2022, she urgently required his approval to align KOKO Club Maize Flour pricing with the government subsidy of Kshs 100 per packet. Despite attempting to reach him through phone, WhatsApp, and Google Chat, he claimed to be too busy and promised to revert later. Less than an hour after a weekly team meeting, however, she overheard him on a phone call with her colleague, Silas, discussing his support upon his return to the office. Despite this, he still did not respond to her urgent request regarding the maize flour pricing.

12. The Claimant further testified that during a Weekly Category Deployment meeting held towards the end of August 2022, the entire Category Team struggled to define Active 1, Active 2, and Active 3 User Rates. She proposed that they adopt the definitions used by their colleague, Peter Kionga, who prepared the KOKO Club Daily Sales Reports. Ken allegedly barked at her,

saying he could not care less about her input. However, after Silas supported her position, Ken conceded and accepted the definitions she had suggested.

13. The Claimant further testified that when she attempted to address the deteriorating working relationship, Ken became more hostile, making it clear that he did not wish to work with her and implying that she had no place in the company.

14. She added that she was verbally abused by another employee and, when she reported the matter to the Managing Director, she was informed that no disciplinary action would be taken because the employee was “*a young man running around with testosterone*” and that “*the Dutch tend to be very blunt.*”

15. The Claimant averred that around the same period, she received a Notice to Show Cause dated 3rd November 2022, alleging violation of the Respondent’s cab policy. Following a disciplinary hearing, she explained that the expenses were solely for business use. She was subsequently issued with a Cautionary Letter dated 21st December 2022.

16. The Claimant testified that she later received a second Notice to Show Cause dated 24th February 2023 for alleged unsatisfactory performance, despite having recently won an award for Pricing & Promo Execution on 12th January 2023.

17. She averred that prior to this second Notice to Show Cause, her manager had already informed her that he did not wish to work with her and advised her to find another manager.

18. The Claimant stated that the cumulative impact of these events left her feeling hounded by the Respondent and convinced that there was no longer a place for her in the organisation.

19. She believed that a decision had already been made to terminate her employment and that the intended disciplinary hearing was merely a formality in which her explanations would not have been considered.

20. She further testified that the work environment had become toxic and was taking a toll on her mental health, compelling her to seek psychological counselling to cope with workplace stress.

21. As a result of the Respondent's conduct, she ultimately tendered her resignation on 21st March 2023.

22. In her further witness statement, the Claimant explained that all her Uber trips were work-related, as she was moving between offices or between work and

home during a period when she was unwell and when the country was experiencing political instability.

23. She added that during a meeting with her manager, Kevin, on 16th February 2023, he raised vague concerns about her performance and she responded comprehensively in an email dated 22nd February 2023.

24. The Claimant further testified that the Respondent began advertising for her position on 22nd February 2023, making her question whether a decision had already been made to dismiss her.

25. She stated that a meeting between Ken and the HR Department took place on 24th February 2023 to discuss her exit, coincidentally, the same date she received the second Notice to Show Cause. Another meeting followed on 9th March 2023, after which she was granted an extension to respond to the notice.

26. According to the Claimant, by 24th March 2023, she had been mentally and emotionally broken down by the Respondent's actions, leaving her with no option but to resign for the sake of her health.

27. She added that as of 24th March 2023, she was still unwell and unable to report to work, and she denied any allegation of abscondment.

28.The Claimant further clarified that when she had previously described Ken as supportive in her emails, she was referring only to instances where he accommodated her requests for time off to attend her children’s school events. She maintained that he nonetheless consistently disparaged her during meetings.

29.Dr. Fredrick Richard Owiti who testified as CW2, identified himself as a Consultant Psychiatrist engaged in private practice. He produced a psychological report which had been filed in Court by the Claimant.

30.Dr. Owiti testified that he attended to the Claimant during the period when she was employed by the Respondent.

Respondent’s Case

31.The Respondent presented its oral evidence through **Mercy Wamangu**, who testified as RW1. Equally, Ms. Wamangu adopted her witness statement as her evidence in chief. She proceeded to produce the Respondent’s list and bundle of documents as exhibits before the Court.

32.RW1 testified that, in accordance with the Respondent’s policy, a performance review meeting was held on 2nd December 2022 during which the Claimant’s performance in the probation period was found to fall below the expected

standard. Consequently, her probation was extended by a further three months to allow her an opportunity to meet the required performance level.

33.RW1 stated that the Claimant's Line Manager offered her support throughout this period to help her achieve the expected performance standards. He recommended that her probation be extended and actively assisted her in addressing the identified competency and attitude gaps.

34.She further testified that a final probation review was conducted on 16th February 2023, during which the Claimant again scored below expectation, achieving a rating of 2.5 out of a possible 5 points despite the support extended to her by both the Line Manager and the Respondent.

35.RW1 added that on 22nd February 2023, the Line Manager formally notified Angela Centra, the then Head of People, and the Claimant that he remained dissatisfied with the Claimant's performance and would not be recommending her confirmation. He sought guidance from the Head of People on the appropriate next steps.

36.According to RW1, on 24th February 2023, the Claimant was invited to a meeting with Angela Centra and her Line Manager to discuss her performance feedback

and potential options moving forward. She declined to attend, offering what RW1 described as unreasonable excuses.

37.RW1 testified that the Claimant eventually agreed reluctantly to meet with Angela Centra and another Human Resources representative that afternoon. During this meeting, the Claimant was issued with a Notice to Show Cause dated 24th February 2023 for unsatisfactory performance. She acknowledged receipt on 28th February 2023 but did not respond as required.

38.RW1 stated that the Claimant then applied for sick leave from 24th February to 7th March 2023. However, the sick notes provided did not correspond to the period of her absence, as they were dated 6th February 2023 and 28th February 2023, covering only three days. Despite the gaps, the Respondent nonetheless approved her sick leave request on its Bamboo HR platform.

39.RW1 further testified that upon the Claimant's return on 7th March 2023, the Respondent extended the deadline for her response to the show cause letter to 13th March 2023 to ensure she had a fair opportunity to be heard. Instead of responding, the Claimant sent an email outlining her work journey and achievements, including recognition for pricing and promotional execution, but did not address the performance gaps highlighted in the Line Manager's email of 22nd February 2023 or the issues raised in the show cause letter.

40. RW1 stated that in the Claimant's email dated 22nd February 2023, she acknowledged her Line Manager's support, describing him as understanding and empathetic throughout her tenure.
41. She added that in the same email, the Claimant noted receiving a Pricing and Promo Execution Award on 12th January 2023 during the same period she claimed the Line Manager was dismissive. RW1 asserted that the award did not reflect her overall performance, which remained below expectations.
42. RW1 testified that on 14th and 15th March 2023, the Claimant was absent again without having applied for sick leave, contrary to company policy.
43. She stated that on 21st March 2023, the Claimant tendered her resignation, citing mental health concerns and an unsuitable work environment.
44. The Respondent accepted her resignation and undertook to investigate the allegations she had raised regarding her Line Manager. RW1 stated that the Claimant shared her concerns on 27th March 2023, after resigning, and that she had not made any formal complaint beforehand. According to RW1, the Claimant had previously acknowledged in a personal conversation that her Line Manager took feedback positively and had since been empathetic and supportive.

45. RW1 stated that the Respondent conducted thorough investigations which revealed no merit in the Claimant's allegations.

46. In her view, the Claimant appeared to be motivated by vindictiveness and was attempting to retaliate against her Line Manager for objectively assessing her performance, extending her probation, and declining to recommend her confirmation. She further noted that the Claimant resigned before the investigations into her complaints were concluded.

47. Regarding the Claimant's allegation of verbal abuse, RW1 stated that the incident involved a colleague allegedly telling her, "*Use your brains a little bit, June.*" The Claimant reported this to her Line Manager, who escalated it to HR. The Managing Director also investigated by speaking to another colleague present during the meeting, who confirmed that the tone was neutral.

48. RW1 added that the Managing Director concluded that the comments were firm but not abusive and that, in context, the colleague had been attempting to drive a point home. The Managing Director agreed to counsel the colleague on his "*Dutch directness,*" and determined that no disciplinary action was warranted.

49.RW1 stated that the Claimant exhibited instances of vindictiveness and insubordination and that the matters she described as a toxic work environment could not have contributed to her medical condition.

50.She testified that the working environment at the Respondent's organisation was peaceful and conducive for all employees, and no other complaints had been raised against the Line Manager, Ken Kamau.

51.In RW1's assessment, the Claimant's complaints were baseless, misconceived, and intended to undermine the Line Manager's career.

52.RW1 noted that the Claimant had previously been disciplined for misuse of the Respondent's Uber platform, having taken 53 trips at a cost of Kshs 51,373, leading to the issuance of a Cautionary Letter.

53.RW1 maintained that the Claimant's resignation was voluntary and not influenced or coerced in any way.

54.She testified that following the Claimant's voluntary resignation, both parties agreed that her last working day would be 23rd March 2023.

55.RW1 added that the Claimant requested to clear with the Respondent on 28th March 2023. In her view, this behaviour was inconsistent with someone claiming constructive dismissal and instead reflected a voluntary resignation.

56.She confirmed that the Claimant was paid all her dues upon resignation and that the Claimant acknowledged the accuracy of the tabulation.

57.RW1 added that, in fact, the Respondent paid the Claimant one month's salary in lieu of notice upon her resignation, despite her failure to give adequate notice.

Submissions

58.The Claimant argued that the evidence demonstrates a consistent record of strong performance under her previous manager, with friction only arising after she professionally challenged Ken's dismissive conduct during a private discussion. In her view, Ken subsequently personalized the matter, held a grudge, and unfairly targeted her.

59.Citing the decisions in **Coca Cola East & Central Africa Ltd v Maria Kagai Ligaga, Civil Appeal No. 20 of 2012**, and **Nathan Ogada Atiagaga v David Engineering Ltd, Cause No. 419 of 2014**, the Claimant submitted that her

resignation resulted from the Respondent's conduct, which made continued employment intolerable and adversely affected her health.

60. On her claim for discrimination, the Claimant referred the case of **Jane Achieng & another v University of Nairobi [2015]**, asserting that the Respondent failed to justify why she was subjected to a show cause, disciplinary hearing, and warning over Uber usage which she could not undertake personally and which Ken knew while also being questioned over business travel, yet Luuk, her colleague, faced no similar process for issuing an insult.

61. The Claimant further submitted that the Respondent offered no justification for Ken being "unavailable" to her for approvals while simultaneously offering assistance to her colleague, Silas.

62. She further contended that the disciplinary process was a mere formality, as a decision had been reached even before the procedural steps under Section 41 were invoked. In this regard, she stated that prior to any notice to show cause, the manager informed her that there was no place for her at the company, Human Resources stated that she was being terminated, her role was advertised, and meetings were convened to "agree on timelines for her exit."

63. The Claimant submitted that, on a balance of probabilities, the medical report and supporting evidence establish that she suffered emotional harm and trauma warranting an award of damages to facilitate ongoing treatment as recommended by her doctor. To support this position, she relied on the case of **Neser v Globology Limited & 7 others (Cause E033 of 2024) [2025] KEELRC 1777** and **Standard Group Limited v Jenny Luesby [2018] KECA 353 (KLR)**.

64. On its part, the Respondent maintained that it treated the Claimant fairly and with considerable accommodation, a fact the Claimant herself acknowledged in her email correspondence.

65. The Respondent further argued that the Claimant's allegations of mistreatment by her line manager were made in bad faith and were merely an attempt to evade accountability for the serious competency concerns raised against her. According to the Respondent, such allegations could not, from the standpoint of a reasonable person, amount to repudiatory conduct.

66. Citing the decisions of **Namale v Yako Supermarket Company Ltd (Civil Appeal 202 of 2019) [2025] KECA 1017**, **Musyimi v Kobian (Kenya) Limited (Cause 399 of 2018) [2025] KEELRC 210**, and **Nelson Ashton v Consumer Action Law Centre (U2010/11450) [2010] FWA 9356**, the Respondent

submitted that the Claimant had failed to demonstrate that her resignation was triggered by any unreasonable conduct attributable to the employer.

67.The Respondent further contended that advertising the Claimant's position did not constitute a repudiation of the contract, particularly given that she was still on probation.

68.It was further submitted by the Respondent that its conduct evidenced an intention to uphold the contractual relationship by allowing the Claimant an opportunity to improve and to be heard. In the Respondent's view, the Claimant's resignation was voluntary and not the result of any repudiatory breach.

69.The Respondent dismissed the Claimant's allegations of discrimination on account of gender or nationality as baseless. Referencing the case of **Peter K. Waweru v Republic [2006] eKLR**, the Respondent argued that the Claimant had not produced evidence to show that male employees who committed similar policy infractions were treated more leniently. In its view, the single incident cited did not establish a pattern of discriminatory conduct nor demonstrate that

the disciplinary measures taken against her were influenced by gender or nationality.

Analysis and Determination

70. Flowing from the pleadings filed by both parties, the evidentiary material on record, as well as the rival submissions, it is evident that the issues falling for determination are:

- i. Whether the Claimant's resignation was voluntary or whether the circumstances amounted to constructive dismissal;**
- ii. Whether the Claimant has established a case of discrimination;**
and
- iii. Whether the Claimant is entitled to the reliefs sought.**

Voluntary resignation or Constructive dismissal?

71. It is undisputed that the employment relationship ended following the Claimant's resignation on 21st March 2023. The key issue in dispute is whether her resignation was voluntary or constituted constructive dismissal.

72. Although the Employment Act 2007 does not expressly define constructive dismissal, the concept has been extensively considered in decisions of this Court

and the Court of Appeal. In the leading case of **Coca-Cola East & Central Africa Limited v Maria Kagai Ligaga [2015] eKLR**, the Court of Appeal observed as follows:

“What is the key element and test to determine if constructive dismissal has taken place? The factual circumstances giving rise to constructive dismissal are varied. The key element in the definition of constructive dismissal is that the employee must have been entitled 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 behavior 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 constituted a repudiatory breach of the contract of employment - this is the contractual test.”

73. The **Black’s Law Dictionary (10th Edition)** defines the term constructive dismissal to mean: -

“An employer’s creation of working conditions that leave a particular employee or group of employees little or no choice but to resign, as by

***fundamentally changing the working conditions or terms of employment;
an employer’s course of action that, being detrimental to an employee,
leaves the employee almost no option but to quit.”***

74. In essence, constructive dismissal arises where an employee is compelled to resign due to the employer’s conduct. Although the employee is not formally dismissed, the employer’s actions create working conditions that are so intolerable, or involve a breach of fundamental terms of the employment contract, that the employee is entitled to treat the resignation as an unfair dismissal.

75. In the present case, the Claimant has identified several circumstances which she asserts compelled her to resign. She cited a strained working relationship with her former line manager, Ken, who she contends was dismissive and unwilling to work with her. She also referenced a disciplinary process alleging violation of the Respondent’s Uber platform, claims of verbal abuse by a colleague, and what she describes as a sham disciplinary process concerning allegations of unsatisfactory performance.

76. To place these assertions in context, it is important to review the Claimant’s resignation email dated 21st March 2023, which is couched as follows:

“Dear Angela,

Trust you are well. I would like to officially hand over my resignation from KOKO Networks with effect from today. It is clear to me that my line manager does not want to work with me and has mistreated me in front of other colleagues. Nothing has been done about the mistreatment I have suffered since August last year.

It feels like a decision was made to terminate me a while ago without my knowledge. As a result, all this has taken a severe toll on me mentally.

I have been left with no choice but to resign because of my mental health and because the environment you have created at KOKO Networks is no longer conducive for me to continue working there.

I will serve my notice days on duty in order to ensure a proper handover.

Lastly, please note that I will be out of office today attending my psychotherapy sessions. I will resume work tomorrow.”

77. Notably, the issues raised by the Claimant in her claim, namely, the disciplinary proceedings relating to her alleged violation of the Respondent’s Uber platform and alleged verbal abuse by a colleague (Luuk), were not cited in her resignation letter as reasons for her decision to resign. Consequently, there is no causal link between these matters and her stated reason for resignation. In light of this, the Court will focus on the issues set out in the Claimant’s resignation letter.

78. From the record, it is evident that the Claimant's engagement with her line manager, Ken, was largely undocumented until after her performance appraisal discussion on 16th February 2022. Indeed, in her email dated 22nd February 2022, the Claimant provided a detailed account of her experience at the Respondent company and documented her interactions with her line manager.

79. She stated that in August and September 2022, she addressed her line manager's dismissive style of engagement, which she contended was affecting her work output. She provided examples and encouraged him to adopt a more inclusive approach with her and the entire Category Team. The line manager reportedly responded positively, acknowledged the feedback, and apologized. Seemingly, this brought the matter to a close at that point.

80. The Claimant also referenced discussions with her line manager regarding her performance during the probation period. She indicated that she received the extension of her probation positively and focused on improving the key area highlighted by her line manager, namely her attitude.

81. She further highlighted her appraisals in January and February 2023, noting that the January appraisal did not clearly outline critical areas for improvement, and that the February appraisal concluded amicably.

82. It is instructive to note that prior to her detailed email of 22nd February 2023, the Claimant had not raised any formal points of disagreement with the Respondent regarding her line manager, nor had she reported any mistreatment dating back to August 2022.

83. Indeed, the record bears that the allegations of mistreatment by her line manager first arose in her resignation email dated 21st March 2023.

84. What's more, in her email of 22nd February 2022, the Claimant acknowledged that her line manager had been extremely supportive on personal matters, particularly concerning her children's welfare, describing him as understanding and empathetic. Notably, the Claimant did not qualify this statement to distinguish it from his professional role as her supervisor.

85. Granted, the Claimant's experience with her line manager may have been unpleasant. However, the lack of a formal complaint to the Respondent indicates that she did not provide the Respondent with an opportunity to address her grievances in that regard.

86. Accordingly, in the absence of a formal complaint to the Respondent regarding mistreatment by her line manager, the Claimant's assertion in her resignation email that the Respondent failed to address such mistreatment since August 2022

does not, by itself, constitute a valid reason to justify her resignation on the grounds of constructive dismissal.

87. In her resignation email, the Claimant also asserted that it appeared that a decision had been made to terminate her employment without her knowledge.

88. It is undisputed that at the time the Claimant tendered her resignation, she had been issued with a Notice to Show Cause dated 24th February 2023 regarding unsatisfactory performance. She was initially asked to respond by 28th February 2023, and by a letter dated 9th March 2023, the response period was extended to 13th March 2023.

89. Subsequently, the Claimant was invited to attend a disciplinary hearing scheduled for 21st March 2023. However, she resigned prior to the hearing taking place.

90. In support of her claim that a termination decision had been made without her knowledge, the Claimant exhibited a copy of a Google Calendar Meeting scheduled for 24th February 2024, in which **Angela Centra** invited RW1, **Ari Zlotoff**, **Ashaba Kamahoro**, **Samuel Karuga**, and her then line manager, **Ken Kamau**, to a meeting to discuss her (Claimant) exit. Angela Centra addressed the others as follows:

“Hi Ken, Ari,

I am setting up this meeting to align on the club exit for JM, given the issues raised.

Agenda for the call:

- *Agree on immediate next step.*
- *Review the show cause notice.*
- *Agree on timelines for exit.”*

91. In a subsequent Google Calendar Meeting scheduled for 9th March 2023, the Claimant's former line manager, Ken Kamau, addressed the same recipients listed in the 24th February 2024 meeting and stated as follows: ***“Team, let's quickly huddle and agree next steps for June now that she's back to work, we have medical certificates and we have a clear recommendation from HR/Legal.”***

92. The agenda set out in the two meetings aforementioned reveals that, despite the Claimant still undergoing a disciplinary process for alleged poor performance, the outcome of that process had effectively been predetermined. Accordingly, the disciplinary process appears to have been merely a formality designed to legitimise the Claimant's exit.

93. The fact that meetings scheduled for 24th February 2023 and 9th March 2023 to discuss the Claimant's exit were arranged before she had been given an opportunity to respond to the Notice to Show Cause or attend the disciplinary hearing clearly demonstrates that the Respondent had initiated her departure before considering her representations. A review of the agendas for these meetings further confirms that the process was largely cosmetic and that the Respondent had effectively predetermined the termination of the Claimant's employment, irrespective of any response she might have provided.

94. Section 41 of the Employment Act envisages a process designed to ensure that an employee is given a fair opportunity to present their side of the story before termination of employment. As envisaged, the process must be fair and objective and cannot be reduced to a mere procedural formality.

95. The Respondent bore both statutory and contractual obligations to ensure that the Claimant was afforded procedural fairness, an entitlement the Claimant reasonably expected to be upheld. However, by indicating that the outcome of the Claimant's disciplinary process had been predetermined and would not be considered objectively, the Respondent's conduct effectively entitled the Claimant to regard herself as discharged from the employment relationship.

96. The Respondent's conduct clearly signalled an intention not to be bound by one or more essential terms of the employment contract. Consequently, the Claimant was entitled to treat herself as constructively dismissed and to exercise her right to terminate her employment with the Respondent.

97. In sum, the Court finds that the Respondent's actions preceding the Claimant's resignation from employment constituted constructive dismissal.

Discrimination

98. The Claimant contends that she was subjected to a disciplinary process for allegedly violating the Respondent's cab usage policy, whereas a male employee who verbally insulted her got away with just a slap on the wrist his actions being defended as "*a young man running around with testosterone*" and attributed to the Dutch tendency "*to be very blunt,*" despite the formal complaint she had lodged.

99. **Article 27 of the Constitution** expressly prohibits discrimination in any form or on any ground. As to the definition of the term "discrimination", the **Black's Law Dictionary, 9th Edition** defines the same to mean "*Differential treatment; a failure to treat all persons equally when no reasonable distinction between those favoured and those not favoured.*"

100. It is evident that the Claimant's alleged violation of the Respondent's cab usage policy and her colleague's misconduct towards her are not comparable and were not likely to warrant the same disciplinary sanctions. Accordingly, the Claimant and her colleague were not similarly situated with respect to the alleged misconduct attributed to each of them.

101. What's more, from the Claimant's email of 1st December 2022, it is apparent that the manner in which she raised the issue resembled an observation rather than a formal complaint.

102. Accordingly, the two scenarios cannot form a valid basis for the Claimant to allege differential treatment between herself and her male colleague.

103. In light of the foregoing, the Court finds that the Claimant has not established a *prima facie* case of discrimination to shift the burden to the Respondent to rebut the allegation. Accordingly, the claim on that account fails.

Reliefs?

104. Having found that the Claimant was constructively dismissed, the Court holds that she is entitled to compensatory damages under **Section 49(1) of the Employment Act**. Accordingly, the Claimant is awarded an amount equivalent

to five (5) months' gross salary. In determining this award, the Court has taken into account the duration of the employment relationship, the remaining term of the Claimant's contract, and the circumstances preceding the separation.

105. The claim for a lost bonus of Kshs 828,000/= is dismissed for being anticipatory. What's more, bonus payments are largely discretionary and dependent on multiple factors. In this case, the Claimant's bonus was performance-based, and there is no evidence that her performance had been assessed or that she had qualified for the bonus.

106. The claim for compensation arising from emotional distress, trauma, discrimination, and violations of the right to fair labour practices are disallowed. In so finding, the Court adopts the finding in **NEC Corporation v Samuel Gitau Njenga [2018] eKLR**, where the Court of Appeal affirmed the holding in **GMV v Bank of Africa Kenya Limited (2013) eKLR**, that: *"the court does not consider that the violation of every conceivable contractual, statutory, or constitutional right warrants a separate award of damages."*

Orders

107. In the final analysis, Judgment is entered in favour of the Claimant against the Respondent as follows;

- (a) The Claimant is awarded compensatory damages in the sum of Kshs 1,725,000.00 being equivalent to five (5) months of her last gross salary.**
- (b) Interest on the amount in (a) shall accrue at court rates from the date of Judgment until payment in full.**
- (c) The Claimant shall also have the costs of the suit.**

DATED, SIGNED and DELIVERED at NAIROBI this 1st day of December 2025.

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STELLA RUTTO
JUDGE

In the presence of:

For the Claimant	Mr. Kinara
For the Respondent	Ms. Wahome instructed by Mr. Eredi
Court Assistant	Mohammed

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