

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR  
RELATIONS COURT AT NAIROBI  
CAUSE NUMBER E6521 OF 2020**

**BETWEEN**

SERAH NYAKIO KARONGO .....CLAIMANT

**VERSUS**

GOOD NEWS PRODUCTION INTERNATIONAL .....RESPONDENT

*Rika J*

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*Wanyoike Thuo Advocates for the Claimant*

*Faith Akoth Oketch & Company Advocates for the Respondent*

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**JUDGMENT**

1. The Claimant filed her Statement of Claim on 4th December 2020.
2. She avers that she was employed by the Respondent as an editor, in the year 2015, on a monthly salary of Kshs. 25,000.
3. In early March 2020, the government introduced working-from-home policy, as a measure of controlling the spread of Covid-19 pandemic.

4. The Claimant faithfully worked from home, in accordance with the public health emergency policy.
5. On 20th April 2020, she was instructed by her supervisor to go back to office, to work on an animation project.
6. The Respondent was aware that she had an infant, and was unable to get a housemaid, due to the limitations imposed by the prevailing public health emergency policy, on freedom of movement..
7. She explained her predicament to the Respondent, and requested to be availed a specific MacBook computer at her home, which would have enabled her to carry out the animation project at home.
8. The Respondent instead issued her an ultimatum: to either go back to work; or proceed on unpaid leave.
9. She declined to go on unpaid leave, emphasizing that she was ready to continue working virtually, in line with the government policy.
10. There was no response from the Respondent. She was not assigned further work. Her salary was stopped.
11. There were other Employees who continued to work virtually.

12. She states that she felt 'cornered,' compelling her to tender her resignation, through a letter dated 15th June 2020, to take effect from 31st July 2020.
13. The letter was accepted by the regional director, who however proceeded to casually dismiss the Claimant.
14. She was denied her salary for 3 months.
15. Her prayers are:-
  - a. Declaration that the Claimant was constructively dismissed by the Respondent.
  - b. Declaration that dismissal was unfair and unlawful.
  - c. 3 months' withheld salary at Kshs, 75,000.
  - d. Equivalent of 12 months' salary in compensation for unfair and unlawful termination at Kshs. 300,000.
  - e. Damages for unlawful and unfair termination.
  - f. Certificate of Service.
  - g. Costs.
  - h. Interest.

- i. Any other suitable relief.
  
16. The Respondent filed a Statement of Response and Counterclaim, which is indicated to be dated 19th January 2021. The physical court file, as forwarded to the undersigned Judge, does not appear to have a copy of the Statement of Response and Counterclaim.
  
17. From the Respondent's witness statement, submissions and Claimant's own pleadings, the Respondent seeks dismissal of the Claim, and special damages by way of Counterclaim, from the Claimant in the sum of Kshs. 11,571 being leave days taken in advance by the Claimant.
  
18. The witness statement of Isaac Masiga, Respondent's coordinator, dated 19th January 2021, comprehensively states the case for the Respondent.
  
19. It is conceded that the Claimant was employed by the Respondent as an editor, in September 2015.
  
20. The Respondent facilitated her attendance of animation classes, where she honed her editorial skills.
  
21. She went on maternity leave on 30th September 2019. She informed the Respondent that she delivered her baby, on 1st October 2019. She was to resume duty after her maternity leave, on 20th January 2020.

22. She applied for an extension of leave of 7 days, to resume on 3rd February 2020. The days were to be recovered from her annual leave entitlement.
23. She returned briefly to work, working normally until the Covid-19 lockdown. By this time, she had been assigned the animation project.
24. Staff who could, such as those in finance and marketing, worked virtually. Those in audio engineering, videography, administrator, and editors, were generally allowed to work virtually, but to attend to office physically, whenever the need arose.
25. It was recognized in the latter category that need would arise, to use office machinery, compelling their presence in the office, where the machinery was housed.
26. There was no progress made by the Claimant in her animation project, from February 2020. There were persistent reminders issued to her, without action.
27. On 23rd April 2020, the production manager issued her e-mail communication, requiring her to create a workplan, on the execution of the project.
28. She did not deliver the workplan. She did not respond to the e-mail communication requiring creation of a workplan.

29. She was reminded about the communication on 28th April 2020.
30. This time, she responded that she was unable to create a workplan, because she was working virtually, but would create one, when normalcy returned to the workplace.
31. She was advised by the production manager on 29th April 2020 to create her workplan, as she was not the only Employee working virtually. Putting the project on hold would hurt the organization. The Claimant was advised that she was not required to come to office the whole day. She was assisted with guidelines on how to fulfil her role in the project.
32. She did not create a workplan.
33. Isaac Masiga called her and held a virtual meeting with her. She insisted that because she had an infant, and considering the public health emergency, it was impossible for her to physically report for duty in the office.
34. Masiga assured her that there were very few people in the office, and she need not fear infection. She declined to report to office, insisting that she needed more time to look for a housemaid. It was already 6 months, since she delivered.
35. Masiga instructed her to go on unpaid leave, and inform the Respondent, when she was ready to resume. She was advised that the Respondent would outsource her animation role, because the project was

timebound. She did not object, and the Respondent went on to secure the services of temporary staff for the animation role.

36. She stayed home for 3 months, without notifying the Respondent whether she had employed a housemaid. On 15th July 2020, she wrote a vindictive letter to the Respondent, stating that she had been compelled to resign by the prevailing circumstances.
37. She alleged that she was discriminated against, because another Employee who had given birth around the same time, was allowed to work virtually. She however has not pleaded discrimination.
38. She alleged that by bringing in an outsourced Employee, the Respondent showed there was a well-orchestrated move to terminate her contract.
39. The Respondent continued to pay her statutory deductions / contributions, because it considered her to be its Employee on unpaid leave. It was hoped that she would resume duty when she was ready.
40. The Respondent states that the Parties' Advocates had negotiated settlement, granting the Claimant 3 months' salary, but settlement was frustrated when the Claimant's Advocates, demanded to be paid costs of Kshs. 50,000.

41. It was against office policy to move office machinery from the office to individual homes. There was a limited number of equipment and the Claimant's request for MacBook computer was not feasible.
42. The Respondent prays for dismissal of the Claim, and for grant of the Counterclaim, with costs.
43. The Claimant filed a Reply to the Statement of Response, and a Response to the Counterclaim, dated 24th February 2021. She states that her extended leave after maternity was authorized by the director. At no time did she agree to take unpaid leave. Covid-19 affected her ability to get a housemaid. She had an infant who was susceptible to infection. She had not been given a chance to decide if to agree to be involved in the animation project. Her decision to resign was due to discrimination, as well as hostile work environment. She denies that she owes the Respondent any annual leave days.
44. The Respondent filed a Reply to the Response to the Counterclaim, dated 26th October 2021, closing the pleadings. This set of pleadings generally reiterates the contents of the Statement of Response, while refuting the Response to the Counterclaim.
45. The Claimant, and coordinator Isaac Masiga, gave evidence for the respective parties on 4th February 2026, closing the hearing. The Claim was last mentioned on 10th March 2026.

46. Both witnesses adopted their witness statements on record in their evidence- in-chief. The Claimant exhibited 10 documents [1-10], while Masiga exhibited 11 documents [1-11] The witness statements capture the parties' positions, as summarized above.
47. On cross-examination, the Claimant repeated that she was required to go back to office immediately on 29th April 2020. She had an infant. She felt compelled to resign.
48. She was not on maternity or compassionate leave, when she was asked to go back to office. She did not work on her animation project, because she was not availed the MacBook computer. She did not have a housemaid and had an infant. It was not the Respondent's duty to provide a housemaid to the Claimant. She was not engaged in acts of insubordination.
49. She was assigned animation project in February 2020. She did nothing between February and April 2020. There were reminders from her supervisor to attend to the project. She did not recall being asked to create a workplan. She recalled she wrote an e-mail, on 28th April 2020, saying she could not create a workplan.
50. She received communication from Mercy Odhiambo, explaining why she needed to go to the office. She did not go to the office. She told her she would go to the office when normalcy returned. She did not inform the Respondent that she needed time to employ a housemaid. She was not

assigned further work in May-July 2020. She resigned on 31st July 2020, and cleared.

51. She was granted leave extension of 12 days, not 7 days. She conceded that she owes the Respondent 12 days of annual leave.
52. Redirected, the Claimant stated that leave extension was authorized by Masiga. She worked for 5 years. There was no communication that she returns to work, May -July 2020. She was still an Employee, meriting her monthly salary. The Respondent offered to pay her salary for this period. She told Masiga that she could work on the assignment when normalcy returned, She also informed him, of her inability to secure a housemaid.
53. On cross-examination, Masiga told the Court that he offered the Claimant leave extension. The outsourced Employee was named Nicholas. The Claimant was employed as an editor. She was not originally an animator. Staff were allowed to work virtually, depending on the nature of their work. Basic editing standards include animation. It is part of editing workflow. The entire project team was to work with the Claimant. There was a virtual work policy. Employees would be supplied with laptops. She was not supplied with one. She did not ask for a laptop. The computer in the office was shared and was not portable.
54. Redirected, Masiga told the Court that the Claimant wrote to him on 4th April 2019, saying she could work with animators. She said she could comfortably use character animations. She trained on animation. Recording gear was not allowed to leave the office. The computer was

bulky and a shared resource. Masiga did everything to avoid dismissal of the Claimant.

55. The issues are whether the Claimant's resignation amounted to constructive dismissal; whether she was unfairly and unlawfully dismissed by the Respondent; whether she merits the prayers sought; and whether the Counterclaim is merited.

**The Court Finds: -**

56. It is common ground that: the Claimant was employed by the Respondent as an editor, on 1st September 2015; her monthly salary was Kshs. 25,000; she went on maternity leave on 30th September 2019; she gave birth on 1st October 2019; she was to resume duty on 20th January 2020; she was granted leave extension of 12 days, to resume on 3rd February 2020; and resumed briefly and continued to work normally, before the Covid-19 lockdown.

57. It is not contested that in February 2020, the Claimant was assigned animation work, which she was to perform within a project, involving other staff. As of the end of April 2020. She had not performed her assignment. She was asked to take some hours to attend to the project from the office, but persistently declined, arguing that she had an infant; she had not secured a housemaid to take care of her infant; the prevailing Covid-19 pandemic, made it difficult for her to secure a housemaid; and that her infant would be exposed to infection if the Claimant physically worked from the office. Her other reasons for non-

compliance with the Respondent's instructions, were that she was not availed a MacBook computer at home, and was not familiar with animation, having been employed as an editor.

58. She resigned on 31st July 2020, submitting that she did so, on the ground that the Respondent discriminated against her, and created a hostile work environment.
59. **Counterclaim**. This was conceded by the Claimant under cross-examination. She stated that, "extension was for 12 days, not 7. I confirm, I owe 12 days. It is Kshs. 11, 571." **The Counterclaim is allowed on admission, at Kshs. 11,571.**
60. **The Claim**. The Claimant went on maternity leave for 3 months, on 30th September 2019.
61. She was to resume duty on 20th January 2020.
62. She was not ready to resume, and requested for extension from the Respondent. She was granted 12 days' extension, to resume on 3rd February 2020.
63. In all these months, from September 2019 to February 2020, there was no known public health emergency, and no lockdown constrained the Claimant, in securing a housemaid.

64. The prolonged maternity leave of 90 days, was introduced in the Employment Act 2007, to enable new mothers rest and bond with their newborns, as well as prepare for baby-care, post-maternity leave. The Claimant ought to have looked for a housemaid, during this period, rather than wait, and raise hue and cry with the Respondent, when it was time to go back to work.
65. She was assigned animation project in February 2020, and made heavy weather of the assignment. She did not attend to it at all. By the time of her resignation, on 31st July 2020, she had not attempted any work on the project.
66. The Respondent was compelled to outsource her role.
67. She explained to the Court that she had an infant, and had not secured a housemaid, due to the challenges of Covid-19 lockdown. She had maternity leave of over 100 days, during which there was no lockdown.
68. She alleged without evidence, that a colleague of hers who gave birth around the same time, was given a free pass by the Respondent, to work virtually. She did not supply the Court with evidence of this comparator.
69. She was advised that she was not required to work from the office the whole day. She was informed that the office desktop was a common user, and could not be taken to her house. She continued to resist the instruction to work for a few hours from the office, demanding to be given a MacBook computer.

70. She was asked by the production manager, on 23rd April 2020 to create a workplan on execution of the project, having slept on the assignment, since February 2020. She was sent a reminder on 28th April 2020.
71. In her evidence on cross-examination, she initially told the Court that, " I cannot recall being asked to provide a workplan. I did not recall receiving e-mail on 28th April 2020 on the subject."
72. Surprisingly, and in stark betrayal of her credibility, she went on to tell the Court that, " I recall writing e-mail on this date, saying I could not develop workplan at the time."
73. She was reassured that the office premises was safe for her, with only a few Employees required to work from there. She agreed that she was advised the office desktop could not leave the office.
74. There is evidence that the Claimant was familiar with animation. She had written to Masiga expressing her competence, and had received training on animation. She had been engaged by the Respondent, in conversation dating back to 2019 on the subject, and had accepted the role. Animation was not an alien subject to her, and was part of the editing workflow. Her alternative argument, that she was being cast in an unfamiliar territory, was quite hollow. She was to work in the project with other team members, and she was familiar with her role.

75. The Respondent treated the Claimant fairly at every turn. Even when she resisted working, many months after her maternity leave was over, she was offered the option of taking unpaid leave, until she felt she was ready, to resume work.
76. She was not on maternity leave or compassionate leave, from February 2020, when she chose to withhold her labour from the Respondent.
77. The Respondent did not give any indication to the Claimant, that it no longer considered itself bound, by the terms and conditions of service, to justify the Claimant's resignation, believing her contract to have been terminated by implication. The Respondent was for continuity, at the time Claimant tendered resignation.
78. Judicial authorities on constructive dismissal in Kenya, such as **Coca-Cola East & Central Africa Limited v. Maria Kagai Ligaga [2015] e-KLR**; **Gitonga Murungi v. Safari Park Hotel Limited [2021] e-KLR**; and, **Mwaniki v. Tihan Limited [2025] KEELRC 1208 [KLR]**, establish that constructive dismissal occurs, where the Employer's conduct, makes it impossible for the Employee, to continue discharging her contractual role.
79. In this dispute, the Respondent did nothing to place hurdles in the Claimant's way, in discharge of her contractual and statutory obligations. To the contrary, the Respondent bent backwards to rescue the employer-employee relationship, extending the Claimant's maternity leave and

giving her the option of taking unpaid leave, until she felt she was adequately prepared to resume duty.

80. She did nothing herself to reciprocate, disregarding the timelines in the animation project, and disregarding the effect of her extended maternity absence on productivity at her Employer's business.
81. Section 29 [2] of the Employment Act grants female Employees, the right to return to the job they hold immediately prior to going on maternity leave, or to a commensurable job.
82. The right of return, carries with it, a corresponding duty on the returning female Employee, to render service to her Employer unreservedly. One cannot just seek extension of maternity leave, and even after it has been granted and exhausted, dither in fully resuming duty. A reasonable Employee would fully resume duty with a sense of urgency, aware that her long absence, may have created a gap in the overall productivity of her Employer's business. The Claimant would have been expected to make up for the lost time, but opted to grind a working relationship with the Respondent, to a screeching halt.
83. The Respondent was compelled to outsource the Claimant's animation role, unsurprisingly, to a male Employee. The Claimant's behaviour was of a kind that encourages discrimination against female Employees, when it comes to recruitment in the job market. Some Employers are led to believe that female Employees, are an economic burden and have lower productivity, considering their potential for prolonged days of

maternity leave; the cost of hiring relievers; and the risk of incessant absence after maternity leave, occasioned by baby care.

84. A perception, perhaps a wrong perception, is created, that males are more productive and stable Employees, less economically burdensome, in comparison to the female gender. Female Employees are deemed to be disruptive to business productivity. A form of gender discrimination, known as 'normative discrimination' is created, restricting equality of opportunity for the female gender, right from the inception.
85. The Claimant formally tendered her resignation on 31st July 2020. She was contractually an Employee of the Respondent, until 31st July 2020, and the Respondent was right in offering her 3 months' salary for May, June and July 2020. **The prayer for 3 months' salary is allowed at Kshs. 75,000.**
86. She has not established that she was constructively, unfairly or unlawfully dismissed by the Respondent. She appears to the Court, to have misapprehended her work-life balance, and blamed the Respondent for her own shortcomings. Her prayers surrounding dismissal, are unfounded, and are declined.

**IT IS ORDERED: -**

- a. The Respondent shall pay to the Claimant 3 months' salary at Kshs. 75,000.**
- b. The Counterclaim is allowed in the sum of Kshs, 11,571.**

**c. No order on the costs.**

Dated, signed and delivered electronically at Nairobi, under Rule 68[5] of the E&LRC [Procedure] Rules 2024, this 30th day of April 2026.

James Rika  
Judge

