

REPUBLIC OF KENYA
IN THE EMPLOYMENT & LABOUR RELATIONS COURT AT
NAIROBI

CAUSE NO. E773 OF 2024

LILIAN WARUGURU NJERI.....
.....CLAIMANT

VERSUS

EXPERTISE GLOBAL CONSULTING
LIMITED.....RESPONDENT

JUDGMENT.

Introduction

1. Before Court is the Claimant's Statement of Claim dated 13th September, 2024, wherein the Claimant seeks the following reliefs as against the Respondent: -
 - a) A declaration that the Claimant has the right to be treated fairly and justly, fair access to justice and equal protection of the law;
 - b) A declaration that the termination of the employment was constructive, wrongful, unfair, and in breach of the Employment Act 2007.
 - c) A declaration that the actions of the Respondent violated the Claimant's constitutional right to fair labour practices.
 - d) The sum of KES **13,571,692.85** being:-
 - i. KES 2,021,562.00 being the balance of salary unpaid for the months April 2024- July 2024.

- ii. KES 83,000 on account of outstanding annual leave days, earned but not paid.
 - iii. KES 8,764,686 being the equivalent of 12 months' total basic salary on account of unlawful termination
 - iv. KES 1,314,702.90 being the House allowance on (iii) above.
 - v. KES 657,351.45 on account of the unpaid Housing allowance entitlement.
 - vi. KES 730,390.50 on account of 1 month's salary for payment in lieu of notice.
- e) Costs of this Cause.
 - f) Interest on the sums in prayers (d) and (e) until payment in full
2. The Respondent filed a Statement of Response dated 18th October, 2024, in response to the Claimant's claim.
 3. The Claimant's case was heard on 11th June, 2025, when the Claimant (CW1) testified in support of her case. She adopted her witness statement dated 13th September, 2024, and produced her list and bundle of documents of even date, as exhibits in the matter, and which were marked as Claimant's exhibits Nos. 1-6.
 4. The Respondent's case was heard on 8th December, 2025, when the Respondent's witnesses Ms. Wangari Muikia (RW1) testified in support of the Respondent's case. She adopted her witness statement dated 18th November, 2024, and produced the Respondent's list and bundle of documents of

even date and a further list dated 3rd December, 2024, as exhibits in the matter, and which were marked as Respondent's exhibits Nos. 1-2.

5. Submissions were received from both parties.

The Claimant's case

6. The Claimant states that she is an experienced professional in human resources, program management, client relations, and business operations, who, in July 2023, entered into a consultancy agreement with the Respondent as an Operations Officer, effective 27th July 2023.
7. It is her case that the agreement was for a fixed term of 150 days, and was set to lapse on 26th July 2024 unless terminated earlier. She avers that her role involved supporting the development of operational frameworks and contributing to business development, including proposal writing.
8. The Claimant states that she was to be paid a daily rate of KES 15,750, capped at KES 157,500 per month for up to ten working days, and she reported to the Head of Programs.
9. The Claimant states that she diligently performed her consultancy role, significantly contributing to business development strategies and operational improvements, as a result of which, on 1st February 2024, the Respondent offered her full time employment as Head of Administration

and Operations, reporting to the CEO, which offer she accepted.

10. It is her case that under the initial Employment Contract, she was engaged for a fixed term of five years, 1st February 2024 to 31st January 2029, and that her remuneration included a gross monthly base salary of KES 300,000 and a daily rate of KES 43,039.05, capped at KES 430,390.50 per month, bringing the maximum gross monthly earnings to KES 730,390.50, in addition to allowances and benefits.

11. The Claimant maintains that the daily rate was payable alongside the base salary as compensation for project management deliverables, which she performed, and that she is therefore entitled to the full capped monthly amount of KES 430,390.50 under that component.

12. The Claimant states that on 1st April 2024, the Respondent re-engaged her as Head of Program Management and Client Relations under a new employment contract. She avers that this Subsequent Employment Contract provided for a fixed term of five years (1st April 2024 to 31st March 2029) and maintained remuneration terms similar to those in the initial Employment Contract.

13. The Claimant states that despite her continued diligent service, the Respondent frustrated her by withholding her daily rate salary for April and May 2024. She further contends that on 31st May 2024, the Respondent

unilaterally altered her employment contract by removing her entitlement to the monthly capped daily rate of KES 430,390.50, without consultation, consent, or justification, and which action she view as punitive, unlawful, and tantamount to a demotion, especially since there was no agreement to reduce her role, scope, or deliverables.

14.The Claimant further asserts that the Respondent, particularly through the CEO, created a hostile and intolerable work environment intended to force her resignation, as a result of which she was compelled to resign on 4th July 2024. The Claimant states that the Respondent accepted her resignation and required her to hand over, setting her last working day as 24th July 2024.

15.The Claimant maintains that her resignation was not voluntary but amounted to constructive dismissal, caused by the Respondent's creation of an intolerable working environment. She further avers that the manner of her exit was callous and violated her constitutional right to fair labour practices, including reasonable working conditions, dignity, and freedom from discrimination.

16.The Claimant contends that the Respondent's actions amounted to both procedural and substantive unfairness, resulting in unlawful constructive termination and causing her continued loss and damage.

17.The Claimant justifies her claim for maximum compensation on several grounds, including diligent service, that she had

a legitimate expectation to serve for the full term of the subsequent 5-year contract, the unilateral changes to her employment terms, including the removal of the daily rate and perceived demotion which made continued employment untenable, and that she did not contribute to or accept the Respondent's unlawful actions.

18.The Claimant finally asserts that her constructive termination was unlawful, unjustified, and both procedurally and substantively unfair. She contends that the Respondent's actions violated the rules of natural justice, amounted to an unfair labour practice, and were contrary to the Constitution and the Employment Act.

19.On cross-examination, the Claimant told the court that she had earlier expressed a desire to resign. She states that in her resignation letter of 4th July, 2024, she thanked the Respondent for appointing her to the position and did not indicate that she was leaving under bad circumstances, nor did she produce any documents indicating intolerable conditions.

20.She confirmed that she gave 20 days' notice instead of the contractual 30 days. She confirmed further that she was paid base salary up to June 2024, and is now claiming salary for July 2024.

21.It is her testimony that she did not earn any daily rate in the four months preceding her resignation. She confirmed that

she was paid terminal dues comprising leave days, KShs.95,000, and house allowance of KShs.180,000/-.

22. In re-examination, the Claimant told the court that she was not paid the daily rate between April and July, 2024, and that she worked the full time and did not receive any complaint indicating she was not working. She further confirmed that the Respondent had sent an email indicating that it was going through a restructuring, and hence the daily rate of Kshs.430,390.50/- was being taken off from her salary.

23. She states that the final dues did not factor in the Kshs.430,390.50/- per month. She avers that under the initial contract, her maximum earnings was Kshs.730,000/-. She avers that the Respondent unilaterally changed her contract and withheld her pay, even though she had planned to serve the full five years of her contract.

24. The Claimant's prayer that the Court grant the reliefs sought in the Claim.

The Respondent's Case

25. It is the Respondent's case that the Consultancy Agreement and the initial Employment Contract of 1st February 2024 were superseded by the Employment Contract that was effective 1st April 2024, which governs the parties' relationship until 31st March 2029.

26.The Respondent argues that the Claimant cannot base any claims on the earlier agreements, as they were rendered inoperative, and maintains that the subject Employment Contract, under which the Claimant served as Head of Programme Management and Client Relations, contains distinct and binding terms that override all prior arrangements.

27.The Respondent maintains that the Claimant's daily rate of KES43,039.05 was not part of her fixed salary but constituted variable, commission-based earnings tied to specific project deliverables. It avers that the Claimant's base salary was fixed at KES 300,000 per month under the Employment Contract, and that the additional earnings were not guaranteed, but depended on project allocations and budget provisions.

28.The Respondent states that the commissions were capped at KES430,390.50 per month and only payable where project coordination or management had been budgeted. It argues that the commissions were separate from salary, variable in nature, and not part of regular wages.

29.The Respondent states that the Claimant's commissions arose from 30% of project coordination tasks reflected in proposals between February and June 2024. It further asserts that the Claimant participated in preparing the relevant project budgets.

30.The Respondent further insists that all payments, both salary and commissions, were made in full in accordance with the Employment Contract and that no further sums are owed to the Claimant.

31.The Respondent denies that the suspension of commission payments was arbitrary or unilateral, asserting that any adjustments were made following transparent discussions with the Claimant. It maintains that the Claimant continued to receive her full base salary for project management, which was distinct from the commission structure.

32.The Respondent avers that the suspension of commissions was justified on the basis that she was already earning a full salary for similar functions, and also due to a reduced need for task-based work during the relevant period.

33.The Respondent further denies allegations of intolerable working conditions or constructive dismissal, maintaining that the Claimant voluntarily resigned on 4th July 2024. The Respondent states that the Claimant, in her resignation letter, expressed appreciation, meaning therefore that the resignation was neither forced nor a result of any wrongful conduct.

34.The Respondent denies that the Claimant's resignation amounted to constructive dismissal or involved any violation of constitutional or labour rights. It maintains that the

Claimant resigned voluntarily, without coercion, discrimination, or unfair treatment.

35.Regarding the claimed damages, the Respondent disputes all heads of claim and states that all salary due under the contract was fully paid, and that commissions were not part of the base salary. On accrued leave, the Respondent avers that the Claimant was paid KES 95,455.00 for 7 accrued leave days as part of her terminal dues, and further denies the claim for compensation, denying that there was any unlawful termination, as the Claimant resigned voluntarily.

36.It further denies the claim for house allowance, arguing that the Claimant was paid KES 180,000.00 covering 4 months. It further avers that the Claimant gave a 20-day notice (4 July to 24 July 2024) instead of the required one month and is thus not entitled to payment in lieu.

37.The Respondent reiterates that it did not terminate the Claimant's employment, and that her resignation was voluntary. It further asserts that it acted in good faith and complied with all contractual and statutory obligations under the Employment Act.

38.On cross-examination, the Respondent's witness (RW1) told the court that other than the base salary, the rest of the amounts were only payable upon based on tasks done, but agrees that the contract does not carry such a provision.

39.RW1 further told the court that clause 7.1.3 of the contract between the parties provides a maximum salary payable of Kshs.730,390/-. He avers that discussions with the Claimant were had verbally and the minutes are not before the court. He avers further that meetings were held with the entire team to discuss restructuring, but the minutes have not been produced in evidence before the court.

40.He avers that the Claimant's last contract only lasted 6 months, February to July, 2024.

41.It is the Respondent's prayer that the Claimant's claim be dismissed with costs.

Analysis and Determination

42.Having carefully considered the pleadings, the witnesses' oral testimonies, the documentary evidence produced, and the written submissions filed for both parties, the Court finds the issues falling for determination are as follows: -

- i. Whether the Claimant was constructively dismissed.
- ii. Whether the Claimant is entitled to the reliefs sought.

Whether the Claimant was constructively dismissed

43.The Employment Act, 2007, does not expressly define what constitutes a constructive dismissal/termination, but the concept has developed through case law and is now treated as a form of unfair termination under Section 45 of the Act.

44. The Court of Appeal decision in ***Coca Cola East & Central Africa Limited v Maria Kagai Ligaga [2015] KECA 394 (KLR)***, is so far the clearest indication of what constitutes constructive dismissal or termination. The Court held that constructive dismissal occurs where the employer's conduct amounts to a fundamental breach of contract, that the breach renders continued employment intolerable, and the employee resigns in response to that breach.

45. To meet the threshold set under the ***Maria Ligaga case (supra)***, an employee is required to show a serious breach of contract and that the breach is intolerable.

46. The Claimant's assertion is that the Respondent unilaterally removed a substantial component of her remuneration, being the daily rate of about Kshs. 430,390.50 per month, and that it created a hostile work environment, making her continued employment untenable.

47. In ***Muga v. Sbc Kenya Limited (2025) KEELRC 1391 (KLR)***, the court found a claim of constructive dismissal justified where circumstances effectively forced the employee to resign.

48. The Claimant, on cross-examination, admitted that her resignation letter did not cite any grievances against the Respondent and that she expressed appreciation to the Respondent for the opportunity to serve. Further, the

Claimant did not produce any documentary evidence, such as emails, complaints, or protest letters, demonstrating the alleged intolerable conditions, only stating that she complained verbally.

49. The Court of Appeal in ***Kihara v. Almasi Bottlers Limited & Another (2025) KECA 1893 (KLR)***, held that a claim of constructive dismissal cannot hold on the basis that the resignation letter did not refer to any grievances, intolerable conditions, or protest.

50. The Claimant further admitted on cross-examination that she had earlier expressed a desire to resign, which, in my view, points to a voluntary rather than a forced resignation.

51. Courts have consistently held that mere dissatisfaction or workplace disagreements do not amount to constructive dismissal. (***See Josephat Muriithi v Kirinyaga Water & Sanitation Company Limited***).

52. In light of the foregoing, I find and hold that the Claimant has not met the evidentiary threshold for constructive dismissal.

Whether the Claimant is entitled to the reliefs sought.

53. Section 10(5) of the Employment Act states: -

“Where any matter stipulated in subsection (1) changes, the employer shall, in consultation with the employee, revise the contract to reflect the change

and notify the employee of the change in writing.”

54. In ***Elizabeth Washeke & 62 Others v Airtel Networks (K) Ltd [2013] KEELRC 572 (KLR)***, the Court held that unilateral alteration of fundamental terms of employment, especially remuneration, is unlawful.

55. The Claimant asserts that the daily rate formed part of her guaranteed remuneration, while the Respondent claims it was variable or commission-based and was determined by the work done, and that the Claimant did not do any tasks warranting such payment in the period of the claim.

56. RW1 admitted that the contract does not expressly provide that the daily rate was conditional or commission-based, and Clause 7.1.3 acknowledged a maximum monthly earning of KES 730,390.50.

57. Further, no written variation or consent by the Claimant was produced to show that indeed, the parties agreed to withdraw the amount between April and July, 2024.

58. Further, the absence of documentary proof of restructuring discussions leaves the court with no option but to find that the Claimant was entitled to the full salary payment in the Months of April to July, 2024.

59. On the allegation of violation of constitutional rights, the Claimant did not prove constitutional violation.

60. On the claim for leave pay, the Respondent proved payment of Kshs.95,455 for 7 days, and the Claimant admitted payment on account of leave.

61. The claim, therefore, fails.

62. The Claimant also admitted on cross-examination that she received payment on account of house allowance as part of her terminal benefit.

63. This claim thus similarly fails.

64. On the claim for compensation, under Section 49 of the Employment Act, compensation is only payable where termination is unfair. Since constructive dismissal was not proved, this claim collapses.

65. Finally, on pay in lieu of notice, the Claimant confirmed that she issued 20 days' notice instead of the contractual 30 days. The court has also found that she has not proved a case of constructive dismissal and is therefore not entitled to notice pay.

66. This claim equally fails.

67. In whole, the Claimant's claim partly succeeds, and the Court issues the following orders:-

- a) That the Claimant has not proved a case of constructive dismissal.
- b) That the Claimant is entitled to the salary withheld in the months of April to July, 2024, at Kshs. 1,721,562/-

c) Parties shall bear their own costs of the suit.

68. Judgment of the Court.

SIGNED, DATED, AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS 30TH DAY OF APRIL, 2026.

**C. N. BAARI
JUDGE**

Appearance:

Mr. Omondi present for the Claimant
Ms. Njoki present for the Respondent
Ms. Esther S- C/A