



**Muchiri v Beiersdorf East Africa Limited (Cause 096 of 2022)  
[2025] KEELRC 502 (KLR) (20 February 2025) (Judgment)**

Neutral citation: [2025] KEELRC 502 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE 096 OF 2022  
S RADIDO, J  
FEBRUARY 20, 2025**

**BETWEEN**

**NANCY MUCHIRI ..... CLAIMANT**

**AND**

**BEIERSDORF EAST AFRICA LIMITED ..... RESPONDENT**

**JUDGMENT**

1. Nancy Muchiri (the Claimant) sued Beiersdorf East Africa Ltd (the Respondent) alleging unfair termination of employment, breach of contract and discrimination.
2. The Respondent filed a Response on 20 September 2022, prompting the Claimant to file a Reply to the Response on 12 October 2022.
3. Hearing commenced before Nzioki wa Makau J on 16 May 2024 and continued on 28 May 2024. The Judge took the evidence of the Claimant and the Respondent's Talent Manager for Africa and the Middle East.
4. This Court took the remainder of the said Manager's testimony together with that of its Human Resource Director, Africa and the Middle East on 21 January 2025.
5. The Claimant filed her submissions on 29 January 2025, and the Respondent on 18 February 2025.
6. The Claimant set out the Issues for determination in her submissions as:
  - i. Whether the Claimant's redeployment from Demand and Supply Planner to Customer Service and Logistics Coordinator was fair?
  - ii. Whether the Claimant was constructively dismissed?
  - iii. Whether the Claimant was discriminated?



- iv. Whether the Claimant is entitled to the prayers sought in the amended claim?
7. The Respondent saw the questions for determination as:
8. The Court has considered the pleadings, evidence and submissions.

### **Fair deployment**

9. The Claimant was a Demand and Supply Planner by the time she proceeded to maternity leave in May 2021.
10. When the Claimant resumed duty on 4 October 2021, she was informed that her new role was that of Customer Service and Logistics Coordinator.
11. The Claimant contended that she was not consulted prior to the role change, and this breached clause 16 of the contract of employment and section 10(5) of the *Employment Act*, 2007.
12. The Claimant further asserted that upon learning of the changes, she raised her concerns but was informed that the changes would not be reversed.
13. The Respondent explained that it embarked on a restructuring exercise in March 2021 through a project called Africope and that it held several consultative meetings with the Claimant before she proceeded on maternity leave and that she indicated that she was only intent on taking on the role of Import and Export Planner, and not the role of Logistics Coordinator.
14. To show that the Claimant was aware of the restructuring and participated in consultations, the Respondent asserted that the Claimant had a meeting with her Line Manager on 4 October 2021.
15. The Respondent also cited an email dated 12 October 2021 from the Claimant to the Talent Manager, Africa and Middle East and an appointment letter dated 12 October 2021.
16. Section 10(5) of the *Employment Act*, 2007, gives the requirements an employer should follow before varying an employment contract. It 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.
17. It is not in dispute that the Respondent undertook a restructuring exercise. The Respondent revealed that the exercise, Africope, commenced in March 2021.
18. From the material on record, it is clear that Africope affected the operations of the Respondent across the continent of Africa, including operations from Ghana and Kenya affected.
19. Such a project must have been a significant exercise, and the Court would have expected the Respondent, as a reasonable employer, to bring the changes to the notice of its employees and, more so, those to be affected formally.
20. The Respondent did not place before this Court any general formal communication to its employees that it was in the process of restructuring. Neither did the Respondent produce in Court any formal communication to the Claimant that her role would be affected during the restructuring exercise and asking her to give her views.
21. The little material on record suggests that the Respondent only involved the Claimant in some semblance of engagement after her return from maternity leave on 4 October 2021. An email from



the Claimant to her Line Manager on 5 October 2021 refers to a meeting on 4 October 2021 wherein she was informed of a *fait accompli*, that she would not continue in her role as Demand and Supply Planner and that she had been offered the role of Logistics Coordinator.

22. The Claimant registered her reservations.
23. Section 10(5) of the *Employment Act* sets out the statutory law on the variation of certain employment particulars, including job description.
24. The Respondent has not demonstrated that it formally consulted with the Claimant before informing her of the change of roles on 4 October 2021.
25. The decision of the Respondent was not statute-compliant.
26. Further, Clause 16 of the Claimant's contract provided:

The provisions of this letter of appointment may only be varied by agreement in writing signed by both you and the company.
27. There is no evidence placed before the Court that the Respondent secured the written agreement of the Claimant before varying the terms of employment.
28. The Court finds the variations by the Respondent contravened both section 10(5) of the *Employment Act*, 2007 and clause 16 of the contract of employment.

### **Unfair termination of employment**

#### Constructive dismissal

29. What constitutes constructive dismissal is now fairly well settled.
30. The Court of Appeal addressed the question of constructive dismissal in *Coca-Cola East & Central Africa Limited v Maria Kagai Lugaga* (2015) eKLR, wherein it stated:

The key element in the definition of constructive dismissal is that the employee must have been entitled to or have the right to leave without notice because of the employer's conduct. Entitled to leave has two interpretations which gives rise to the test to be applied. The first interpretation is that the employee could leave when the employer's behaviour towards him was so unreasonable that he could not be expected to stay - this is the unreasonable test. The second interpretation is that the employer's conduct is so grave that it constitutes a repudiatory breach of the contract of employment- this is the contractual test.....
31. In the instant case, the Respondent altered the Claimant's employment contract without prior consultation. The alterations were significant, though the parties disagree on the impact.
32. The Respondent asserted that the Claimant was going to take up a more senior role, but the Claimant saw a demotion because she was going to report to an employee who reported to her at one point in time.
33. Since the Respondent did not comply with the law on variation of employment contracts and its own contract with the Claimant, the Court concludes that this was a case of constructive dismissal.

### **Discrimination**

34. The Claimant made a case that the Respondent discriminated against her on the ground of her pregnancy because of the variation of the contract upon return from maternity leave.



35. According to the Claimant, no other employee was affected by the reorganisation conducted by the Respondent.
36. The Claimant claimed that her rights to equal treatment before the law, not to be discriminated on account of pregnancy, and to protection during pregnancy as contemplated by the International Labour Organisation Convention No. C183 were violated.
37. The Respondent denied discriminating against the Claimant on account of her pregnancy. It contended that it supported the Claimant financially and emotionally during her difficult pregnancy and that another member of staff, the erstwhile Logistics Coordinator was also affected by the restructuring.
38. The Respondent produced evidence in the form of WhatsApp exchanges during the hearing, which show that it extended financial and emotional support to the Claimant during her pregnancy.
39. The Respondent also produced its Organogram before and after the restructuring. The organogram leaves no doubt that there were changes to various roles, though the persons holding those roles did not change much.
40. In light of the above, the Court finds that the Respondent did not discriminate against the Claimant because of her pregnancy.

### **Appropriate remedies**

#### Compensation

41. The Claimant served the Respondent for about 18 years. The Court has concluded this was a case of constructive dismissal. The circumstances leading to the Claimant's resignation were not of her making.
42. Considering these factors, the Court is of the view that the equivalent of 10-months' gross salary as compensation would be fair (gross monthly salary was Kshs 251,238/-).

#### **Pay in lieu of notice**

43. The Claimant left employment at the prompting of the Respondent's conduct. The employment contract provided for 1-month salary in lieu of notice.
44. The Court finds the Claimant is entitled to Kshs 246,952/- (basic salary) pay in lieu of notice.

#### **Severance pay**

45. The Claimant sought Kshs 2,386,761/- severance pay.
46. The Court has found this was a case of constructive dismissal and not redundancy.
47. The Court will, therefore, not award severance pay.

### **Conclusion and Orders**

48. The Court finds and declares that the Respondent constructively dismissed the Claimant and that discrimination was not proved.
49. The Claimant is awarded:
  - i. Compensation Kshs 2,512,380/-



ii. Pay in lieu of notice Kshs 246,952/-

Total Kshs 2,759,332/-

50. The awards to attract interest at court rates from the date of judgment.

51. The Claimant to have costs.

**DELIVERED VIRTUALLY, DATED AND SIGNED IN MOMBASA ON THIS 20<sup>TH</sup> DAY OF FEBRUARY 2025.**

**RADIDO STEPHEN, MCI Arb**

**JUDGE**

Appearances

For Claimant Komm Advocates

For Respondent Mohammed Muigai LLP, Advocates

Court Assistant Wangu

