



REPUBLIC OF KENYA



KENYA LAW
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**Ndeg'eri v Sankara Nairobi (Cause 1003 of 2018)
[2025] KEELRC 534 (KLR) (20 February 2025) (Judgment)**

Neutral citation: [2025] KEELRC 534 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 1003 OF 2018
K OCHARO, J
FEBRUARY 20, 2025**

BETWEEN

DORCAS WAMBUI NDEG'ERI CLAIMANT

AND

SANKARA NAIROBI RESPONDENT

JUDGMENT

Introduction

1. By Memorandum of Claim dated 31st May 2018, the Claimant sued the Respondent seeking the following reliefs;
 - a) A declaration that the Claimant's dismissal by the Respondent was wrongful, unfair, and in breach of the rules of natural justice.
 - b) An amount of Kshs 1,796,760/=being 12 months' gross salary, compensation for wrongful and unfair dismissal.
 - c) An unconditional letter of reference.
 - d) Interest on b and c.
 - e) Costs of the suit.
 - f) Any other relief that this Honourable Court may deem fit and just to grant.
2. The Respondent resisted the Claimant's Claim through a Memorandum of Response dated 17th December 2018, denying that the termination of the Claimant's employment was at its initiation, as she voluntarily resigned from her employment. As such it denied the Claimant's cause of action and entitlement to the reliefs sought.



3. At the hearing of this matter, the Claimant and the Respondent's witness adopted their respective witness statements filed herein as their evidence in chief and tendered the documents they filed in this matter as their exhibits.

Claimant's case

4. The Claimant states that she first came into the employment of the Respondent as a Personal assistant to the General Manager on 1st September 2015 on a permanent basis. She initially served under probation and got confirmed into employment after completing the probationary period, successfully.
5. The Claimant further states that she worked diligently, professionally and dedicatedly without any disciplinary issue or complaint being raised against her by the Respondent until when his good and cordial employer-employee relationship encountered headwinds. This happened when Mr Krishna Unni, took reigns as the Respondent's Group General Manager at the beginning of 2017.
6. She stated that before Mr Krishna Unni came in as the Group General Manager, she had served under his immediate predecessor and two other General Managers, very cordially.
7. On or about 23rd June 2024, some payroll documents from the Finance Department were brought to her and she went ahead as per practice to place them on the General Manager's Desk. The General Manager didn't act on them immediately. Meanwhile, the Payable Accountant kept on visiting her office to check whether documents had been signed by the General Manager. When she noted that they had eventually been signed, she picked them up from the Group General Manager's desk and handed them over to the Finance Department.
8. On 24th June 2017, the Group General Manager came to her office inquiring whether she had picked up the envelope from his office. When she answered in the affirmative and that she had handed over the same to the Payables Accountant, it didn't sit well with the Group General Manager. He shouted at her, telling her how she lacked basic manners. He ordered her never to step in his office. Further, to pick the document from whoever she had given it to, and bring it back to him. When she did so, he shouted at her again, telling her to disappear from his face.
9. She felt treated badly in a manner she had never been before. She felt, insulted, harassed, threatened, and incapacitated as her role entailed taking documents to and picking them up from, the Group General Manager's office.
10. Later he called her into his office and told her that he had decided that she undergoes post-appointment training. Further, she was to work as a trainee in the front office service centre agent, Club lounge agent, and guest relations agent. The training didn't have any relationship with her job description. The training was to take four months. The training had the impact of causing her to work for more hours than the contractual 44 hours per week.
11. During this training period other employees raised complaints against her, which in her view were unfounded. However, the complaints were turned into disciplinary issues.
12. On 24th July 2017, the Claimant received an undated notice to show cause. She was accused of attempting to exit the Hotel without following the prescribed process stipulated in the Hotel Control Policy, on 5th July 2017.
13. She Responded to the show cause letter on 25th July 2017. On 10th July 2017, she was abruptly called into a meeting, which to her surprise was turned into a disciplinary meeting. She had not been notified of the meeting and or the agenda for the meeting.



14. The Respondent's actions against her were driven by malice thus; contrary to its own procedures, they ordered her to undertake an irregular cross-training; they demoted her without written explanation and/or valid notice; and the Respondent's representative accused the claimant of leaving the Hotel without permission, only to acknowledge later that she had obtained permission from Mr. Luke.
15. The actions by the Respondent and or its agents caused psychological and emotional stress on her. Her pressure went up and had to be given 4 days of sick off from the 26th of July to the 29th of 2017. As a result of the trauma and stress, she was forced to resign involuntarily from her employment.
16. She alleges that the Respondent in complete ignorance of the dictates of natural justice, refused and or failed to allow her to be heard, and or listen to her grievances.
17. Cross-examined by Counsel for the Respondent, the Claimant testified that she resigned from her employment while on her leave. Her resignation occurred while an appeal she had lodged against a decision for issuance of a warning against her was pending determination.
18. Referred to the minutes of the grievance hearing meeting of 1st August 2017, the Claimant asserted that the indication therein that she admitted it was wrong for her to pick up the envelope from the General Manager's office in his absence, was contrary to what he told the Panel.
19. Her Job description required that she be well conversant with the overall hotel operations.
20. She was informed that she had a right to be accompanied by an Associate of her choice during the meeting. Unfortunately, she had none to accompany her as the notice given was too short. She did indicate this to the Panel. Notwithstanding, the Panel didn't allow her an opportunity to look for a willing Associate to accompany her.
21. She testified that she knew that exiting the Respondent's premises could amount to misconduct.
22. The Claimant stated that on 30th July 2017, she wrote an email to Carlyne, indicating that she had been unable to get a colleague to accompany her to the meeting, nonetheless, she was going to be present in the meeting. Further, following the indication, the meeting was rescheduled to the following day, to allow her to find an associate to accompany her.
23. She admitted that she resigned without giving notice. The resignation was to take effect immediately.

Respondent's case

24. The Respondent presented one witness, Carlyne Onyancha to testify on its behalf. She stated that at all times, she was the Human Resources Manager of the Respondent Company. On 1st September 2015, the Respondent employed the Claimant as a Personal Assistant to the General Manager via the appointment letter dated 27th August 2015.
25. The witness stated that the Claimant remained in employment without incident until 24th June 2017 when she without seeking the consent of the Group General Manager opened and gave away an envelope marked confidential and containing the entire organization's payroll information.
26. On 30th June 2017, the Claimant received a notice informing of her assignment to cross-train as part of the Front Office Department for 4 months. The training would enable her to understand the nature of the business from end to end and therefore equip her with the skills to better carry out her duties. In the circumstances, the training was set to be carried out during the Claimant's ordinary working hours and therefore, didn't fall under the ordinary cross-training guidelines set out in the Hotel Policy Manual.



27. On 5th July 2017, contrary to the process prescribed by the Hotel Manual Policy, the Claimant attempted to exit the Hotel premises relying solely on oral permission granted by the Head of Department. The duty Guard attempted to repulse the Claimant's move, but she eventually succeeded in exiting the premises without the required gate pass. Her actions were noted as misconduct and a disciplinary process commenced.
28. On 10th July 2017, the Claimant met with her supervisors to discuss the incident after a report was made to them by the security team. The Claimant however declined to sign a corrective action form detailing the incident citing illness. However, on 17th July 2017 during a meeting with the Claimant, her supervisors and her, the Claimant agreed to sign the corrective action form regarding her conduct during the incident.
29. The witness further stated that on 20th July 2017, the Claimant citing illness requested permission to leave the Hotel. Despite the Hotel Policy providing that where an employee falls ill while on duty, the duty falls on the Hotel to the employee to the hospital, the Claimant insisted on going home. Upon the policy being brought to her attention, she instead chose to stay until the end of her shift. At the end of the shift, her supervisor inquired how she was feeling to which she responded that she did not die. This rude response led to the Claimant being summoned by the department supervisors to whom she denied speaking to the supervisor or even meeting her after the shift.
30. On 24th July 2017, the Claimant was issued a show cause letter regarding the events of 5th July 2017 when she exited the Hotel despite not being issued a gate pass per the Hotel Policy Manual.
31. She responded to the letter through her letter dated 26th July 2017 addressing the contents thereof and raising additional work-related grievances.
32. On 29th July 2019, a meeting to address the disciplinary issue as well as her grievances was scheduled for 31st July 2017. The Claimant citing ill health and brevity of the notice stated that she was unable to secure an employee to accompany her to the meeting. The Respondent postponed the meeting to the following day to grant her more time.
33. On 1st August 2017, the disciplinary meeting was convened. The Claimant was present. On 7th August 2017, the Respondent issued the Claimant with a Final Warning Letter based on the incidents of 5th July 2017 and the disciplinary meeting between the Claimant, the persons involved in the incident and the Management held on 1st August 2017. The Claimant was given 7 days to appeal the letter.
34. On the 12th of August 2017, appealed against the Final Warning. Before a date for the Appeal Hearing could be scheduled, the Claimant proceeded on her annual leave. The witness communicated to the Claimant via e-mail that a date for the hearing of her appeal was to be scheduled upon her return.
35. The witness stated that on 30th August 2017, the Respondent received an e-mail from the Claimant containing an executed copy of her Resignation Letter. The resignation was to take effect immediately.
36. The Claimant resigned without notice. Under the *Employment Act*, she became obligated to pay one month's salary in lieu of notice. The Claimant is, therefore, indebted to the Respondent Kshs. 101,413.20.

Analysis and determination

37. I have carefully considered the pleadings by the parties; their respective evidence and submissions and the following issues emerge for determination;

- I. Did the Claimant resign voluntarily from her employment?



- II. If the answer to[I] above is in the negative, was she wrongfully and unfairly dismissed from her employment?
- III. Is the Claimant entitled to the reliefs sought?
- IV. Is the Respondent's Counterclaim merited?

Did the Claimant resign voluntarily from her employment?

- 38. There is no dispute that the Claimant was at all material times an employee of the Respondent, and that she separated from her employment when she by her letter dated 30th August 2017, resigned from employment with immediate effect. Undeniably, resignation from employment by an employee, is one of those ways a contract of service can be brought to an end at the initiative of the employee. Thus, an employee who intentionally terminates his or her employment by resignation cannot subsequently claim unfair dismissal or termination of employment and seek protection of the *Employment Act*.
- 39. I have carefully considered the pleadings by the Claimant, her witness statement, which no doubt is a replica of the pleadings, and her evidence before this Court, and find myself challenged to fathom how her admitted resignation, could be a basis for any claim or a claim for unfair termination of employment or summary dismissal, against the Respondent.
- 40. The Claimant asserted that the resignation was involuntary. That she resigned due to stress and trauma, a product of the happenings at her workplace as enumerated in her pleadings and witness statement. She stated that the Sick off sheet dated 26th July 2017, speaks in support of the assertion. I have carefully considered the document, with great respect, it is a bald document which does not speak to the fact that the Claimant was suffering from stress and trauma [work related or any other], or this or that medical condition.
- 41. By reason of the premises, I am not convinced by the Claimant that she resigned involuntarily.
- 42. It is important to point out at this juncture that this Court isn't ignorant of the doctrine of constructive dismissal, and as such, the fact that an employee can leave his or her employment by resignation due to actions of the employer that create a situation at the workplace so unbearable that the employee cannot fulfil what is the employee's most important function, namely to work.
- 43. If the Claimant intended to assert constructive dismissal, she was let down. Let down by pleadings, and evidence that totally did not bring out her case as one based on the doctrine of constructive dismissal.
- 44. Having found as I have hereinabove, that the Claimant voluntarily resigned from her employment, then an easy conclusion sets in. Her claim for unfair dismissal stands on quicksand. It would therefore not be prudent and necessary to proceed to consider issues [II] and [III].
- 45. In the upshot, I find the Claimant's case without merit, it is hereby dismissed.

Is the Counterclaim merited?

- 46. In the Counter-Claim, the Respondent prayed for one month's pay in lieu of notice amounting to Kshs. 101,413.20.
- 47. Clause 15.6 of the contract of employment dated 27th August, 2015, provides that, "Either party wishing to terminate this contract will give each other one month's written notice or month pay in lieu of notice."



48. Undoubtedly, the Claimant's resignation was with immediate effect. She didn't issue the requisite contractual notice. She unfortunately has to bear the contractual consequence, paying one month's salary in lieu of notice.

49. In the upshot,

I. The Claimant's claim is hereby dismissed as it lacks merit.

II. The Respondent's Counterclaim is allowed. The Claimant shall pay the Respondent, one month's salary in lieu of notice, KShs. 101, 413.20.

III. Each party to bear its own costs.

READ SIGNED AND DELIVERED THIS 20TH DAY OF FEBRUARY 2025.

OCHARO KEBIRA

JUDGE

In the presence of:

Mr. Koli for the Claimant.

Mr. Kisia for the Respondent.

