



REPUBLIC OF KENYA



KENYA LAW
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**Abuya v County Government of Meru & 4 others (Cause E018 of 2023)
[2025] KEELRC 890 (KLR) (20 March 2025) (Judgment)**

Neutral citation: [2025] KEELRC 890 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MERU
CAUSE E018 OF 2023
ON MAKAU, J
MARCH 20, 2025**

BETWEEN

DR CALVIN PETER ABUYA CLAIMANT

AND

COUNTY GOVERNMENT OF MERU 1ST RESPONDENT

MERU COUNTY PUBLIC SERVICE BOARD 2ND RESPONDENT

COUNTY SECRETARY, MERU COUNTY GOVERNMENT . 3RD RESPONDENT

**CHIEF OFFICER OF HEALTH, MERU COUNTY GOVERNMENT 4TH
RESPONDENT**

**DIRECTOR MEDICAL SERVICES, MERU COUNTY GOVERNMENT 5TH
RESPONDENT**

JUDGMENT

Introduction

1. The claimant brought this suit on 20th September, 2023 seeking the following reliefs: -
 1. A declaration that the claimant’s employment was constructively terminated on the 10th March 2023.
 2. A declaration that the claimant’s salary stoppage and termination of his employment services are unlawful and unfair.
 3. An award of compensation for unlawful, unfair and unprocedural stoppage of salary and termination of services.



4. A declaration that the respondents have violated the claimant's rights guaranteed and protected by Articles 19, 27, 28, 30, 41, 43, 47 and 50 of *the Constitution*.
 5. An award of general damages for the violation of and or breach of the claimant's constitutional rights.
 6. Compensation equivalent to 12 months' salary aggregating to Kshs.3,840,000.
 7. One-month salary in lieu of notice aggregating to Kshs.320,910.
 8. Salary arrears for the months of April and May 2023 aggregating to Kshs.641,842.
 9. Unpaid leave allowance aggregating to Kshs.518,393.07
 10. A certificate of service.
 11. Costs of the suit and interest on the sum awarded at court rates.
 12. Any other relief as the Honourable Court would deem just and expedient to grant.
2. The respondents filed their response on 29th January 2024 denying liability and accusing the claimant of absconding duty and resignation without notice. Therefore, they prayed for the suit to be dismissed with costs.
 3. The suit went to full hearing where each side called one witness. After close of the hearing both sides filed written submissions.

Factual Background

4. The claimant is a Medical Doctor and he was employed by 2nd respondent as a Senior Assistant Director of Medical Services/Medical Specialist 1 Job CPSB vide a letter dated 18th October 2021. He reported on 5th November 2021 at Meru Teaching and Referral Hospital (MRTH) as a Medical Specialist Oncology.
5. He successfully completed his probation period of six months on 18th April 2022 but he was never given confirmation of his appointment. However, he continued working and receiving salary which implied that he had been confirmed as a permanent employee. Therefore, he assumed his office and performed his roles and functions on the basis of the appointment letter.
6. On 28th December 2022, he was selected for a Fellowship in Hematology and BMT at HCG Cancer Centre in Bangalore India for the year 2023 and he was required to report on 1st March 2023. The Fellowship was partly sponsored by the Government of Kenya through the Ministry of Health.
7. In preparation to join the Fellowship Programme, he paid tuition fees of Kshs.367,790 and readied all his travel documents. He then applied for study leave and allegedly obtained all the necessary departmental approvals allowing him to proceed with the Fellowship Programme as scheduled.
8. On 10th March 2023, he was surprised to receive a letter requiring him to show cause why disciplinary proceedings should not be instituted against him for absconding duty from 28th March 2023. The letter also stopped his salary with immediate effect. He never responded to the show cause letter and instead he sought audience with Chief officer, Health Services (4th respondent) on several occasions to address the issue but in vain.
9. Since his salary had been stopped he never went for the fellowship as he was unable to sustain himself during the study leave. Therefore, he tendered his resignation on 29th May 2023 and brought this



- suit alleging that the action of stopping his salary while he was still in employment amounted to constructive termination of his employment.
10. He averred that the show cause letter blamed him for absconding in a future date, that is, 29th March 2023 and it never gave him the timelines within which to respond. He further averred that the action of the respondents violated his right to fair labour practices guaranteed under Article 19,27,28, 30, 41,43,47 & 50 of *the Constitution*.
 11. The respondents averred that the claimant's study leave was not duly sanctioned by the relevant authorities and as such he had no authority to leave his duty station. They averred that there are procedures in place for study leave within the County Public Service, through which the claimant's application did not go. All he got was an approval from his duty station HR Committee that was subject to further approvals by the departmental HR Advisory Committee, then County HR Management Advisory Committee, and finally the 2nd respondent (CPSB) which issues a release letter.
 12. The respondents averred that the claimant absconded duty when he left his work station from 28th February 2023 before consideration of his leave application by the relevant authorities and as such he was served with a show cause letter dated 10th February 2023. The claimant failed to respond and the matter was escalated to the Departmental HR Advisory Committee.
 13. The respondents averred that absconding of duty by the claimant was contrary to public interest and therefore he could not continue drawing salary and benefits from public coffers without rendering any services.
 14. They further averred that absconding duty and failure to respond to show cause letter was a sufficient ground for the claimant's dismissal but he resigned before any disciplinary proceedings were commenced. They maintained that serving the claimant with show cause letter and stopping his salary was within the law and therefore the reliefs sought are untenable.
 15. During the hearing, the claimant testified as CW1 and basically reiterated the facts summarized above but added that the leave approval by the Hospital's HR Advisory Committee was final. However, he admitted that he was never issued with a letter releasing him to go on the study leave.
 16. He also admitted that he never responded to the show cause letter which charged him with absconding duty. Instead he engaged the County Officials informally and when the 4th respondent frustrated him enough by refusing to give him audience, in addition to the salary stoppage, he resigned. Since then he never received any response to his resignation letter. He maintained that his leave application was properly guided by the HR Manager and the chairperson of the HR Advisory Committee who told him to proceed on the study leave pending release letter from the Hospital.
 17. Ms.Veronica Mwonjiru Imaana, 1st respondent's Assistant Director HR in the Health Department testified for the respondents as RW1. Her evidence echoed the facts summarized above but added that HR Advisory Committee (the primary committee) met and approved the claimant's request to proceed on study leave.
 18. She further testified that after that primary committee approval the procedure required that the committee forwards the minutes plus a recommendation to the Chief Officer (4th respondent) via a cover letter and the officer is required to make a request to the Chief officer attaching the minutes of the HR Advisory Committee. After receiving the two correspondences, the chief officer was supposed to mark the request for action by the HR Officer for discussion by the Departmental HR Advisory Committee.



19. She went on to say that if the Departmental Committee approves the request, the matter is forwarded to the County HR Management Advisory Committee comprising all the Chief County Chief Officers. If the request is approved, the request is forwarded to the County Board (2nd Respondent) for consideration. If the Board approves the request, it gives a letter for study leave.
20. She testified that the process takes even months to exhaust but she admitted that there are cases where officers proceed on study leave before completion of the approval process. Such cases include where the request has reached the Chief Officer and is approved by a Departmental HR Advisory Committee and a temporary authority letter given by the chief officer pending the final approval. She denied being aware whether the claimant had obtained such temporary authority from the chief officer but she clarified that the claimant resigned before his request for the study leave was considered by the Departmental Committee.

Submissions

21. The claimant framed three issues for determination: -
 - a. Whether the claimant absconded duty.
 - b. Whether the claimant was constructively dismissed.
 - c. Whether the claimant is entitled to the reliefs sought.
22. On the first issue, it was submitted that the claimant requested for study leave by a letter dated 25th January 2023 through the laid down protocols. The leave was approved by the Health HR Advisory Committee upon which approval he proceeded for his study leave from 28th February, 2023.
23. He was, however, surprised to receive a show cause letter dated 10th March 2023 accusing him of absconding duty and also stopping his salary. He denied the alleged absconding of duty and maintained that his study leave had officially been approved. He faulted the respondents for stopping his salary and commencing disciplinary process before ascertaining his whereabouts by contacting him or his next of kin.
24. To buttress the above point, reliance was placed on *Boniface Francis Mwangi v BOM Iyego Secondary School* (2009) eKLR, *Simon Mbithi Mbane v Inter Security Services Ltd* (2008) eKLR, *Joseph Nzioka v Smart Coatings Ltd* (2017) eKLR and *Stanley Omwoyo Onchweri V BOM Nakuru YMCA Secondary School* (2015) eKLR where the courts were unanimous that, before dismissing an employee for absence from duty, the employer ought to make effort to contact the employee to ascertain the reason for the absence.
25. It was therefore submitted that the actions taken by the respondents against him including issuing of show cause letter and stopping of his salary amounted to condemning him unheard and it went to the root of the contract of employment and annulled it. consequently, he tendered his resignation.
26. To fortify the claimant's case of constructive dismissal, reliance was placed on *Solid Doors (Pty Ltd v Commissioner Theron & 2 others* (2004) 25 ILJ 2337 (LAC), *Western Excavating (ECC) Ltd v Sharp* (1978) ICR 222 or (1978) QB 761, *Coca Cola East and Central Africa Limited v Maria Kagai Ligaga* (2015) eKLR, *Milton M Isanya v Aga Khan Hospital Kisumu* (2017) eKLR, *Brian Mandila Khaemba v Chief Justice of Kenya* (2019) eKLR, *Mokaya v Christ The King Parish & another* (2024) KEELRC 28 (KLR) and *Odongo v Masinde Muliro University of Science & Technology* (2023) KEELRC 1761 (KLR) where the courts discussed the principles of constructive dismissal and the consequences of salary stoppage when the contract of employment is still subsisting.



27. In view of the foregoing matters, it was submitted that the claimant is entitled to the reliefs sought including compensatory damages for unfair termination and violation of his constitutional rights. Reliance was placed on Hudson Kidala Kisigwa v Romaso Kenya Ltd (2018) eKLR, Alice Ndaani & 5 others v Mwalimu National Savings & Credit Cooperative Society Ltd (2021) eKLR, Fancy Jeruto Cherop & another v Cathay Ltd (2018) eKLR and Rajab Barasa & 4 others v Kenya Meat Commission (2016) eKLR.
28. On the other hand, it was submitted for the respondents that the claimant was not constructively dismissed. It was submitted that for a claim of constructive dismissal to succeed, there must be proof that the employee resigned from employment because the employer created conditions that left the employee with no option but to resign.
29. In this case, it was submitted that the claimant resigned two months after receipt of show cause letter for absconding work. It was further argued that the resignation came after unreasonable delay and the letter never blamed the respondents or any other reason for his exit. Accordingly, it was submitted that the resignation was voluntary after the claimant discovered that he had no good cause to show for absconding duty.
30. For emphasis, reliance was placed on Anthony Mkala Chitavi v Malindi Water & Sewerage Company Ltd (2013) eKLR, Coca Cola East & Central Africa Ltd v Maria Kagai Ligaga (2015) eKLR, Sophie Muthoni Njagi v Rift Valley Railways (Kenya) Limited (2020) eKLR where the courts discussed the principles of constructive dismissal.
31. Finally, the court was urged to find that the claimant has not adduced evidence to discharge the burden of proof of his case, and as such the suit should be dismissed with costs.

Issues for determination and analysis

32. There is no dispute that the claimant served the respondents with a resignation letter dated 29th May 2023. The issues for determination are: -
 - a. Whether the resignation amounted to constructive dismissal.
 - b. Whether the reliefs sought are merited.

Constructive dismissal

33. The claimant resigned from employment vide the letter dated 29th May 2023 but contended that the resignation was in fact constructive dismissal. However, the respondents maintained that the resignation was voluntary to evade disciplinary proceedings.
34. I have considered the evidence before the court and the submissions by counsel. For a resignation to become constructive dismissal, it must meet certain thresholds that have been developed by courts over time. The authorities cited by both sides bring out the legal principle that, for constructive dismissal to occur, the resignation must not be voluntary but one that is triggered by the conduct of the employer that makes work environment intolerable, or which amounts to breach of the contract that goes to the core of the employment contract. Also, the resignation should take place with or without notice but without unreasonable delay.
35. In the instant case, the claimant's resignation letter stated as follows: -

“RE: Resignation



With regards to the above subject matter, I tender my resignation as a Medical Specialist 1 (Medical Oncologist) with immediate effect.

I have accumulated 60 days annual leave...”

36. The letter does not state any reason for the resignation and it does not attribute the resignation to the employer’s conduct. It is therefore not possible to find that the resignation was due to any intolerable conduct or repudiatory breach of the contract by the respondents.
37. However, I find merit in the respondents’ contention that the resignation was voluntarily done to evade disciplinary process contemplated under the show cause letter dated 10th March 2023. I really don’t understand why the claimant failed to write a response to the show cause letter to explain his absence instead of chasing after the chief officer and other officers of the County for audience.
38. However, I note from the evidence that the claimant was not conversant with the procedure for seeking study leave and ended up being misled to commence the leave before the approval process was completed and release letter issued. I believe that, even now the resignation can be withdrawn if the County Board has not approved it since there is no evidence from the County Board indicating that the resignation of such an important medical specialist was sealed due to lack of information on how to make a study leave application.
39. Having said that, I must however, restate that the claimant has not proved a case of constructive dismissal on a balance of probability. He resigned by the letter dated 29th May 2023 without stating any reason after receiving a show cause letter dated 10th March 2023 accusing him of absconding duty which he declined to respond.

Reliefs

40. In view of the finding that the claimant did not prove constructive dismissal, he is not entitled to declaration that he was constructively dismissed. Accordingly, the claim for compensation for unfair termination and salary in lieu of notice must fail.
41. The claim for salary for April and May 2023 must also fail because the claimant admitted that he never worked during the said months. He should not have proceeded on the study leave before ascertaining whether his salary would be payable during his study leave. Such matters require proper negotiations and agreement, which in most cases requires an employee going on study leave to sign a Bond with the employer.
42. The claimant is also not entitled to declaration that the respondents violated his rights under Article 19, 27, 28, 30, 41, 43, 47 and 50 of *the Constitution* of Kenya, 2010. The claimant did not adduce evidence to prove the alleged violation. There is evidence that he absented himself from work without leave and when he was addressed a show cause letter, he deliberately failed to respond. In the circumstances, the employer was right in stopping his salary.
43. The claim for leave lacks particulars as he merely alleged that he had accumulated leave of 60 days but failed to show how he arrived at the 60 days leave. He has also not proved that his contract of service allowed him to accumulate annual leave.
44. The respondents also faulted the claimant for resigning with immediate effect. Accordingly, they argued that he ought to pay the employer one-month salary in lieu of notice. However, the respondent did not file any counterclaim.



Conclusion

45. I have found that the claimant resigned from his job voluntarily. I have also found that he is not entitled to the reliefs sought. As such, I dismiss the suit. For avoidance of doubt, the parties are at liberty to engage in internal dispute resolution mechanism in the public interest since the claimant blamed his situation to lack of proper information. For the same reason, I will not condemn the claimant to pay costs of the suit.

DATED, SIGNED AND DELIVERED AT NYERI THIS 20TH DAY OF MARCH, 2025.

ONESMUS N MAKAU

JUDGE

ORDER

This judgment has been delivered to the parties via Teams video conferencing with their consent, having waived compliance with Rule 28 (3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

ONESMUS N MAKAU

JUDGE

