



**Juma v Geothermal Development Company (Cause 1573 of 2018)  
[2025] KEELRC 695 (KLR) (6 March 2025) (Judgment)**

Neutral citation: [2025] KEELRC 695 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE 1573 OF 2018  
L NDOLO, J  
MARCH 6, 2025**

**BETWEEN**

**NANCY ALIVITSA JUMA ..... CLAIMANT**

**AND**

**GEOTHERMAL DEVELOPMENT COMPANY ..... RESPONDENT**

**JUDGMENT**

**Introduction**

1. The dispute between the Claimant and the Respondent arises from the Claimant's resignation on 31<sup>st</sup> October 2016. The Claimant lays out her claim in a Statement of Claim dated 26<sup>th</sup> November 2018 and the Respondent states its defence in a Reply dated 27<sup>th</sup> March 2019.
2. At the trial, the Claimant testified on her own behalf and the Respondent called two witnesses; Mariam Yunus, the Manager, Human Resource Development and Ricky Gai, a Nursing Officer. Thereafter, the parties filed written submissions.

**The Claimant's Case**

3. The Claimant was employed by the Respondent on 10<sup>th</sup> September 2009, in the position of Chief Officer, Public Relations and Communications, earning a monthly salary of Kshs. 180,000 plus a house allowance of Kshs. 35,000 and a transport allowance of Kshs. 25,000. In addition, the Claimant was entitled to other allowances amounting to Kshs. 10,000 and leave allowance of Kshs. 50,000 or one third of the basic salary.
4. The Claimant reported to the Manager, Public Relations and Communications. By a letter dated 28<sup>th</sup> February 2012, she was transferred to Nakuru but the transfer was cancelled by a subsequent letter dated 15<sup>th</sup> June 2012.



5. The Claimant accuses her line manager, Ruth Musembi of subjecting her to a humiliating and hostile work environment, characterised by frequent bullying, disrespect, rude and offensive encounters. According to the Claimant, she found it unbearable and difficult to effectively discharge her duties.
6. On 18<sup>th</sup> July 2016, the Claimant sent an email to Ruth Musembi, alleging that the work environment had become toxic. The Claimant stated that she would be available for a meeting to discuss the issues. Musembi is said to have confirmed that she would be available for a meeting.
7. On 19<sup>th</sup> July 2019, a meeting was convened by the General Manager- Corporate Affairs, Christopher Leparan, in the presence of the Human Resource Officer, Rosemary Okello, Rebecca Tallam and the Claimant, to discuss issues raised by staff in the Corporate Communications and Marketing Department.
8. The Claimant avers that at the said meeting, it was discussed and resolved that:
  - a. She did not follow the laid down protocol in raising her concerns about her superior. It was pointed out to her that she ought to have reported the matter to the General Manager or to the Human Resource Manager and subsequently to the Managing Director;
  - b. She ought to have included other Section Heads and the Kenya Electric Trades and Allied Workers Union (KETAWU) team in her email communication. She was informed that her approach to the issue amounted to undermining her superior and incitement;
  - c. She was further instructed to understand her immediate superior's personality;
  - d. The whole Department ought to have prepared an internal memorandum, raising the grievances.
9. The Claimant states that the Corporate Communications and Marketing Department prepared an internal memorandum dated 20<sup>th</sup> July 2016, raising the following grievances against Ruth Musembi, the Manager, Public Relations and Communications:
  - a. Condescending behaviour in communicating to staff;
  - b. Procuring a public relations agency, thus disregarding and devaluing the professional capacity of the Respondent's public relations staff;
  - c. Unfair promotion reviews, training and development.
10. The General Manager, Corporate Affairs is said to have responded by an internal memorandum dated 21<sup>st</sup> July 2016, undertaking to address all the grievances raised.
11. On 8<sup>th</sup> August 2016, the General Manager, Corporate Affairs wrote to the Claimant, asking her to provide specific cases in respect of the issues raised against the Manager, Public Relations and Communications. The Claimant was required to submit her response by close of business on 13<sup>th</sup> August 2016.
12. Subsequent to this, the Corporate Communications and Marketing Department staff wrote their own letter dated 10<sup>th</sup> August 2016, requesting for a departmental meeting. A meeting was scheduled for 16<sup>th</sup> August 2016.
13. By letter dated 22<sup>nd</sup> August 2016, the Claimant was transferred to Nakuru effective 1<sup>st</sup> September 2016. She appealed against the transfer on medical grounds, pointing out the lack of necessary specialist medical care at Nakuru. The Claimant states that she had a medical condition that required the attention of a neurologist, who was only available either in Nairobi or Mombasa.



14. The Claimant terms the transfer to Nakuru as malicious with the ill intention of denying her access to the highest attainable standard of health care services. Her appeal having been dismissed, the Claimant tendered her resignation on 31<sup>st</sup> October 2016.
15. The Claimant's case is that she was constructively dismissed. She therefore seeks reinstatement to the position held by her prior to resignation or in the alternative:
  - a. Maximum compensation awardable under the law;
  - b. Service pay for 7 years;
  - c. Terminal dues and benefits;
  - d. Costs plus interest.

### **The Respondent's Case**

16. In its Reply dated 27<sup>th</sup> March 2019, the Respondent admits having employed the Claimant as pleaded in the Statement of Claim.
17. The Respondent denies the Claimant's allegations of a hostile work environment and states that the transfer to Nakuru was in line with company needs and policy.
18. The Respondent denies receiving an appeal from the Claimant, against the transfer. The Respondent however admits having written to the Claimant on 14<sup>th</sup> September 2016, advising her that there were no neurologists in Nakuru and that she could be attended by a general physician.
19. The Respondent maintains that the Claimant tendered her resignation willingly and without any pressure.

### **Findings and Determination**

20. There are two (2) issues for determination in this case:
  - a. Whether the Claimant has proved a case of constructive dismissal;
  - b. Whether the Claimant is entitled to the remedies sought.

### **Constructive Dismissal?**

21. The Claimant pursues a claim of constructive dismissal against the Respondent. Black's Law Dictionary (Tenth Edition) defines constructive dismissal or discharge as:

“An employer's creation of working conditions that leave a particular employee or group of employees little or no choice but to resign, as by fundamentally changing the working conditions or terms of employment; an employer's course of action that, being detrimental to an employee, leaves the employee almost no option but to quit.”

22. In *Nathan Ogada Atiagaga v David Engineering Limited* [2015] eKLR constructive dismissal was defined in the following terms:

“Constructive dismissal occurs when an employee resigns because their employer's behaviour has become so intolerable or made life so difficult that the employee has no choice but to resign. Since the resignation was not truly voluntary, it is in effect a termination. For example, when an employer makes life extremely difficult for an employee to force the employee to



resign rather than outright firing the employee, the employer is trying to effect a constructive discharge.”

23. In *Milton M. Isanya v Aga Khan Hospital* [2017] eKLR the Court stated thus:

“In constructive dismissal the desire to resign is from the employee as a result of hostile working environment or treatment by the employer. A constructive dismissal occurs where the employer does not express the threat or desire to terminate employment but frustrates the employee to the extent that the employee tenders resignation.”

24. In their final submissions, both parties made reference to the decision in *Coca Cola East & Central Africa Limited v Maria Kagai Ligaga* [2015] eKLR where the Court of Appeal stated the following:

“The key element in the definition of constructive dismissal is that the employee must have been entitled 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 constituted a repudiatory breach of the contract of employment-this is the contractual test.”

25. The Court of Appeal went further to establish the following principles to be applied in adjudicating claims of constructive dismissal:

- a. What are the fundamental or essential terms of the contract of employment?
- b. Is there a repudiatory breach of the fundamental terms of the contract through conduct of the employer?
- c. The conduct of the employer must be a fundamental or significant breach going to the root of the contract of employment or which shows that the employer no longer intends to be bound by one or more of the essential terms of the contract.
- d. An objective test is to be applied in evaluating the employer’s conduct.
- e. There must be a causal link between the employer’s conduct and the reason for the employee terminating the contract i.e. causation must be proved.
- f. An employee may leave with or without notice so long as the employer’s conduct is the effective reason for termination.
- g. The employee must not have accepted, waived, acquiesced or conducted himself to be estopped from asserting the repudiatory breach; the employee must within a reasonable time terminate the employment relationship pursuant to the breach.
- h. The burden to prove repudiatory breach or constructive dismissal is on the employee.
- i. Facts giving rise to repudiatory breach or constructive dismissal are varied.

26. The Claimant communicated her resignation by her letter dated 31<sup>st</sup> October 2016, addressed to the Respondent as follows:

“Re: Resignation



I would like to hereby submit my 30 day resignation notice. This will be from 1<sup>st</sup> November to 30<sup>th</sup> in line with the guidelines set out within the present HRPP.

I thank you for the opportunity to have worked in this company for the past 7 years and making me part of the team to ensure that Kenyans have cheaper power.

I will appreciate provision of all that is due to me at the earliest.

Yours Faithfully,

(signed)

Nancy Alivitsa Juma”

27. In tendering her resignation, the Claimant did not cite any reason for her decision. In her pleadings and testimony before the Court however, she complained about a toxic work environment on two fronts; first, alleged harassment and bullying by her immediate supervisor and second, a transfer from Nairobi to Nakuru, which she termed as malicious and unfair.
28. There is evidence on record that there were work related grievances in the Claimant’s Department, which the Respondent’s management attempted to resolve. It is also on record that the Claimant had resisted her transfer, citing a medical condition, which required specialist attention in Nairobi. In its defence, the Respondent termed the Claimant’s transfer as an administrative action taken in the ordinary course of business.
29. While the Claimant’s transfer to Nakuru may have caused her some inconvenience, the Court was not convinced that this action by the Respondent was so severe as to make it impossible for the Claimant to continue working. Further, there was evidence that the Respondent’s management had made attempts to address the grievances within the Claimant’s Department.
30. To my mind, not every reflex resignation amounts to constructive dismissal. The threshold for constructive dismissal is achieved where the resignation has a direct causal link with the employer’s conduct, which may reasonably be described as intolerable. It cannot be said to be constructive dismissal, when an employee resigns because of a conventional inconvenience.
31. Overall, I find and hold that the Claimant has not established a case of constructive dismissal.
32. Her entire claim therefore fails and is dismissed with an order that each party will bear their own costs.
33. Orders accordingly.

**DELIVERED VIRTUALLY AT NAIROBI THIS 6<sup>TH</sup> DAY OF MARCH 2025**

**LINNET NDOLO**

JUDGE

Appearance:

Messrs. Atieno and Oduo for the Claimant

Mr. Anyoka for the Respondent

