



**Obiero v Office of the Director of Public Prosecutions (Petition  
E024 of 2023) [2025] KEELRC 1165 (KLR) (25 April 2025) (Judgment)**

Neutral citation: [2025] KEELRC 1165 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU  
PETITION E024 OF 2023**

**J RIKA, J**

**APRIL 25, 2025**

**BETWEEN**

**CASMIR AUGUSTUS OBIERO ..... PETITIONER**

**AND**

**OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS ..... RESPONDENT**

**JUDGMENT**

1. The Petitioner filed his Petition on 8th December 2023.
2. The Respondent was served with the Petition and relevant documents, but did not file its Response.
3. As late as 28th January 2025, almost 2 years after the Petition was filed, the Respondent had not filed its Response, and asked the Court for 14 days to comply.
4. The Petition was last mentioned before the Court on 4th March 2025, in the absence of the Respondent, when the Petitioner confirmed filing and service of his Submissions, and the Petition reserved for Judgment. The Respondent had not yet filed anything.
5. The Petition is founded on the affidavit of the Petitioner, sworn on 8th December 2023.
6. He states that he was employed by the Respondent as a Prosecution Counsel II, on 7th February 2022.
7. He resigned on 4th September 2023, after what he describes as haphazard transfers, across several Counties.
8. He was initially posted to Baringo County. He was advised in the letter of appointment that he would be taken through induction. Induction is the first step in welcoming new Employees, under the Respondent's Human Resource Manual, and the Induction Programme for Newly Recruited Prosecutors, 2023. He was not inducted.



9. He was invited for induction on 26th November 2023 to 1st December 2023. It was more than 1½ years after appointment, and 2 months after he resigned.
10. While stationed at Kabarnet Law Courts, he was required to attend to cases in Marigat and Elgeyo Marakwet Mobile Courts twice a month. The Courts were 45km and 97km respectively, from his station.
11. He was entitled to an allowance of Kshs. 14,000 for every quarter he attended Mobile Courts, in the year 2022.
12. All his colleagues at the station except the Petitioner, were paid their allowances through AIE. He was discriminated against.
13. He reported discrimination to the County Head Baringo, Nakuru Regional Head and the Deputy Director of County Affairs and Regulatory Services at the Head Office. There was no response.
14. While at Baringo County, the Petitioner developed a hearing problem, because of the adverse weather conditions. He was placed under continuous medication at MTRH and Eldoret Hospital.
15. He was transferred to Elgeyo Marakwet County on 16th June 2023, 10 months after he requested to be transferred.
16. In a letter dated 4th April 2023, the Respondent's Regional Coordinator, had transferred the Petitioner from Kabarnet to Nakuru.
17. The Petitioner relocated his family to Nakuru. He rented a house in Nakuru, and enrolled his child in a school at Nakuru.
18. It was when he reported at Nakuru, that he was informed that the Rift Valley Regional Coordinator had temporarily deployed him to Elgeyo Marakwet County.
19. When the Petitioner lodged a complaint, he was advised that transfer to Nakuru was inadvertent, and he was transferred back to Kabarnet with immediate effect.
20. He complied and returned to Kabarnet. Shortly after he returned, he received another letter from the Respondent dated 16th June 2023. He was informed that he had been transferred to Elgeyo Marakwet, with effect from 1st August 2023.
21. He reported at Marakwet, on 1st August 2023. By now, he had depleted his savings. He could not effectively discharge his duties, while maintaining his family at Nakuru.
22. He decided to resign, effective 1st September 2023.
23. He cleared with the Respondent. He was not paid his August 2023 salary. He was not paid transfer allowance on any occasion. He was not paid his Mobile Court allowance. He was subjected to discrimination, unfair labour practices and denied fair administrative action.
24. The Respondent's Human Resource Manual, clause 4.10.18 provides for transfer allowance equivalent of the transferred Employee's 1-month basic salary, before the Employee moves to the new station.
25. He submits that the Respondent violated Articles 10, 41, 47, 48, 159, 232 and 236 of *the Constitution*.
26. He prays for: -



- a. Declaration that the Respondent's conduct amounted to unfair labour practices, and was discriminatory.
  - b. Declaration that Prosecution Counsel are entitled to Daily Subsistence Allowance, when attending Mobile Courts.
  - c. Damages for constitutional violations.
  - d. Damages for constructive dismissal.
  - e. Mobile Court attendance allowance for 2 quarters at Kshs. 28,000.
  - f. August 2023 salary at Kshs. 136,894.
  - g. Transfer allowance from Kabarnet to Nakuru at Kshs. 69,394.
  - h. Transfer allowance from Nakuru to Kabarnet at Kshs.69,394.
  - i. Transfer allowance from Nakuru to Iten at Kshs. 69,394.
  - j. Airtime allowance for June, July and August 2023 at Kshs. 6,000.
  - k. Compensation for rent paid at Nakuru at Kshs. 55,000.  
Total...Kshs. 434,076.
  - l. Any other suitable remedy.
27. The issues are whether the Respondent's treatment of the Petitioner, amounted to constructive dismissal; whether the Respondent violated the Petitioner's constitutional rights; and whether he is entitled to the remedies sought.

**The Court Finds: -**

28. The Petition is not opposed.
29. The Petitioner's history as a Prosecution Counsel, employed by the Respondent; the terms and conditions of his service; his constant and haphazard transfers across the Counties; the withholding of transfer allowances and Mobile Court attendance allowances; and his eventual resignation, are uncontested.
30. The facts in this Petition mirror those in the leading decision in Kenya, on constructive dismissal, Court of Appeal decision, Coca Cola East & Central Africa Limited v. Maria Kagai Ligaga [2015] KECA 394 [KLR].
31. Ligaga was transferred from Kenya to Century Bottling in Uganda. Within a month of reporting she was told there was no role for her in Uganda. She was then offered a role in Mozambique. She did not settle in Mozambique and was offered roles in Nyeri and Kisumu in quick succession. She was compelled to move her family in these haphazard transfers. In the end she resigned, believing that the Respondent was no longer interested in honouring her contract.
32. She sued the Respondent for constructive dismissal.
33. It was held that the Respondent mishandled her development assignment and derailed her career. It was held that constructive dismissal occurs, when an Employer behaves in a manner that amounts to a repudiatory breach. The breach must be fundamental, going to the root of the contract. Constructive dismissal takes place, secondly, when the Employer's behaviour towards the Employee is



- so unreasonable, that the Employee could not be expected to stay. The Employer's behaviour creates an intolerable environment, making it difficult, for the Employee, to go on discharging his role. The E&LRC adopted these principles on constructive dismissal in *Deya v. Safaricom KEELRC 13561 [KLR] [16th December 2022] [Judgment]*.
34. The Court of Appeal cited various decisions from comparative jurisdiction including *Western Excavating [ECC] Limited v. Sharp [1978] ICR 674 [which adopts the contractual test]*.
  35. The Petitioner herein was mishandled by the Office of the Director of Public Prosecutions, right from the word go.
  36. He was employed as a Prosecution Counsel on 7th February 2022. He was supposed to be inducted, in accordance with the Respondent's Human Resource Manual and the Induction Programme for Newly Recruited Prosecution Counsel, 2023.
  37. Induction was an integral term of his service.
  38. Contrary to this fundamental term of the Petitioner's contract on induction, the Respondent extended its invitation to him for induction scheduled for 26th November 2023 to 1st December 2023.
  39. It was 1 ½ years after the Petitioner was appointed, and about 2 months since he resigned. Does not the Office of the Director of Public Prosecutions keep records? Why would it be inviting a former Employee for an induction course?
  40. Right from the beginning, the Respondent displayed signs of repudiatory breach, declining to take the Petitioner through induction, before setting him off, on the perilous prosecutorial role.
  41. He was posted to Kabarnet. He covered various Mobile Courts in the environs. While his colleagues, Mongare, Abwajo, Ratemo and Bartilol were paid Mobile Court allowance, the Petitioner was not.
  42. He was discriminated against, and denied equal pay, for work of equal value. As held by the Court of Appeal in *Ol Pejeta Ranching Limited v. David Wanjau Muhoro [2017] e-KLR*, paying different remuneration for the same work, or work of equal value, is plainly discriminatory and is an unfair labour practice. It is likewise both an act of repudiatory breach, that would result in constructive dismissal. He reported discrimination to the Respondent's Regional and Head Offices. The injustice was not corrected. The Petitioner ought to have been paid the same allowances paid to his colleagues, having undertaken the same prosecutorial role.
  43. He was initially stationed at Kabarnet Law Courts, Baringo County. He became ill on account of harsh weather conditions at Baringo. He was treated at Eldoret Hospital.
  44. He was transferred to Elgeyo Marakwet County. He was transferred to Nakuru Regional Office. He relocated his family, much like Maria Kagai Ligaga, in the Coca Cola decision cited above. He secured a new school for his child, and rented a house at Nakuru for his family.
  45. When he reported to Nakuru, he was told that there was no role for him there, and that his transfer was a mistake. He was redeployed to Elgeyo Marakwet County. He reported there but again wrote to his superiors, complaining about the peripatetic transfers. The Rift Valley Regional Coordinator wrote to him, advising that transfer to Nakuru was inadvertent.
  46. The Court in *Raphael Kihara Ruthuku v. Kenya Revenue Authority [2019] e-KLR*; *Mugo v. ASP Company Limited [Appeal No. E103 of 2021] [2024] KEELRC 191[KLR] [12th February 2024] [Judgment]*; and *Mutegi v. Chief Executive Officer, Kenya Development Leather Council & Another [2024] KEELRC 1447 [KLR]*, underscored that it is the prerogative of an Employer to transfer an



- Employee, and Courts will not interfere with the prerogative, unless it is inhumane, actuated by malice or bad faith, or otherwise exercised unreasonably.
47. The explanation by the Respondent that transfer to Nakuru was inadvertent, was a disguise for a decision that was unreasonable and inhumane, and perhaps actuated by malice and bad faith. It was not a prerogative that was exercised fairly and objectively.
  48. The Petitioner submits that, by the time he went back to Elgeyo Marakwet, he had depleted his financial resources. He could no longer sustain himself at Elgeyo Marakwet, and his family at Nakuru. He resigned.
  49. His resignation amounted to constructive dismissal. The facts surrounding his constant transfers; the advice that there was no role for him at Nakuru; and the adverse effect the transfers had on his family life, compare well with the facts in the leading case on constructive dismissal in the Kenyan jurisdiction, *Coca Cola East & Central Africa v. Maria Kagai Ligaga* [supra].
  50. His invocation of constitutional violations is well-founded. The irrational transfers; withholding of transfer allowances; the refusal to pay to him Mobile Court allowances while his colleagues were paid; and the deprivation of his right to induction at the outset, all amounted to unfair labour practices, and were discriminatory.
  51. The Supreme Court of Kenya in *Kenya Ports Authority v. Munyao & 4 Others* [2023] KESC 112 [KLR], defined the concept of unfair labour practice, to encompass all conduct prior to, in the course of, during and after employment that is prohibited by the law. Unfair labour practice occurs when one of the parties to the employment relationship, acts or omits to act, in accordance with the principle of fair dealing between capital and labour.
  52. The Respondent is a constitutional office, established under Article 157 of *the Constitution*. It is a public office, bound by the values and principles enumerated under Article 232 of *the Constitution*, which include affording adequate and equal opportunities for appointment, training and advancement at all levels of the public service; transparency; and accountability for administrative acts. The Respondent was not responsible for its administrative acts, by advising the Petitioner that his transfer to Nakuru, which compelled him to relocate his family, was inadvertent. It was not responsible by delaying his induction, and inviting him for induction, when he was already an ex-Employee.
  53. Other Articles of *the Constitution* that were violated by the Respondent, as observed above include the right not to be discriminated against [27]; the right to fair labour practices [Article 41] and the right to fair administrative action [47].
  54. Section 5 of the *Employment Act*, forbids Employers from discriminating against Employees with respect to recruitment, promotion, training and terms and conditions of service, among other factors. Section 5[5] specifically demands that an Employer shall pay his Employee, equal remuneration, for work of equal value.
  55. ILO *Convention No. 100 of 1951*, the Equal Remuneration Convention, mandates Employers to pay Employees equal pay for work of equal value. Jobs with similar requirements, skills and responsibilities, should be compensated equally.
  56. These statutory and international labour standards, have anchorage in Article 41 [2] [a] and [b] of our Constitution, which states that Employees have the right to fair remuneration and to reasonable working conditions.
  57. Prayer [a] is allowed. It is declared that the Respondent violated the Petitioner's constitutional rights under Articles 27, 41, and 47 of *the Constitution*.



58. The Court understands the Petition to be an individual litigation, rather than a public interest litigation brought by the Petitioner, on behalf of Prosecution Counsel at large. Prayer [b] seeking declaration that Prosecution Counsel in general, are entitled to daily subsistence allowance while attending Mobile Courts, is misplaced. The Petition is not collectively presented, to warrant declaratory order granting a benefit across the board. The evidence availed to the Court is not about the benefits that should be paid to Prosecution Counsel.
59. Prayer [c] is merited. The Respondent clearly violated the Petitioner's constitutional rights. There were multiple violations, by a constitutional office, warranting damages. Damages to redress these violations are granted at Kshs. 750,000, under paragraph [c].
60. The prayer for damages in constructive dismissal [d] is similarly merited. There is a catena of judicial precedents, establishing that the Respondent's conduct towards the Petitioner amounted to repudiatory breach, and created an adverse environment, which made it difficult for the Petitioner to go on discharging his contractual role.
61. In *Deya v. Safaricom Limited* [supra] the Court was of the view that constructive dismissal is not a creature of statute. It is not the same concept as unfair termination. It is termination which is initiated by the Employee, and the standards for fair termination under Sections 41, 43 and 45 of the *Employment Act*, are inapplicable. It is a common law concept, and damages in redressing constructive dismissal, do not have to be capped at the equivalent of an Employee's 12 months' salary. While the cap of 12 months' salary in compensation for unfair termination is a useful guide, commonly adopted by the Courts in awarding damages for constructive dismissal, it is not mandatorily applicable to damages for constructive dismissal.
62. The Petitioner is granted damages for constructive dismissal, at Kshs. 750,000.
63. He is allowed the prayers for Mobile Court attendance allowance at Kshs. 28,000; August 2023 salary at Kshs. 136,894; and transfer allowances at Kshs. 208,182. These allowances were payable to the Petitioner, and were paid to the Petitioner's colleagues.
64. His prayer for rent paid at Nakuru is declined. The Court in awarding him damages for constitutional violations and constructive dismissal, has taken into account the overall harm occasioned to the Petitioner by the Respondent, which would include such things as the cost of securing a new house at Nakuru. It is also noted that the Petitioner was entitled to house allowance under his contract.
65. His letter of appointment did not provide for airtime allowance. There is no support for the prayer.

In sum, it is ordered: -

- a. It is declared that the Respondent violated the Petitioner's constitutional rights under Articles 27, 41 and 47 of *the Constitution* of Kenya.
- b. The Respondent shall pay to the Petitioner damages for constitutional violations at Kshs. 750,000.
- c. The Respondent shall pay to the Petitioner damages for constructive dismissal at Kshs. 750,000.
- d. The Respondent shall pay to the Petitioner Mobile Court allowance at Kshs. 28,000; August 2023 salary at Kshs. 136,894; and transfer allowances at Kshs. 208,182.
- e. The total monetary award is Kshs. 1,873,076.



f. No order on the costs.

g. Interest allowed at court rate, from the date of Judgment, till payment is made in full.

**DATED, SIGNED AND DELIVERED AT NAKURU ELECTRONICALLY, THIS 25TH DAY OF APRIL 2025.**

**JAMES RIKA**

**JUDGE**

