



Kinoti & 2 others v Directline Assurance Company Limited (Cause E1059 of 2024) [2025] KEELRC 1058 (KLR) (3 April 2025) (Ruling)

Neutral citation: [2025] KEELRC 1058 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E1059 OF 2024**

**S RADIDO, J
APRIL 3, 2025**

BETWEEN

**STELLA NKIROTE KINOTI 1ST CLAIMANT
ELIZABETH LILIAN OUKO 2ND CLAIMANT
FREDRICK IRUNGU GITAHU 3RD CLAIMANT**

AND

DIRECTLINE ASSURANCE COMPANY LIMITED RESPONDENT

RULING

1. On or around 6 December 2024, the Chair of the Board of Directline Assurance Co. Ltd (Respondent) and Chair of the Human Resource & Nominations Committee wrote to Stella Kinoti, Elizabeth Lilian Ouko and Fredrick Irungu Gitahi (the Claimants) sending them on compulsory leave to facilitate investigations on various operational issues. The letters also referred to a forensic audit commissioned by the Insurance Regulatory Authority.
2. On 11 December 2024, the Claimants moved the Court alleging constructive dismissal, constitutional violations and breach of contract.
3. The Claimants pleaded the following reliefs:
 - i. A declaration that the decision of the Respondent made on 6th December 2024 to send the Claimants on compulsory leave amounts to a constructive dismissal/termination of their employment contracts.
 - ii. A declaration that the Respondent's decision made on 6th December 2024 to send the Claimants on compulsory leave contravened the Claimants' constitutional rights under Articles 35 and 41 of *the Constitution*.



- iii. A permanent injunction to restrain the Respondent from terminating the Claimants' employment for failure to obey illegal and fraudulent instructions and without following due process.
 - iv. An order that the Respondent do pay to the Claimants all their salaries and allowances for the period of compulsory leave.
 - v. That the Respondent issues a Memo to all staff clarifying that the Claimants are not under investigation by the Insurance Regulatory Authority and that the intended forensic audit by the Authority is not and was never directed towards the Claimants.
 - vi. That the Respondent issues a Memo to the Respondent's employees that the Claimants are not and never was a subject of an audit as alluded to in the WhatsApp message to the remaining members of the Respondent's EXCO dated 6th December 2014.
 - vii. Any other better or further relief that the Court may fit in the circumstances of this case.
 - viii. The Respondent pays the costs of this suit.
4. At the same time, the Claimants filed a Motion seeking orders:
- i. ...
 - ii. ...
 - iii. That pending the hearing and determination of this Cause, the Respondent herein, their agents and/or servants be restrained from terminating the Claimants'/applicants' respective contracts of employment or howsoever interfering with the applicants' discharge of their duties and to unconditionally reinstate them to their respective positions of Head of Finance, Human Resource Manager and Internal Auditor respectively and restore all their work privileges, including access to emails and company systems.
 - iv. That this Honourable Court be pleased to suspend letters dated 6th December 2024, sending the Claimants'/applicants to compulsory leave until further orders of this Honourable Court.
 - v. That this Honourable Court be pleased to suspend letters dated 6th December 2024, sending the Claimants'/applicants to compulsory leave pending the hearing and determination of this suit.
 - vi. That costs of this application be provided for.
5. The primary grounds in support of the Motion were that sending the Claimants on compulsory leave was unlawful; the Claimants had declined to comply with fraudulent orders issued by new Management and Board of Directors leading to their being sent on compulsory leave; the Claimants would not be able to defend themselves in a case of disciplinary proceedings because they had been locked out of their offices and their laptops confiscated; the Respondent had made the work environment hostile with a view to force the Claimants to resign and that the conduct of the Respondent amounted to constructive dismissal.
6. On 16 December 2024, the Respondent filed a Notice of Preliminary Objection contending:
- Take notice that the Respondent herein shall raise preliminary objection to the entire suit during the first appearance or hearing of this matter or so soon thereafter and supplicate that the entire suit be dismissed or otherwise struck out with costs in limine on, inter alia, the ground that the Claimants herein are non-suited as the very prerequisite mandatory



condition for a suit grounded on constructive dismissal has not been met, that is, it is not in dispute nor is it disputable nor has it been pleaded by the Claimants that they resigned before instituting this suit.

7. When the Motion came up on 17 December 2024, the Court directed the parties to file and exchange responses and submissions. The Court declined to issue any ex-parte injunctive orders.
8. The Claimants filed their submissions on 10 February 2025.
9. On 11 February 2025, the Claimants informed the Court that the Respondent had commenced disciplinary action and sought preservative orders.
10. The Claimants also indicated that they had filed their submissions. The Respondent had not complied with the directions of 17 December 2024 within the agreed timelines.
11. The Respondent requested for leave to have its replying affidavit admitted out of time, and the Court indulged the Respondent and directed it to file a replying affidavit before 14 February 2025. The Respondent was also directed to file its submissions before 28 February 2025.
12. The Respondent instead filed a replying affidavit and submissions on 7 March 2025 (the affidavit and submissions were not filed within the agreed timeline).
13. In the affidavit, the Principal Officer of the Respondent deponed that the dispute between it and Elizabeth Lilian Ouko and Fredrick Irungu Gitahi (2nd and 3rd Claimants) had been settled out of Court, and these Respondents had indicated they would withdraw their claims; that these 2 Claimants had resumed duty; the Cause did not make out a case for constructive dismissal; forensic audit had implicated Stella Nkirote Kinoti (1st Claimant) in serious financial malpractice; the 1st Claimant had been issued a notice of termination of contract through a notice dated 4 February 2025, but it had been held back because of orders issued by the Court; the Directors who resolved to send the Claimants on compulsory leave had been appointed by the High Court and that the Directors had not instructed the Claimants to act on fraudulent transactions.
14. On the same day, the Respondent filed a second Notice of Preliminary Objection contending:
 - i. That the entire suit is incurably defective, hopelessly incompetent, an abuse of the process as the mandatory prerequisite for declaration for and construing constructive dismissal/termination during principle (g) as set out in the locus classicus on constructive dismissal being the Court of Appeal of Coca-Cola East & Central Africa Limited Vs. Maria Kagai Ligaga that is, the employee must have resigned or constrained to resign has not been met or complied with as the 1st applicant is still an employee of respondent and has never resigned for constructive dismissal to even be considered by this Honourable Court.
 - ii. That the 1st Claimant's application dated 11th December 2024, being predicated on a case which is fatally defective and hopelessly incompetent, the same is null and void as well set out in case of Macfoy Vs. Africa Limited by Lord Denning Acts that are null and void.
 - iii. That the fact that the 1st applicant has never resigned or has not resigned first is neither in dispute nor disputable, therefore have the requirements of a Preliminary Objection in the case of Mukisa Biscuits have been met.
15. The Court has considered the Motion, affidavits and submissions and makes the following determinations.



Notice of Preliminary Objection filed on 7 March 2025

16. The Respondent's Notice of Preliminary Objection filed on 7 March 2025 was filed after the Court had given directions. The Claimants have not been granted an opportunity to respond to it, and the Court will not address it in this Ruling.

Motion filed on 11 December 2024 and the Preliminary Objection filed on 16 December 2024

17. The substantive prayer in the Motion under consideration is proposed order (iii) seeking an order restraining the Respondent from terminating the employment contracts of the Claimants.
18. The Respondent's Principal Officer deponed that the dispute with the 2nd and 3rd Claimants had been settled out of Court and they had resumed work. These Claimants have not filed any rebuttals to the deposition and the Court concludes that it would not be prudent to grant any of the orders sought in favour of these Claimants.
19. The Claimants asserted a cause of action for constructive dismissal and unfair labour practices
20. At this interlocutory stage, the Court is not expected to get into an interrogation of disputed facts. Whether the Respondent violated the Claimants' fair labour rights cannot be evaluated before the interrogation and testing of evidence from both parties.
21. It is not in dispute that the gravamen of the Claimants' action is constructive dismissal.
22. The Respondent urged the Court not to grant the orders sought because the cause of action was grounded on constructive dismissal, and that it was imperative that the Court determines whether constructive dismissal had been proved before allowing any order reinstating the Claimants to employment.
23. In this Court's view, it would be antithetical to the doctrine of constructive dismissal and fair labour practices to maintain or preserve an employment relationship in a case where a party asserts that the employer has created a hostile work environment because the Court would be sending an employee to offer personal services within a hostile work environment.

Orders

24. The Motion dated 11 December 2024 is found without merit, and it is dismissed.
25. The Respondent missed several milestones for filing documents as directed by the Court. It is denied costs of the Motion.

DELIVERED VIRTUALLY, DATED AND SIGNED IN NAIROBI ON THIS 3RD DAY OF APRIL 2025.

Radido Stephen, MCI Arb

Judge

Appearances

For Claimants Gacheru Ng'ang'a & Co. Advocates

For Respondent Gatundu & Co. Advocates

Court Assistant Wangu

