



**Dahnani v Standard Chartered Bank Ltd (Cause 489 of 2018)  
[2025] KEELRC 1458 (KLR) (16 May 2025) (Judgment)**

Neutral citation: [2025] KEELRC 1458 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE 489 OF 2018  
NJ ABUODHA, J  
MAY 16, 2025**

**BETWEEN**

**SEEMA DAHNANI ..... CLAIMANT**

**AND**

**STANDARD CHARTERED BANK LTD ..... RESPONDENT**

**JUDGMENT**

1. The Claimant through a Memorandum of Claim dated March 28, 2018 pleaded inter alia: -
  - a. At all material times, the Claimant was a bona fide employee of the Respondent having been seconded to the Respondent's Kenya office as the Executive Director, Strategic Family Initiatives.
  - b. The Claimant was seconded to the Kenya office from the United Kingdom in 2012 and took on a role as Executive Director, Strategic Family Initiatives.
  - c. In 2015, she moved from Corporate & institutional Banking to take on a role as Liaison Manager, Private Clients, East Africa reporting to the Managing Director, Private Clients, Africa. She was required to satisfy the bank (hereinafter referred to as the Company) that she held all internal and external qualifications, accreditations, certifications and regulatory approvals and to inform the bank in the event she ceased to hold them. All this was contained in a contract of employment dated March 11, 2015, which further indicated that her previous service with the company would be deemed to be continuous with the date of her commencement of service being 11<sup>th</sup> September 2000.
  - d. In order to comply with the above referenced terms, the Claimant was required to resign from her employment with her home country on acceptance of the offer, which she duly did. These terms are well spelt out in the contract annexed at Page 31-43.



- e. The contracts never gave the company the right to change her job description or deviate therefrom. Good practice would require that in the event this was to happen, it would be in writing and with her acquiescence.
- f. The said contract also provided that her employment was for an indefinite period but terminable with a 3 month notice. The Claimant was entitled to participate in the Group's Discretionary Total Variable Compensation Plan and a paid annual leave of 32 days. The provisions of this plan entitled her to the following benefits {at the time of leaving)
  - i. Base Salary of Kshs 17,589,604.20
  - ii. Target Bonus of Kshs 9,075,520
  - iii. Housing allowance of Kshs 1,920,000
  - iv. Access to company Sharesave scheme
  - v. International medical coverage for spouse and dependents
  - vi. Pension with 14% contribution from the Respondents
- g. The Claimant served diligently in her new position\* as she had. done before both in Kenya and in the UK. On moving to the Private Bank, she was given the impression that she could run a similar role to her previous one but under the structure of the Private Bank where she would foster new relationships and facilitate "One Bank" transactions. To take on this role, the Claimant, was required to localize off her expat contract, with significant, reductions to her package and become an employee of SCB Kenya which she did so in May 2015. (Page 31-43).
- h. The Claimant's supervisor was Nash Mithani to whom she reported from a matrix perspective as well as the Chief Executive Officer, Kenya & East Africa, Mr. Lamin Manjang, to who she reported from a governance perspective.
- i. As was expected of her, the Claimant diligently wrote monthly reports to both Nash Mithani and Lamin Manjang, giving expected details of events and new deals as well as indicating where she required assistance. The new role presented many teething problems including lack of structure and basic data.
- j. With time, the Claimant realized that over and above the stated teething problems, her coverage area was moving away from East Africa to just Kenya, an obvious unilateral deviation from the expressed provision in her contract of employment.
- k. As a diligent employee, the Claimant took it upon herself to raise the obstacles and difficulties she was facing in Her periodic reports but no assistance was ever forthcoming. She also pointed out her sacrifice of a 40% pay cut moving from Expat to Local and that her liabilities remained in GBP with the local currency devalued by 15% since then.
- l. In December 2015, the Claimant wrote her self-assessment report which she sent to Nash Mithani and Camin Manjang for review. The Claimant avers that her review was done over a phone discussion with Nash Mithani that lasted less than 10 minutes. This call was placed to her while she was on leave. It is the Claimant's position that no issues were raised over her performance or related matters during that discussion or later thereafter in any manner whatsoever.



- m. The Claimant avers that this mode of assessing her went against laid down Company procedures as the expected full self-assessment conversation did not take place and her ratings were not communicated to her before being issued with her final bonus letter (on February 25, 2016. The said letter was sent to her via a system generated e-mail rather than holding a meeting or a teleconference where she would have had a chance to ask any question or seek clarifications.
- n. The Claimant states that she challenged the management of the Respondent regarding the contents of the bonus letter initially via an email and then through a conference call with Nash Mithani, Hugo Borges (who had recently taken over as the matrix manager for the role) and Helen Mold, UK Human Resources but was given an unsatisfactory response. She felt compelled to raise an official grievance dated March 13, 2016 as per the laid down procedures of the Respondent.
- o. The Claimant avers that no response was forthcoming; a trend that she had begun experiencing whenever she raised any issues concerning her work and role. She was compelled to make numerous follow-ups to Lamin Manjang, HR RM in Kenya and London and at the Group level. She only got an official acknowledgment of her grievance 2 months later, which was, again, contrary to the Company's Group Grievance policy.
- p. By this time, the majority of the Claimant's deal flow responsibilities with the corporate bank had been handed over to a new team based in London, the Ultra High Net Worth Team. Over the course of 2015/2016 this team was given the responsibility of being 'the conduit between the Private Bank and colleagues from CIB, CB and the Product teams'. This was exactly what she left her CIB role to do for the Private Bank and hence left her role with little substance and certainly not reflective of her capabilities, experience and seniority, which are the key attributes that had led to her being assigned the role in East Africa.
- q. The Claimant continually communicated her frustrations with her role via e-mail and phone conversations to senior heads of business and her new matrix manager, Hugo Borges but she received no assistance. She was forced to raise this issue again as part of her grievance for which she was forced to follow up on the report with no support at all? This was a very frustrating, demotivating and draining experience which she never thought she would ever go through given her qualifications, experience and previous roles at the Respondent.
- r. Eventually her grievance was heard after much struggle and frustration and the Company decided that the bonus awarded in March 2016 should be revised to an average bonus based on a rating which in itself was unwarranted. The remaining portion of her bonus was only paid in September 2016. The second element of her grievance was the issues around her role and the decision on this was that there was inconclusive evidence, in spite of all her communication and protests together with the reality on the ground.
- s. The Claimant avers that the Company never sought for any information or clarifications from her that would enable them to see her point of view or give an in depth reply to her queries. At one point, she was informed by HR Manager, Employee Relations, that the management would not issue her any written communication on this specific area given but that as it was being addressed by senior people in the management, the matter would be resolved in her favour. The Claimant followed up 'with said officer on the same issue via email on 2<sup>nd</sup> September.
- t. As was the trend, no solution or response was forthcoming, forcing the Claimant to take up the matter yet another time with the HR in London. She was advised to consider redundancy



as an option given the majority of her role had fallen away and that there appeared to be no other role at the time in Kenya that would suit her. This advice was given via a phone call on 26<sup>th</sup> August 2016 and followed up by and email on August 29<sup>th</sup> 2016 with the stated office.

- u. A short while later, the HR in London made an about turn and advised that the business still needed someone with her seniority and experience. Earlier on, Ian Gibson, Head of Private Banking Africa and Middle East, had also suggested that she looks for another role internally as the Private Bank business did not need someone with her level of experience and skill set. Suffice to say, no facilitation was given even after this suggestion. Much of these communications were via phone calls.
  - v. The Claimant states that from this time on, she experienced deep frustration although she tried her best in her role. In spite of her expertise, seniority and experience, she was only used to provide referrals, to organize and host events and provide administrative help to incoming teams.
  - w. The Claimant further avers that once again, her mid-year assessment in June 2016 was not conducted as required. There was no conversation and follow up on self assessment from her seniors. This, she avers, was a loud communication to her that she did not matter, compounded with the fact that she had been raising complaints all along. Part of her grievances was the failure to properly appraise her, which in itself would assure her of the importance of her role and her future at the Company.
  - x. The Claimant states that having nothing left to do, wallowing in deep frustration and regret for her signing up to serve the Respondent in East Africa, subsequently localizing her contract and taking a 40% pay cut as advised by the Respondent and having left a lucrative position in London, she tendered her resignation from the Respondent on September 25, 2016 which was acknowledged by the Respondent's CEO on October 24, 2016.
2. The Claimant in the upshot prayed for the following against the Respondent;
- i. A declaration that the respondent's conduct towards the claimant amounted to constructive termination.
  - ii. The termination of the claimant was thus unfair and unlawful
  - iii. An award of Kshs. 26,012,800/- made up as follows:
    - a. accrued leave for one year.....Kshs. 1,625,800/-
    - b. 3 month's salary in lieu of notice Kshs.....4,877,400/-
    - c. 12 month's salary as compensation.....Kshs. 19,509,600/-
    - d. Unpaid Housing allowance.....Kshs. 1,920,000/-
    - e. Pension Contribution
    - f. Variable compensation as per contract
    - g. any other relief that the Court may grant.
3. The Respondent in response filed its Response to the Memorandum of Claim dated June 14, 2018 and averred inter alia:-



- a. In response to paragraph 3 of the Memorandum of Claim, the Respondent admits that the Claimant was appointed on or about November 21, 2011 and seconded to the Respondent on international assignment for 36 months. The Claimant reported for the assignment in 2012. The said appointment was governed by the Assignment Document dated November 21, 2011, the Respondent's policies and the Employment Act, 2007.
- b. In response to paragraphs 5 and 6 of the Memorandum of Claim, the Respondent avers that the Claimant resigned from her employment with Standard Chartered Bank UK PLC.
- c. Upon resignation from SCB UK, the Claimant applied for a local position with SCB Kenya.
- d. The Claimant was appointed, Liason Manager, Private Clients, East Africa to serve on the Respondent's contract terms effective May 1, 2015.
- e. In response to paragraph 7 of the Memorandum of Claim, the Respondent states that the contract issued to the Claimant by the Respondent explicitly informed the Claimant of her new job description for which she consented as condition of her acceptance.
- f. In further response to paragraph 9 of the Memorandum of Claim, the Respondent avers that the Claimant took up the role from the Respondent after applying for the same and was in no way compelled to terminate her international assignment.
- g. In further response to paragraphs 11 and 12 of the Memorandum of Claim, the Respondent avers that the Claimant was accorded support and necessary assistance necessary to carry out her assignments in the course of her employment.
- h. In further response to paragraphs 14,15 and 25 of the Memorandum of Claim, the Respondent avers that the assessment discussions took a reasonable, time. The Claimant was granted adequate time for the assessment.
- i. In response to paragraph 16 and 17 of the Memorandum of Claim, the Respondent states that the concerns of the Claimant were addressed by the Line Manager.
- j. In response to paragraphs 18,19, 20 and 21 of the Memorandum of Claim, the Respondent states that the grievances raised by the Claimant were handled conclusively and no appeal was ever instituted by the Claimant.
- k. In response to paragraph 22 and 23 of the Memorandum of Claim, the Respondent states that it is not aware of any official having asked the Claimant to consider taking up redundancy as alleged by the Claimant. Moreover, declaration of a redundancy is always at the initiative of the employer.
- l. In response to paragraph 27 of the Memorandum of Claim, the Respondent states that the line manager had the right to review the Claimant's job description and to call for discussions on the Claimant's job description.
- m. In response to paragraph 28 and 29 of the Memorandum of Claim, the Respondent states that the line manager clearly responded to the issues raised by the Claimant and explained to her that she may not have fully understood the scope of her role.
- n. In further response to paragraph 45 of the Memorandum of Claim, the Respondent avers that;
  - a. The Claimant was paid all her accrued leave dues.



- b. The Claimant was not entitled to notice pay as she resigned and gave notice to the Respondent.
  - c. The Claimant's termination of service was lawful on her initiative and thus there is no basis for her claim of 12 months' pay compensation or house allowance.
  - d. The Claimant was only eligible to pension and variable compensation within the terms of her contract.
4. The Respondent in the upshot prayed that the claim be dismissed with costs.

### **Evidence**

5. At the hearing on October 26, 2023 the claimant informed the Court that she relied on her witness statement dated May 30, 2018 as her evidence in chief. She also relied on her documents filed with the claim.
6. In cross-examination, it was her evidence that she was claiming Kshs. 26,012,800 against the respondent and that she joined the respondent in May, 2015 and resigned on September 26, 2016 and that she must have take some leave during this period. It was her evidence that she came to Kenya under contract seconding her from the UK and that her employer was Stanchart PLC. She stated that she entered into a new contract with the respondent which was found at page 32 of her bundle of documents. The contract was dated 11<sup>th</sup> March, 2015 and that the UK contract ended when she entered into contract with the respondent.
7. The claimant further stated that under the new contract, the reporting lines were UK, Dubai and Kenya but the governance lines were in Kenya. The contract designated her as a Band 4- Director Level and that she was a client liaison manager. However the contract never referred to her as director level manager. It was her evidence that she signed the contract and accepted its terms. Regarding reporting lines, it was her evidence that she reported to the respondent's CEO and that direct reporting was to Marketing Head EA- Private Banking and that there was no one in Kenya (the respondent) with that title. She stated that she did not sign her job description and that one needed not to have signed their job description.
8. Concerning grievance procedure, it was her testimony that the contract provided for grievance handling procedure which applied to all positions. The grievance was to be lodged with the local CEO and HR in London and that she followed instructions from HR both in Kenya and London and that her complaint would be directed to Kenya because that was where her second contract was. Her complaints were over process rating and bonus. The claimant admitted that there was grievance hearing meeting on July 14, 2016 and the report was on whether the grievance should be upheld or not but she was not involved in the process. She further conceded that the report was her document and that she filed it. At page 121 of the document it was stated that the grievances were addressed and that the concern over bonus was upheld. She denied that her grievance on rating and role were never upheld. The claimant further stated that the grievance outcome was given to her and that she was advised of her right of appeal by Gautam Duggal who sat in Dubai but did not appeal because she was advised that it would be too late.
9. Concerning her house allowance, the claimant stated that this was factored in her salary at a diminished rate and that she was a member of the pension scheme and this was managed by a separate entity from the respondent.



10. Regarding her resignation, she stated that her resignation letter was dated September 25, 2016 and that the resignation was accepted. According to the claimant, she resigned because she had no choice however she did not say so specifically in her resignation letter but that she followed up on issues with HR Kenya and UK. She received payment from September to December which was equivalent to three months as provided by the contract and further that she agreed with the terms of the exit and that she received her salary during the notice period and that her last payslip showed she was paid leave upon exit.
11. In re-exam, the claimant stated that correspondence confirmed that her position was Director-Private Banking and that it was standard practice not to sign job description documents. Regrading grievances, it was her evidence that she raised the first one in March, 2016 and received the response some 23 weeks later. She sent her grievance to the local CEO, UK and Dubai. The claimant maintained that her day to day business included reporting to London and Dubai.
12. The respondent called as witness one Evans Munyori who stated that he was the Head of HR for the respondent and that he recorded a statement in the matter dated April 26, 2023 which he relied on as his evidence in chief. He also relied on the documents filed by the respondent in support of their defence to the claim. According to Mr. Munyori, the respondent had an elaborate grievance handling policy. (page 82 CBD). The claimant raised a grievance under the policy. It was dated March 13, 2016 in which she raised two concerns. One was on performance and rating and another was on bonus she was getting after appraisal. A grievance hearing was conducted and the minutes were signed by the claimant. The claimant was informed of the outcome of the grievance hearing. The rating was found sufficient for the year and upheld while the bonus was varied and an extra payment of Kshs. 4 million paid to the claimant.
13. It was his evidence that all employees have the right of appeal and that the claimant never appealed. He further testified that the claimant resigned and did not give a specific reason for doing so. She merely said that the year had been difficult for her. The claimant signed exit checklist and that she served the notice period and was paid her full salary during the notice period.
14. In cross-examination he stated that he was familiar with the timeliness in the grievance procedure and that the grievance should be responded to within 2 months and that the respondent responded to the claimant in 3 months which he found reasonable. Concerning bonus, it was his evidence that this was reviewed based on peer review of individuals at the same level. He denied that the previous bonus was discriminatory. Mr. Munyori further stated that bonus was discretionary and could not be paid if undeserved.
15. Concerning resignation, he stated that the bank accepted the claimant's resignation. The claimant was paid her terminal dues after she had left and that she was alerted of the payment through SMS.

### **Claimants' Submissions**

16. The claimant's counsel Mr. Njiru posed a question whether his client's resignation amounted to constructive dismissal and sought to demonstrate that indeed it was. Counsel submitted that her client left a prestigious and well-paying job in the UK in Corporate & Institutional Banking with the promise of setting up a new unit with the respondent in Kenya. The claimant was to be the Liaison Manager, Private Client's, East Africa reporting to the Managing Director. She was required to prove that she held all internal and external qualifications, accreditations, certifications and regulatory approvals and to inform the Bank in the event she ceased to hold them for her to qualify for this role.



17. According to Counsel, this, as a prerequisite, stood in stark contrast to her meeting with her boss Mr. Hugo Borges who announced to her that he doubted and did not even know the qualifications the claimant had when she demanded for a face to face meeting to discuss her frustration after trying to get her grievance addressed through the HR and UK office for over a year. According to the claimant, she could not have been given the new role of Liaison Manager Private Clients, East Africa, if all her qualifications ( academic, technical as well as legal) were in doubt.
18. According to Counsel, the claimant therefore became surprised when elements of her role started to be gradually hived off her job description and being assigned to her juniors in the newly created “Ultra High Networth Team” without her knowledge. This fact of the gradual erosion of her roles as spelt out in her job description was admitted by the Head of HR in London through their telephone conversation on August 16, 2016 as well as her email of 29<sup>th</sup> August, 2016 to the said HR. Counsel submitted that the claimant conducted herself with diligence and wrote monthly reports to both Nash Mithani and Lamin Manjang giving expected details of events and new deals as indicating where she required assistance. According to the claimant, the new role presented many teething problems including lack of structure and basic data to make it a success. She only expected the respondent to appreciate this and give an equal level of support and room for her to excel.
19. Regarding appraisals, counsel submitted that her client did her own self appraisals twice and expected a formal discussion with her boss Mr. Mithani as was the norm in the HR procedures of the respondent however on both occasions, her boss casually and demandingly purported to appraise her over a phone call which lasted less than 10 minutes without giving the claimant a chance to actively participate in the appraisal. Further, her appraisal rating was released and a bonus determined without sharing the proposed ratings with her first as was the policy. This, according to counsel and failure to respond to her client’s request for support and dishing out her roles to her junior’s without her knowledge added to her frustration which was already building up.
20. Regarding the grievance processing, counsel submitted that after lengthy period of being ignored and frustrated, her client decided on one final attempt and raised her complaints in March, 2016 in accordance with the respondent’s policy. Her grievance was acknowledged by the MD and her boss some two months later and the grievance determined some six month’s later in September, 2016. According to the claimant, the decision to revise her bonus rating was a great indictment on the respondent given the manner in which her appraisal and rating was done. The decision on the issue surrounding her role was that there was inconclusive evidence despite her communication and protests and the reality on the ground.
21. Counsel submitted that given the foregoing, the claimant tendered her resignation on September 25, 2016 which was acknowledged by the respondent’s CEO on October 24, 2016. According to Counsel, the conduct of the respondent in handling the claimant’s issues as an employee was a classic case of frustration that would be a legitimate cause for an employee to resign under circumstances that would amount to unfair termination. Counsel in support, relied on the case of Coca cola East & Central Africa Ltd vs. Maria Kagai on the issue of what amounted to constructive dismissal.
22. In conclusion counsel submitted that that the claimant deserved the orders sought except leave which was paid after she had left the respondent’s employment.

### **Respondent’s Submissions**

23. Mr. Odera and Ms Kadima for the respondent on the other hand submitted on the issue of constructive dismissal that the same is fundamentally a breach of an employment contract by an employer of such nature as to frustrate the continued execution of the contract by the employee. Counsel on this



point relied on the dictum of Lord Denning MR in the case of *Western Excavating (ECC) Ltd v. Sharp* [1978]ICR 221 and the local case of *Coca cola East Africa Ltd v Maria Kagai* [2015] KECA 394 KLR. It was submitted that the employer's conduct must constitute a repudiatory breach of the employment contract, serving as effective cause for the employee to resign. Additionally, the burden of proof rested with the claimant who must establish a causal link between the employer's conduct and their resignation as a response.

24. The claimant was employed as a Client Liaison Manager (CLM) with a job description that was summarised in appendix A of the contract titled "Private Bank In-Country Liaison Managers in Africa. Which was stated as " to further drive referrals between our onshore operations in Africa and Private Bank, we are putting client liaison managers (CLM) on the ground, who will work with local networks to stimulate/coordinate lead generation for onward referral of prospects to the Private Bank." According to counsel, the essence of (CLM) position was encapsulated within the terms of the employment contract between the parties, in the description of the job, key responsibilities and delineation of the 'dos' and 'don'ts'.
25. According to Counsel, the claimant's key responsibility of the CLM's coordinative role encompassed collaborative working with CEOs, segment heads, relationship managers- East Africa and Private Banking Management team Africa. To this end the claimant had a responsibility of developing a plan to promote Private Banking, work collaboratively with relationship managers and identify target clients. She was to be the main contact to facilitate communication between corporate and institutional clients and offshore private relationship management teams, maximise client engagement, network with internal stakeholders and support relationship managers.
26. The coordinative role of the CLM was further exemplified by the claimant's key performance measurables which included introduction and onboarding of new private banking relationship in East Africa, monthly activity reports and action plan to market heads, Africa private stakeholders and offshore Africa Private Banking Team.
27. Counsel further submitted that in direct contradiction to the express provisions of the employment contract and the principles established in *Coca cola East & Central Africa* case, the claim for constructive dismissal by the claimant has been erroneously grounded on parole evidence. The allegation of repudiation of the contract was premised on terms of engagement beyond the job description, key objectives, key responsibilities and key performance measurables outlined in the contract. Counsel submitted that the claimant's reliance on the extraneous terms of employment contract was discernible at paragraph 9 of her statement of claim and paragraph 6 of her submissions where she claimed that on moving to Private Bank, she was given the impression that she could run a similar role to her previous one.
28. The respondent further submitted that the claimant resigned from her position in the UK and thereafter applied for a local position in Kenya. The claimant was issued with a local contract which detailed her job description and other terms of her employment which she consented to as a condition of her acceptance. Regarding gradual reduction of her role, counsel submitted that there was inconsistency on the claimant's assertion regarding structural deficiencies and lack of basic data. The claimant testified that her supervisors were Head of Private Banking Africa, from a matrix perspective, and CEO Kenya East Africa from a governance perspective which aligned with the terms of her employment contract. The claimant could not therefore assert lack of structure in her reporting lines or supervisory framework when her job description clearly delineated her scope of work, reporting lines and key relationship stakeholders. In other words, the claimant's contract provided for a well-defined framework for her role, identifying collaborative departments and key colleagues supporting



her functions. Concerning data, the claimant failed to clarify what specific data was missing and how it was essential to her role or its direct impact on her responsibilities.

29. Concerning casual over the phone appraisals, counsel submitted that the claimant did not raise in the statement of claim, witness statement or testimony in court, this issue. According to Counsel therefore, it has been held severally that a party cannot introduce new issues which they had not previously pleaded, in their submissions. On this score, counsel relied on the case of *Ogando v Watu Credit Limited* [2024] KLR and related cases where it has been held that submissions simply concretize and focus on each side's case to win the Court's decision. They are not evidence on which a case is decided. The foregoing notwithstanding, counsel maintained that the claimant's 2015 and 2016 appraisals were conducted in accordance with company's policy and were transparent and satisfactory. If the claimant had issue with the way the appraisal was conducted, she should have raised the grievance through the channels provided by the respondent. She did not do so.
30. On the issue of ignored grievance for six months, Counsel submitted that the claimant raised a grievance with CEO Kenya/Regional CEO East Africa on 13<sup>th</sup> March, 2016. Various communications ensued thereafter between the claimant and various persons from the respondent's Legal and HR Departments which culminated in the scheduling of the grievance for hearing on 4<sup>th</sup> July, 2016. An investigation was held on 1<sup>st</sup> August, 2016 and a decision rendered on 17<sup>th</sup> August, 2016. This was a period of 52 days, a timeframe which is not inordinately long considering the senior managerial responsibilities of the panel members.
31. Regarding bonus for 2015, counsel submitted that the respondent acted procedurally and fairly in both awarding the claimant's bonus and addressing her bonus related grievance. The respondent in its review report dated 22<sup>nd</sup> April, 2016 acknowledged that the claimant's contract provided for targeted bonus, a fact her line manager had not been aware of. Following the review, the claimant's bonus was adjusted to 70% resulting in a revised award of Kshs. 6,352,864/-.
32. Concerning whether the claimant was entitled to the remedies sought, counsel submitted that the claimant received full reimbursement for 19 unclaimed leave days which was processed through December, 2016 salary and that following her resignation, the claimant served the requisite three months' notice period.
33. Concerning house allowance, Counsel submitted that as per the claimant's contract she received rental subsidy payable through payroll and the claimant was not entitled to any bonus or variable compensation as such payment were expressly conditional upon the employee being in service at the time of the award and not serving notice period.
34. In conclusion, counsel submitted that the respondent had demonstrated that the claimant's resignation did not amount to constructive dismissal hence there was no cause of action against the respondent.

### **Determination**

35. The Court has reviewed and considered the pleadings, testimonies and submissions by both counsel in support and opposition to this case. The Court has also considered authorities relied on by counsel and is of the view that the issues for determination are:-
  - i. Whether the Claimant was constructively dismissed by the Respondent.
  - ii. Whether the claimant is entitled to the reliefs sought.



**a. Whether the Claimant was constructively dismissed by the Respondent.**

36. As to whether the Claimant's employment was constructively terminated counsel for the claimant contended that her client left a prestigious and well-paying job in the UK in Corporate & Institutional Banking with the promise of setting up a new unit with the respondent in Kenya. She was required to prove that she held all internal and external qualifications, accreditations, certifications and regulatory approvals and to inform the Bank in the event she ceased to hold them for her to qualify for this role. The claimant therefore became surprised when elements of her role started to be gradually hived off her job description and being assigned to her juniors in the newly created "Ultra High Networth Team" without her knowledge.
37. Concerning appraisal, counsel submitted that her client did her own self appraisals twice and expected a formal discussion with her boss Mr. Mithani as was the norm in the HR procedures of the respondent however on both occasions, her boss casually and demandingly purported to appraise her over a phone call which lasted less than 10 minutes without giving the claimant a chance to actively participate in the appraisal.
38. The foregoing, according to counsel, and failure to respond to her client's request for support and dishing out her roles to her junior's without her knowledge added to her frustration which was already building up and eventually culminated to her resignation.
39. The respondent on the other hand took the position that the claimant was employed as a Client Liaison Manager (CLM) with a job description that was summarised in appendix A of the contract titled "Private Bank In-Country Liaison Managers in Africa. the claimant's key responsibility of the CLM's coordinative role encompassed collaborative working with CEOs, segment heads, relationship managers- East Africa and Private Banking Management team Africa. To this end the claimant had a responsibility of developing a plan to promote Private Banking, work collaboratively with relationship managers and identify target clients.
40. Counsel therefore contended that the allegation of repudiation of the contract (constructive dismissal) was premised on terms of engagement beyond the job description, key objectives, key responsibilities and key performance measurables outlined in the contract between the parties.
41. The concept of constructive dismissal in employment relationship was aptly articulated by Lord Denning MR in *Western Excavating (ECC) Ltd v Sharp (1978) ICR 221* as follows;
- "If the employer is guilty of conduct which is a 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, then the employee is entitled to treat himself as discharged from any further performance. If he does so then he terminates the contract by reason of the employer's conduct."
42. The Court is also aware of the position in the case of *Nathan Ogada Atiagaga v David Engineering Ltd [2015] eKLR*, where that court stated as follows;
- "Constructive dismissal occurs when an employee resigns because their employer's behavior 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."



43. The concept of constructive dismissal was further discussed by the Court of Appeal in the case of *Coca Cola East & Central Africa Ltd v Maria Kagai Ligaga* [2015] KECA 394 (KLR) where the Court took the contractual approach test of constructive dismissal and considered the guiding principles including fundamental terms of the contract, causal link between the resignation and the employer's conduct, resignation within reasonable time and absence of acquiescence, waiver or estoppel among others.
44. From the foregoing caselaw, it is fundamental that for a claim based on constructive dismissal to succeed, the employee must sufficiently demonstrate that the employer has either directly or indirectly created a near-impossible environment for the employee to continue working and it was no longer reasonable to consider the contractual relationship as existing. The conduct and or the obtaining environment must be so egregious that no reasonable employee would bear but terminate the relationship.
45. The claimant herein complained to this Court that the respondent did not give her a clear job description and that some of her roles were hived off to the High Networth Team. From the record, the claimant was issued with an appointment letter dated 11<sup>th</sup> March, 2015 whose terms she accepted by signing the same on 1<sup>st</sup> May, 2015. The contract at clause 3.1 made reference to the job description document which was attached as part of the contract. This was produced at page 11 of the respondent's bundle of documents.
46. The Court has however noted several email by the claimant to different individuals within the respondent Bank raising concerns about her job territory and role. There is however nothing on record concerning a formal complaint over this by the claimant as provided under clause 25 of her contract of employment yet it was the main issue that she claimed triggered her frustration and eventual resignation. In contrast, the claimant by an email dated 13<sup>th</sup> March, 2016 to one Manjang Lamin, her Line Manager, formally raised a complaint invoking the respondent's official grievance handling procedure. The complaint was over two issues only. That is, her performance rating and bonus. These were heard on 4<sup>th</sup> July, 2016 and a report thereon produced on 22<sup>nd</sup> August, 2016. It is noted that at the grievance hearing of the two issues framed, was when the claimant requested that her grievance also covers the fact that critical aspects of her role had been changed and or reallocated to other teams leaving her with significantly reduced responsibility and little substance.
47. The claimant therefore outlined to the panel her concerns and was at the conclusion thereof informed by the MD Mr. Gautam that her concerns had been noted and the respondent would endeavour to review the issues after discussions with the line manager and relevant stakeholders.
48. The complaint against rating was dropped by the claimant but the one on bonus was found merited and the claimant paid Kshs.4,952,864/- in addition to bonus already received. On the complaint over her role, the panel concluded that there was no overwhelming evidence to support this complaint. There was nothing on record that the claimant disputed or was not satisfied with the panel's verdict over her complaint concerning her role. Instead by a letter dated 25<sup>th</sup> September, 2016 addressed to Lamin Manjang, the claimant tendered her resignation. This is to be noted was just a month after the outcome of the grievance hearing. The respondent accepted the claimant's resignation and allowed her to serve the three months' notice period which she did.
49. Back to the concept and principles governing constructive dismissal, the Court had earlier observed that it was fundamental that for a claim based on constructive dismissal to succeed, the employee must sufficiently demonstrate that the employer has either directly or indirectly created a near-impossible environment for the employee to continue working and it was no longer reasonable to consider



the contractual relationship as existing. The conduct and or the obtaining environment must be so egregious that no reasonable employee would bear but terminate the relationship.

50. In this particular case, the claimant did not formally lodge a complaint concerning reduction and or interference with her role using the formal channels. She tendered no reason for not doing so. She merely asked for it to be added as an issue at the scheduled hearing of her formal complaint on rating and bonus yet it was an issue that was causing her frustration and eventually triggered her resignation. Further, the claimant upon tendering her resignation stayed with the respondent for three months serving her contractual notice period. It cannot therefore be said that the respondent had created a near-impossible environment for the claimant to continue working but resign. It is the Court's view that the claimant has not meet the threshold for a claim based on constructive dismissal. Therefore, the claim for unfair termination on account of constructive dismissal and consequential orders are hereby rejected.
51. On housing allowance, the claimant's payslip as attached to her bundle of documents, showed she was paid monthly rent allowance of Kshs. 160,000/- this claim is therefore rejected. Regarding pension contribution, this was not specified and, in any event, the claimant conceded that pension was handled by a different and independent entity.
52. In conclusion, the claim herein is found without merit and is hereby dismissed with costs.
53. It is so ordered.

**DATED AT NAIROBI THIS 16<sup>TH</sup> DAY OF MAY, 2025**

**DELIVERED VIRTUALLY THIS 16<sup>TH</sup> DAY OF MAY, 2025**

**ABUODHA NELSON JORUM**

**PRESIDING JUDGE-APPEALS DIVISION**

