



**Karoki v Capital Group Limited (Cause E336 of 2020)
[2025] KEELRC 1884 (KLR) (26 June 2025) (Judgment)**

Neutral citation: [2025] KEELRC 1884 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E336 OF 2020
CN BAARI, J
JUNE 26, 2025**

BETWEEN

NYAKIO KAROKI CLAIMANT

AND

CAPITAL GROUP LIMITED RESPONDENT

JUDGMENT

1. In a Memorandum of Claim dated 27th July, 2020 and filed on even date, the Claimant seeks the following reliefs as against the Respondent:-
 - a. A finding that the actions of the Respondent leading to the termination of the Claimant's employment were unfair and unlawful.
 - b. Compensation in the sum of Two Million Four Hundred Fifty-One Shillings only (Ksh.2,451.000/=)
 - c. Payment of pension benefits due to the Claimant
 - d. Interest on (b) above at court rates from the date of termination until payment in full.
 - e. Costs of these proceedings and interest thereon at court rates from the date of judgment until payment in full.
2. The Respondent filed a Response to the claim dated 23rd November 2020 wherein, it reiterated that it did not commit any unfair practices leading to the termination of the Claimant's employment.
3. The matter was first heard before Hon Justice Rika on 6th December, 2023, and later concluded before this Court on 9th October, 2024. The Claimant testified in support of her case, adopted her witness statement and produced her list and bundle of documents as exhibits in the matter.



4. The Respondent presented one Grace Nyambura Ndungu, who testified on its behalf. She similarly adopted her witness statement and produced a list and bundle of documents filed in the matter as the Respondent's exhibits in the case.
5. Both parties filed submissions.

The Claimant's Case

6. The Claimant states that by way of a letter of offer dated 20th March, 2001, which she accepted, the Respondent offered her employment as a Traffik Co-ordinator on a total monthly salary of Thirty Thousand Shillings (Ksh.30,000/=).
7. It is her case that in the year 2003, she was promoted and given further responsibilities, and that she signed a job description witnessed by her supervisor for the said position of Traffik Coordinator.
8. She avers that sometime in the year 2004, the Management of the Respondent Company changed to its current management. She states that with the change in management, she was retained in her position as the Traffik Coordinator and her employment contract continued under the new management with no new contract signed.
9. It is the Claimant's case that on 23rd March 2005 after a successful appraisal of her performance and in recognition of her hard work, the Respondent reviewed her gross salary to Fifty Thousand Shillings (Ksh50,000/=). She states further that on 16th January 2006, the Respondent in further recognition of the good work that she did, further reviewed her Salary upwards to a gross salary of Fifty-Five thousand Shillings (Ksh.55.000/=).
10. The Claimant states that on 1st October, 2006, she was appointed traffik Manager through the Respondent's letter dated 4th October 2006, and with the appointment, her gross salary was further reviewed from Fifty Five thousand Shillings to Seventy Thousand Shillings (Ksh.70,000/=).
11. The Claimant further states that on 23rd October 2007, her Salary was further reviewed upwards to a gross salary of Ninety Five Thousand shillings (Ksh.95,000=) effective 1st October 2007. It is her case that on 5th September, 2008, she was allocated a monthly telephone allowance of Ten Thousand Shillings (Ksh.10,000/=) effective 1st September, 2008.
12. The Claimant states that on 15th October, 2009 she was given an additional role as a Radio Data Analyst, and that in recognition of the additional duties, the Respondent further reviewed her gross salary to One Hundred Eighty Thousand Shillings (Ksh.180 000/=).
13. It is the Claimant's case that on 3rd September, 2012, the Respondent appointed her as a Trainer in addition to the roles she was already undertaking, where she was expected to train both new and existing staff on all the Respondent's Products. She avers that with her appointment as a staff trainer, she was to be paid a monthly allowance of Fifteen Thousand Shillings (Ksh.15,000/=) and further allowances of between Fifteen Thousand Shillings (Ksh.15,000/=) and Twenty Five Thousand Shillings (Ksh.25.000/=) per training, depending on the kind of training she conducted.
14. She avers further that on 1st July 2014, the Respondent informed her through its letter of even date that she will be paid a monthly extra duty allowance of Thirty Thousand Shillings Only (Ksh.30.000/=) effective May, 2014 for the Technical Assistance she was giving to the IT, technical Departments and the Organization as a whole.
15. The Claimant states that she continued performing her duties in the Respondent's Company until sometime in the month of May, 2019 when the Respondent's Finance director who was also the acting



- Human Resources Administrator, informed her by word of mouth that her salary would be reduced beginning the month of June, 2019.
16. It is her case that the communication by the Respondent Finance director was without any prior notice to her, and nor were there attempts by the Respondent to initiate discussions with her with a view of looking at the options available to both parties before such a drastic step that was detrimental to her could be taken.
 17. The Claimant states that she objected to the communication, and insisted that any communication on the purported reduction of her salary should be put in writing for ease of reference and also to enable her respond if need be.
 18. She states further, that on 3rd June 2019, the Respondents Finance director sent her an email informing her of the Respondent's decision to reduce her salary effective 1st June 2019, and further informing her that training and bonus would not be a permanent feature in her pay slip effective 1st June 2019. It is her case that in the communication to her, she was informed that the decision to reduce her salary was due to the ongoing cost reviews and to facilitate more accountable spending.
 19. The Claimant states that she objected to the said decision to reduce her salary and allowances through her email of 27th June 2020, which email was received and responded to on the same day by the Finance director, reiterating her earlier verbal communication.
 20. It is the Claimant's case that on 28th June 2019 she again responded to the email of 27th June 2019 stating that the decision to reduce her salary and allowances was not backed by any evidence, was without due process and/or consultation, and was in breach of the employment contract between the parties.
 21. She avers that in response to her objection, the Respondent's Finance director wrote an email on the 1st July 2019 addressed to her, informing her that her concerns had been noted and further advising her that a hearing would be scheduled as soon as possible and further advising the Claimant to carry her supporting documents to the said hearing. The Claimant states that the Respondent did not schedule or call her for any hearing as was advised.
 22. The Claimant states that she continued performing her duties in the Respondent's Company when on 1st July 2019, the Respondent through a letter evenly dated informed her that basic Salary of One Hundred Fifty Thousand Shillings (Ksh.150,000) had been reduced effective 1st July 2019 by Thirty-Four Thousand Shillings (Kshs.34,000/=) to One Hundred and Sixteen Shillings Thousand (Kshs.116,000/=).
 23. It is her case that on 10th July 2019 at around One O'clock in the afternoon, she received a call through the office Telephone line from the Respondent's Chairman instructing her to abide by what she was being told, and if not, leaves her employment with the Respondent. That the said telephone call by the Respondent's Chairman was meant to intimidate and harass her into agreeing to the salary reduction which she had objected to.
 24. The Claimant avers that on 11th July 2019, through a letter of even date, the Respondent informed her that her Monthly bonus of Five Thousand Shillings (Ksh.5000) and extra duty allowance of Thirty Thousand (Kshs.30.000/= had been withdrawn with immediate effect.
 25. It is her case that as a result of the Respondent's unlawful actions and continued intimidation and harassment due to her objection to her salary reduction, her employment relationship with the Respondent became so fractious forcing her to resign from her position with the Respondent as the Traffik Manager and Staff Trainer effective 5^o August 2019.



26. The Claimant states that the actions of the Respondent described above caused her emotional distress and damage. She avers further, that the actions of the Respondent in unilaterally reducing her salary and allowances and the continued intimidation to have her accept the unlawful decision leading to the termination of her employment was against the rules of Natural Justice and fair employment and Labour Practices.
27. The Claimant avers that as at the date of the termination of her contract of employment with the Respondent, her gross monthly salary stood at One Hundred Eighty Thousand Shillings (Ksh.180,000/=). She further avers that at the time of termination of her contract of employment the Respondent owed her Fifteen (15) leave days not taken.
28. The Claimant contends that the actions of the Respondent by conduct amounted to unlawful termination of her employment as the same was without any valid reasons, and that the proper procedure set out in the *Employment Act* No. 11 2007 was not followed.
29. It is the Claimant's prayer that this Court allows her claim and award her the remedies sought.

The Respondent's Case

30. It is the Respondent's case that the Claimant was employed as a Traffic Coordinator in March, 2001 and that she gradually rose through the ranks to the position of Traffic Manager in October, 2006. The Respondent states that in October 2009, the Claimant was given an additional role as a Radio Data Analyst with a corresponding Salary increase.
31. It avers further that in September 2012 she was given an additional role as a Staff Trainer, and which additional role was not to be carried out every day, but rather, she was called upon to handle the training on a need by need basis as called upon by the Respondent and provided with an allowance as and when training occurs.
32. It is the Respondent's case that the Claimant also provided technical assistance to the IT and Technical departments as required in the Respondent's organization. It avers further that this was temporary until these departments were fully and qualitatively staffed as per the letter communicating this role to her.
33. The Respondent avers that the Claimant's basic salary was Kshs.150,000/- consisting of Kshs.150,000/= basic pay plus Kshs.30,000 in fixed House and Telephone Allowances. It states that for the additional roles given, the Claimant was to be paid extra duty allowances of Kshs.45,000/- and a bonus of Kshs.5,000/=.
34. It is the Respondent's case that in 2018, it suffered reduced revenues having faced a decline of over Kshs.100,000,000/- from the revenue earned in the year 2017, and that this steep and sudden reduction in revenues despite the costs remaining at the same level due to a tough economic environment in the country, led to limited cash flows and an increase in loans taken by the Respondent. The Respondent states that it was faced with having to restructure the company with an aim to evaluate efficiency and sustain costs that were at a high level.
35. The Respondent avers that in April, 2019 it began sensitizing staff, including the Claimant, that due to the loss of revenue and the effect of the loss on the company's liquidity, there was a need for restructuring of costs including salaries. It states further that the staff was advised that this was the only way to sustain the business and avoid lay-offs.



36. The Respondent states that sensitization was commenced by way of oral discussions with the other Heads of Departments and the individual employees as the initial step of employer employee consultations as envisaged by Section 10 (5) of the Employments Act.
37. The Respondent further states that it followed up the oral discussions by initial written communication given to each of the individual employees. It states further that an email was sent to the Claimant on 8th May 2019 informing her of the proposal that all department managers' basic pay be reduced by 20% only if and when certain revenue targets were not achieved, and that the email explained the financial constraints that the Respondent was experiencing as earlier discussed during consultation with the employees.
38. The Respondent states that despite engaging the Claimant in consultations, both oral and written, as envisaged by Section 10(5) of the Employment Act on the proposed material change to the employment contract, the Claimant did not respond to the email of 8th May 2019.
39. That in addition to the oral discussions and the written communication to each individual employee, a town hall meeting was held at the Respondent's offices on 10th June 2019, when the Respondent's Chairman met all the employees to discuss the financial constraints facing the company, and to explain to them all the need to regulate costs in order to avoid further deficits and prevent lay-offs.
40. It is the Respondent's case that all oral discussions during the sensitization meetings were followed by written communication and formal letters that were sent out to each individual employee including the Claimant.
41. It states that whereas it first raised the issue of the proposed reduction of salaries with the Claimant orally in April, 2019 and in writing on 8th May 2019 through its Finance Director to facilitate consultations as envisaged by the Employment Act, the Claimant failed to respond to the discussions in writing until 27th June 2019, when she indicated that she was not agreeable to the communication dated 3rd June 2019 that training allowances and bonuses would be paid when actually incurred.
42. The Respondent state that by its email of 1st July 2019, it invited the Claimant to a hearing in which she would be granted an opportunity to have a one on one discussion with the management and Chairman of the Respondent as part of the continued consultative process. The Respondent avers that the meeting did not take place as the Claimant became unnecessarily hostile and attempts to finalize the details of the meeting bore no fruits as she set unreasonable conditions when invited for the hearing, thereby causing the same not to happen despite the Respondent being ready and willing to engage.
43. It is the Respondent's case that one of the unreasonable demands by the Claimant was that she refused to meet the Respondent's Chairman at his place of residence and demanded that the meeting ought to be held in the office, which demand was unreasonable as at the time, the Chairman was very ill and was rarely able to leave his house for engagements. It avers that most of the official meetings with the Chairman were held at his premises, therefore, it was neither out of the ordinary nor improper to have the meeting there.
44. The Respondent states that by the end of June, 2019 the company was in dire financial constraints and could not raise sufficient funds to pay salaries leading to communication dated 11th July, 2019 to the Claimant that following the consultations, the Respondent would reduce her basic salary from Kshs.150,000 to Kshs.116,000/= with effect from August, 2019. That the Claimant's house allowance of Kshs.20,000/= and telephone allowance of Kshs.10,000/= would continue to be paid as was communicated to the Claimant in this letter. That the Respondent therefore paid the Claimant the total amount of Kshs.146,000/= as basic salary inclusive of fixed house and telephone allowances.



45. The Respondent states that it did not engage in any unlawful actions, intimidation or harassment of the Claimant, instead, it took all the steps necessary to not only be humane and prevent loss of employment of multiple staff, but also took steps to uphold the law, but the Claimant frustrated all efforts to engage in amicable consultations.
46. The Respondent states that the Claimant rushed to resign voluntarily when there were avenues available to ventilate the issue including the proposed meeting that she frustrated from proceeding. It states that the Claimant's resignation contravened her letter of employment which provided for a notice period of one month or payment of one month's salary in lieu of such notice.
47. The Respondent states further that it continued to be open for discussions and assessment of avenues to increase revenue throughout the process.
48. It avers that the Claimant had accrued nine (9) leave days that had not been taken as at the date of her resignation on 2nd August 2019, and that it communicated this position to the Claimant in a letter dated 9th August, 2019, accepting her resignation, and the payment in lieu of leave days not taken amounting to Kshs.56,712.33 was accounted for in the Claimant's terminal pay slip for August 2019.
49. The Respondent states that it did not terminate the Claimant's employment; instead, the Claimant voluntarily resigned effective 5th August, 2019.
50. It is the Respondent's case that it in good faith and following further consultations with the Labour Office, resolved to restore the salaries for all staff and paid all employees the arrears that were not paid in July, 2019 due to lack of revenue. The Respondent therefore immediately resolved the issue of the underpaid salaries.
51. It avers that the Claimant's basic salary was therefore reinstated to Kshs.180,000/- but, taking into consideration that extra duties and training allowances were ex-gratia payments, the Respondent maintained the position that the allowances and bonuses would be paid as and when earned.
52. The Respondent states that considering the failure by the Claimant to work through her notice period, it tabulated one month's pay in lieu of notice as being due and owing from the Claimant in her final payslip. This sum remains due and owing to the Respondent from the Claimant and therefore, the Claimant's claim of compensation in the sum of Kshs.180,000/- being payment for the one month's notice is therefore misguided.
53. It states that the Claimant was paid all her pension benefits amounting to Kshs.4,820,347, and she is well aware that she received her employee portion of the pension on 15th October 2019, while the employer portion was transferred to her new pension scheme on 11th December 2019 before these pleadings were filed.
54. The Respondent states that no other employee except the Claimant, raised a claim or dispute with regard to the reduction in salary for the month of July, 2019, which reduction in any event was restored, and paid out as arrears in August, 2019.
55. The Respondent concludes that the Claimant's resignation was premature and, in her haste, she breached the terms of her own contract.
56. The Respondent prays that the Claimant's case be dismissed with costs.



The Claimant's Submissions

57. It is the Claimant's submission that the termination of her employment fits within the parameters set as to what amounts to constructive dismissal. She placed reliance in the decision of this Court in [*Osoti v Trees for the Future INC \(Cause E002 of 2023\)*](#) [2024] KEELRC 962 (KLR) (2 May 2024) (Judgment) and *Kenya Union of Sugarcane Plantation and Allied Workers v Othira* (Appeal E005 of 2023) [2024] KEELRC 843 (KLR) (18 April 2024) (Judgment) to support this assertion.
58. The Claimant urges this honorable court to make a finding that she was constructively dismissed and that the Respondent committed unfair Labour practices leading to the termination of the Claimant.
59. The Claimant further submits that having proved constructive dismissal, and the Respondent's failure to address the issues leading to the termination, that she is entitled to compensation of Twelve Months salary and a further One-month notice pay as the circumstances leading to the termination was abrupt.
60. It is her final submission that the court to finds in her favour and awards her compensation as prayed in the memorandum of Claim.

The Respondent's Submissions

61. The Respondent submits that the Claimant did not plead the issue of constructive dismissal and cannot now sustain such a claim before this Court in the absence of pleading it. It submits further that unlawful and unfair termination is a separate cause of action to constructive dismissal.
62. It is the Respondent's submission that this Honourable Court is bound by the pleadings of parties, hence it follows that the Court has to adjudicate upon the specific matters, which have been raised by way of pleadings. That to adjudicate on matters that are not raised in pleadings would be tantamount to this Honourable Court delving into the realm of litigation, contrary to the rules of natural justice and procedure. It had reliance on the Supreme Court decision in *Petition No. E007 of 2023 - Abidha Nicholus versus The Attorney General & 7 Others*.
63. It further submits that the Claimant did not raise the issue of constructive dismissal in her Memorandum of Claim and is therefore estopped from raising it in any way, shape or form.
64. The Respondent submits that it tendered evidence to show there were consultations with not only the Claimant, but with the members of Respondent's staff in line with Section 10 (5) of the [*Employment Act*](#). It is its submission that the said section does not impose an obligation that these consultations should end up with consensus between the parties, and therefore consent as alleged by the Claimant, does not apply. The Respondent further submits that its actions did not amount to constructive dismissal.
65. The Respondent further submits that it did not terminate the employment of the Claimant, but rather, the Claimant resigned from her employment.
66. It is the Respondent's submission that in light of the fact that the Claimant voluntarily resigned, she is not entitled to compensation in the sum of KES. 2,451,000, on account of the alleged unfair and unlawful termination. It submits that it has been demonstrated by the Respondent that it is the Claimant that breached the terms of the contract by not serving her one-month notice period.

Analysis and Determination

67. I have carefully considered the pleadings, the witnesses' oral testimonies and the rival submissions. The issues that present for my determination are:-



- i. Whether the Claimant was constructively dismissed
- ii. Whether she was unfairly terminated
- iii. Whether she is entitled to the reliefs sought.

Whether the Claimant was constructively dismissed

68. The Black's Law Dictionary (Tenth Edition) defines constructive dismissal 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.”

69. In her undated letter of resignation referenced 'Constructive Dismissal', the Claimant spelt out her frustrations in the service of the Respondent and which she contended occasioned her resignation. The Claimant proceeded to lodge the instant claim before court dated 27th July, 2020. Under her claim, the Claimant sought a finding that the actions of the Respondent leading to the termination of her employment, were unfair and unlawful.

70. The Respondent's position is that the Claimant did not plead the issue of constructive dismissal and cannot now sustain such a claim before this Court in the absence of pleading it. It submits further that unlawful and unfair termination which is what the claimant pleaded, is a separate cause of action to constructive dismissal.

71. It is the Respondent's further assertion that this Honourable Court is bound by the pleadings of the parties, and has to adjudicate upon the specific matters, which have been raised by way of pleadings.

72. The Respondent contends that to adjudicate on matters that are not raised in pleadings would be tantamount to this Court delving into the realm of litigation, contrary to the rules of natural justice and procedure.

73. Indeed, as correctly submitted by the Respondent, a cursory look at the entire of the Claimant's Memorandum of Claim, evidently shows that not in a single paragraph of the claim did the Claimant plead constructive dismissal.

74. The Court of Appeal in the case of Independent Electoral and Boundaries Commission & another v Mule & 3 others [2014] KECA 890 (KLR) cited with approval the reasoning of Judge Pius Aderemi JSC in the Supreme Court of Nigeria case of Adetoun Oladeji (Nig) Ltd v Nigeria Breweries Pie SC 9112002 for the holding that;

“.....it is now a very trite principle of law that parties are bound by their pleadings and that any evidence led by any of the parties which does not support the averments in the pleadings, or put in another way, which is at variance with the averments of the pleadings goes to no issue and must be disregarded.”

75. Further in the Adetoun Oladeji case (supra), the Court stated;

“In fact, that parties are not allowed to depart from their pleadings is on the authorities basic as this enables parties to prepare their evidence on the issues as joined and avoid any surprises by which no opportunity is given to the other party to meet the new situation.”



76. Again in the case of Daniel Otieno Migore v South Nyanza Sugar Co. Ltd [2018] KEHC5465 (KLR), the Court held thus:-

“It is by now well settled by precedent that parties are bound by their pleadings and that evidence which tends to be at variance with the pleadings is for rejection. Pleadings are the bedrock upon which all the proceedings derive from. It hence follows that any evidence adduced in a matter must be in consonance with the pleadings. Any evidence, however strong, that tends to be at variance with the pleadings must be disregarded.”

77. The letter of resignation and the submissions where the Claimant brings in the issue of constructive dismissal, are in my view not pleadings. It is therefore obvious that by reason that constructive dismissal was not an issue in the Claimant’s claim, the Respondent was denied an opportunity to prepare its evidence on the issue. For the sole reason that the Claimant did not plead constructive dismissal in her Memorandum of Claim, she is estopped from raising it at this juncture.

78. In the premise, the Court finds no basis upon which to consider the issue of whether or not the Claimant was constructively dismissed, and I let it rest.

Whether the Claimant was unfairly terminated

79. The Claimant told Court that she resigned from the service of the Respondent and claims compensation for the unfair and unlawful termination.

80. A termination of employment is considered unfair where the employer fails to adhere to the twin tenets of fair procedure and the substantive justification for the termination espoused under Sections 41, 43, 45 and 47 of the *Employment Act*, 2007.

81. The Respondent contends that it did not terminate the Claimant. The Claimant on her part admits that she resigned from the service of the Respondent.

82. In my considered view, the issues of compliance with the law on termination/dismissal from service, does not arise in the event of a resignation such as the one before Court, except in a case of constructive dismissal which the Court has held was not pleaded herein.

83. In the circumstances, I find and hold that the Claimant having resigned from the service of the Respondent, cannot now claim to have been unfairly terminated, and her claim in this respect is dismissed.

Whether the Claimant is entitled to the reliefs sought

84. It is evident from the record that the Claimant’s terminal/final dues were tabulated and paid out to her.

85. I find and hold that the Claimant has not proved that she is owed on account of terminal dues.

86. In the upshot, the Claimant’s claim is dismissed in its entirety with no orders on costs.

87. Judgment of the Court.

DATED, SIGNED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS 26TH DAY OF JUNE, 2025.

C. N. BAARI

JUDGE



APPEARANCE:

MR. WEBALE PRESENT FOR THE CLAIMANT

MR. KINYANJUI H/B FOR MR. MUSANGI FOR THE RESPONDENT

MS. ESTHER S - C/A

