



**Kuria v Safaricom Public Limited Company (Cause 977 of 2018)  
[2025] KEELRC 2281 (KLR) (31 July 2025) (Judgment)**

Neutral citation: [2025] KEELRC 2281 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE 977 OF 2018**

**L NDOLO, J  
JULY 31, 2025**

**BETWEEN**

**ANGELA WAIRIMU KURIA ..... CLAIMANT**

**AND**

**SAFARICOM PUBLIC LIMITED COMPANY ..... RESPONDENT**

**JUDGMENT**

**Introduction**

1. In her claim as documented by a Memorandum of Claim dated 25<sup>th</sup> May 2018, the Claimant, Angela Wairimu Kuria, accuses her former employer, Safaricom PLC, of frustrating her out of employment.
2. The Respondent denies the claim by its Memorandum of Reply dated 29<sup>th</sup> November 2018.
3. At the trial, the Claimant testified on her own behalf and the Respondent called its Senior Manager-Employee and Labour Relations, Odhiambo Ooko. The parties also filed written submissions.

**The Claimant's Case**

4. The Claimant commenced her employment with the Respondent at a call centre and was later transferred to a retail shop. She worked until December 2017, when she resigned.
5. The Claimant alleges that she was discriminated against and frustrated at the work place by her supervisors. She claims to have complained to the Respondent's management, about the intolerable conditions at her place of work, but her pleas were ignored.
6. The Claimant therefore states that the Respondent constructively dismissed her as her working conditions were made so intolerable to the extent that she was compelled to resign. The Claimant cites the following particulars of constructive dismissal on the part of the Respondent:
  - a. Blatantly ignoring actions of discrimination and frustrations towards the Claimant;



- b. Failing and/or refusing to offer any explanation towards solving the Claimant's concerns that she was being discriminated against and frustrated at her place of work;
  - c. Grossly and mercilessly diminishing the ability of the Claimant to meet her obligations at work;
  - d. Causing the Claimant extreme mental embarrassment and hardship;
  - e. Being callous, indifferent and unresponsive to the plight of the Claimant and her general welfare as an employee.
7. The Claimant accused the Respondent of refusing and/or neglecting to respond to her claims of being insulted, discriminated against and cyberbullied at her place of work.
8. The Claimant therefore pursues the following remedies:
- a. A declaration that she was unlawfully dismissed;
  - b. One month's salary in lieu of notice;
  - c. Maximum compensation under the law;
  - d. Costs.

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

9. In its Memorandum of Reply dated 29<sup>th</sup> November 2018, the Respondent admits that the Claimant was its employee effective 3<sup>rd</sup> May 2010, having been employed by a letter of appointment dated 30<sup>th</sup> April 2010, in the position of Customer Care Representative.
10. The Claimant was promoted to the position of Customer Experience Executive, effective 1<sup>st</sup> June 2017, a position she held until her resignation by which time she was earning a monthly salary of Kshs. 85,620.95
11. The Respondent points out that in her resignation letter dated 21<sup>st</sup> November 2017, the Claimant did not disclose the reason for the resignation. The Claimant's resignation was accepted vide the Respondent's letter dated 27<sup>th</sup> November 2017.
12. The Respondent terms the Claimant's resignation as voluntary and adds that she was paid all her terminal dues, which included annual leave encashment, pay for days worked and Christmas gift, all totalling Kshs. 111,806.24.
13. The Respondent denies the Claimant's allegations of harassment and discrimination. The Respondent asserts that it does not condone any form of harassment or discrimination, pointing to an existing Anti Bullying and Harassment Policy, at the material time.
14. With regard to the Claimant's complaint about being insulted and discriminated against, the Respondent states that the Claimant made a report sometime in October 2017, and the complaint was substantively addressed and the issue resolved by the Human Resource Business Partner. According to the Respondent the Claimant's complaint could not be substantiated nor corroborated.
15. On the complaint of cyberbullying, allegedly perpetrated by a co-worker, the Respondent avers that the issue arose on 24<sup>th</sup> November 2018, soon after the Claimant had tendered her resignation. The Respondent points out that the offensive post on the work WhatsApp group was deleted, with the author stating that the post had been misdirected.



16. The Respondent maintains that the Claimant's complaints were fully addressed by the Shop Manager, pointing out that if the Claimant was still aggrieved, she ought to have escalated the matter to the next level, in accordance with the Grievance Handling Policy and Procedure.
17. The Respondent denies the Claimant's claim of constructive dismissal and reiterates that she voluntarily resigned from her employment.

### **Findings and Determination**

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

### **Constructive Dismissal?**

19. On 21<sup>st</sup> November 2017, the Claimant sent the following handwritten letter to the Respondent:

“ To Safaricom

Ref: Resignation From Duties Given

I would like to tender my resignation effective today. I am therefore serving my 30 days Notice.

I am grateful for the opportunity as well as the experience gained as a CEE for close to 8 years.

Thank you

Yours

(signed)

Angela Kuria”

20. Although the Claimant did not disclose the reason for her resignation in the said letter, her case is that she was forced to resign by the Respondent's failure to address her complaints of bullying and discrimination at her place of work.
21. The Claimant therefore lays a claim of constructive dismissal. 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.”

22. In her written submissions dated 19<sup>th</sup> May 2025, the Claimant referred to the persuasive decision in *Western Excavating (ECC) Ltd v Sharp (1978) ICR 222* where Lord Denning MR stated thus:

“ 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 essentials of the contract, then the employee is entitled to treat



himself as discharged from any further performance. If he does so, he terminates the contract because of the employer's conduct. He is constructively dismissed.”

23. In its decision in *Coca Cola East & Central Africa Limited v Maria Kagai Ligaga* [2015] eKLR the Court of Appeal established the following principles to be applied in adjudicating claims of constructive dismissal:
- a. What are the fundamental or essential terms of the contract of employment?
  - b. Is there a repudiatory breach of the fundamental terms of the contract through conduct of the employer?
  - c. The conduct of the employer must be a fundamental or significant breach going to the root of the contract of employment or which shows that the employer no longer intends to be bound by one or more of the essential terms of the contract.
  - d. An objective test is to be applied in evaluating the employer's conduct.
  - e. There must be a causal link between the employer's conduct and the reason for the employee terminating the contract i.e. causation must be proved.
  - f. An employee may leave with or without notice so long as the employer's conduct is the effective reason for termination.
  - g. The employee must not have accepted, waived, acquiesced or conducted himself to be estopped from asserting the repudiatory breach; the employee must within a reasonable time terminate the employment relationship pursuant to the breach.
  - h. The burden to prove repudiatory breach or constructive dismissal is on the employee.
  - i. Facts giving rise to repudiatory breach or constructive dismissal are varied.
24. My understanding of the Claimant's pleadings, testimony and submissions is that she resigned because she was unhappy with the outcome emanating from the processing of her grievances against her co-workers. The tone of her letter and its presentation in handwritten form suggests an employee resigning in a huff, as a result of a difficult situation at work.
25. In its decision in *Stella W. Muraguri v Edward Kamau Muriu & 4 others* [2022] eKLR this Court stated that:
- “...not every involuntary resignation amounts to constructive dismissal. The threshold for constructive dismissal is achieved where the involuntary resignation has a direct causal link with the employer's conduct, which may reasonably be described as intolerable. It cannot be said to be constructive dismissal, when an employee resigns to get out of a tight spot.”
26. In the present case, the Claimant resigned because of an outcome of a grievance resolution process that did not go her way. To my mind, the Respondent's actions cannot be said to have created an intolerable work environment. At any rate, there is evidence that the Claimant did not exhaust the grievance escalation process available to her.
27. For the foregoing reasons, I find and hold that the Claimant has not established a case of constructive dismissal. Her claims for compensation and notice pay are therefore without basis and are disallowed.
28. Ultimately, the Claimant's entire claim fails and is dismissed with an order that each party will bear their own costs.



29. Orders accordingly.

**DELIVERED VIRTUALLY AT NAIROBI THIS 31<sup>ST</sup> DAY OF JULY 2025**

**LINNET NDOLO**

**JUDGE**

Appearance:

Ms. Murira for the Claimant

Mr. Okeyo for the Respondent

