



**Kibiro v Ole-Sereni (Employment and Labour Relations Cause
E741 of 2022) [2025] KEELRC 2076 (KLR) (15 July 2025) (Judgment)**

Neutral citation: [2025] KEELRC 2076 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS CAUSE E741 OF 2022**

**HS WASILWA, J
JULY 15, 2025**

BETWEEN

PAUL NJOROGE KIBIRO CLAIMANT

AND

OLE-SERENI RESPONDENT

JUDGMENT

1. The Claimant instituted this claim vide a Memorandum of Claim dated 17th October 2022 and prays for judgment against the Respondent for: -
 - a. A declaration that the Respondent's action constituted constructive dismissal and that the entire disciplinary process of employment was unlawful and unfair and that the Claimant is entitled to payment of his unpaid salary, 2 months' salary in lieu, terminal dues and compensatory damages;
 - b. An order for the Respondent to pay the Claimant his due terminal benefits and compensatory damages as tabulated in paragraph 15 of the Claim;
 - c. Interest on (b) above from the date of filing this claim till payment in full.
 - d. Cost of this suit plus interest thereon.

Claimant's Case

2. The Claimant avers that he was employed by the Respondent as a Human Resource Manager on 1st July 2024 on permanent and pensionable terms earning a monthly salary Kshs. 420,000 until he unwillingly resigned from his employment on 18th October 2019.
3. The Claimant avers that around August 2019, he started having problems with his line or immediate Manager who on two distinct occasions recommended two persons who are unqualified for certain



- advertised position and since they lacked the requisite qualifications, and being the Human Resource Manager, he expressed his reservation and ultimately declined to offer them any appointment.
4. The Claimant avers that after these incidents, it caused friction with his line and/or immediate manager who thereafter started acting suspiciously towards him; the Claimant later discovered that there was a plan to discredit him and cite him with the offence of sexual harassment and eventually terminate his services.
 5. His suspicion was later confirmed when the Respondent served him with a notice to show cause on wide allegations of anonymous employees whose identity to date have remained mysterious and with strict instructions for the Claimant to respond to the issues raised therein.
 6. The Claimant avers that the notice to show cause failed to address the allegations of sexual harassment and that the allegations lacked clarity and hid the identity of the complainants making it impossible to interrogate the issues raised that the modality of investigation was questionable.
 7. The Claimant avers that he responded to the notice to show cause and stated that the allegations were malicious and intended to malign his character as a profession. He demanded to know the identity of the complainants, their details, signed statements, to be issued, the alleged investigation report and supporting evidence. He also demanded for signed copies of the company policy on sexual harassment, code of conduct and disciplinary procedures to enable him respond comprehensively to the issues raised.
 8. The Claimant avers that instead of the disciplinary process being resolved internally, the complaint was referred to the Respondent's external advocate contrary to the Human Resource best practice which required any disciplinary process to be conducted internally before a third party is allowed.
 9. The Claimant avers that he complained about it in vain as he was forced to visit the Respondent's external advocate and his access to the alleged documentation was limited to 30minutes and he was never given enough time to interrogate the document and comprehend the allegations therein.
 10. It is the Claimant's case that the disciplinary process was unfair, illegal and un-procedural and he was being frustrated which word spread very fast and his reputation was being maligned to an extent of him being unable to discharge his duties.
 11. The Claimant avers that the rumours and lies being spread affected his health and work life and the uncertainty and anonymity of the complaints against him made it worse and there was a lot of pressure from the Respondent forcing him to bow down and involuntarily and unwillingly resigned.
 12. The Claimant avers that he issued the Respondent a notice of resignation in accordance with the terms of employment, however, the Respondent did not acknowledge or respond to it. Despite this, the payment of his dues began and he was never allowed in the office to serve the two months' notice period as provided in the terms of employment.
 13. It is the Claimant's case that the entire process was unprofessional, unfair, unlawful and inhumane whose sole intent and purpose was to terminate the Claimant's employment and/force him to resign.

Respondent's Case

14. In opposition to the Claim, the Respondent filed a Memorandum of Response dated 23rd November 2022.
15. The Respondent admitted that the Claimant was employed at the Hotel as the Human Resource Manager but deny that he unwillingly resigned from his employment.



16. The Respondent avers that the Claimant was served with a Notice to Show Cause (NTSC) on grounds that it received complaints of sexual harassment from several of its employees against the Claimant and by the NTSC, the Claimant was required to respond to the allegations.
17. It is the Respondent's case that the NTSC contained precise details of the complaints and included instances of discretion considering the nature of the complaints. The Claimant was then directed to collect the written statements on the specific complaints against him from the Company's General Counsel. The Claimant collected the statements on 8th October 2019 and acknowledged receipt by signing against each complaint; upon collecting the statements, he was given ample opportunity to respond.
18. The Respondent avers that upon receipt of the NTSC, the Claimant requested for the documents on 30th September 2019 to enable him prepare his response adequately; the Respondent prepared and shared the documents with him the same day.
19. The Respondent avers that the Claimant was only directed to collect the statements from the Company's Legal Officer, who is engaged as the Respondent's General Counsel and not as an external advocate. The duties of the General Counsel apart from having conduct of the legal implications on the sexual harassment case against the Claimant also included protecting the Hotel from any risk and/or exposure under Section 6 of the Employment Act arising from the complaints against a senior management officer of the Company.
20. The Respondent avers that the Claimant was supplied with all the complaints and acknowledged receipt of all the relevant statements. The Claimant on numerous occasions sought extension of time to submit his response; and the request for extension of time was always granted.
21. The Respondent denied any form of intimidation on how the Claimant's disciplinary proceedings were initiated and handled and avers that the Claimant declined to respond to the complaints and instead embarked on diversionary tactics to evade the disciplinary process and the complaints against him.
22. The Respondent avers that the Claimant was granted extension of time to respond to the NTSC severally, however, he failed to respond to the allegations and instead decided to submit his notice of resignation claiming the complaints on sexual harassment were fabricated.
23. The Respondent avers that the Claimant having served a resignation notice terminated the employment contract voluntarily and he was not entitled to any pay in lieu of notice; on the contrary, he ought to have paid the hotel compensation in lieu of notice
24. The Respondent avers that the Claimant belonged to a pension scheme with it and was not entitled to service pay.
25. The Respondent denied that the Claimant was wrongfully terminated and maintains that his resignation was voluntary and any loss suffered by him was self-inflicted and not attributable to the Respondent.

Evidence in Court

26. The Claimant (CW1) adopted his witness statement dated 10th October 2023 as his evidence in chief and produced his filed bundle of documents dated even date as his exhibits 1-7.



27. During cross examination, CW1 testified that he was asked to pick some documents from the Respondent's lawyer and the names of the complainants could be revealed at the Respondent's counsel's offices.
28. CW1 testified that he was given a summary of the witness statements which were not signed. He was informed that they were still under protection and the Respondent refused to give him the copies.
29. CW1 testified that upon receipt of the NTSC, he asked for 7 days to respond; on 4th October 2019, he wrote an email to the Group CEO informing him that he had not responded to the NTSC as he had been ill. He sent another email on 17th October 2019 asking for a 7-day extension to respond which was granted by the Respondent's Board which he ultimately responded by writing a resignation letter.
30. CW1 testified that he was not forced to sign the resignation letter but that the Respondent consistently refused to give him documents to enable him respond so he was frustrated and he decided to resign.
31. CW1 testified that he was partially paid his final dues which was Kshs. 244,000.
32. The Respondent's witness (RW1) Nazir Noordin stated he is Respondent's Managing Director and adopted his witness statement dated 2nd November 2023 as her evidence in chief and produced the Respondent's bundle of documents dated even dated as his exhibits 1-43.
33. During cross examination, RW1 testified that the investigation was done by the Respondent's Chief Security Officer and the report is signed and stamped.
34. RW1 testified that in the report, the Claimant was being investigated but he is not aware if the Claimant recorded a statement.
35. RW1 testified that the Claimant in his resignation letter stated that he was compelled to meet company lawyer for documents and statements which was intimidating and he was denied to take copies of the documents.

Claimant's Submissions

36. The Claimant submitted on three issues: - Whether the Respondent conduct amounted to constructive dismissal; whether the Claimant is entitled to the reliefs sought under the memorandum of claim; and who bears the cost of this suit.
37. The Claimant submitted that his woes began when he failed to recommend a candidate proposed by his immediate boss who vowed to discredit him and ensure he resigns. Additionally, the Respondent's actions confirm an ulterior motive since in one-month, various complaints were generated against the Claimant on sexual harassment, investigation conducted, conclusion made and immediately he was issued with two show cause letters and required to sign certain reports from the Company's General Counsel.
38. The Claimant submitted that the concept of constructive dismissal was discussed in *Coca Cola East & Central Africa Limited v Maria Kagai Ligaga* [2015] KECA 394 (KLR) where the Court of Appeal found that constructive dismissal occurs when an employee is forced to leave his job against his will because of his employer's conduct. Although there is no actual dismissal, the treatment is sufficiently bad that the employee regards himself as having been unfairly dismissed.
39. The Claimant submitted that in the instant case, the Respondent devised a method to force him to yield to pressure and resign. The Respondent cited him for sexual harassment against faceless and nameless colleagues, conducted a biased investigation which did not take account his position and



subsequently issued him two show cause letters and involved the Company's General Counsel. These actions as stated in the Claimant's resignation letter made it impossible for him to continue working for the Respondent thus his involuntary resignation.

40. The Claimant submitted that the fact he involuntarily resigned shows that the Respondent's conduct was intolerable and the only option available to him was resignation. He relied on *Anthony Mkala Chitavi v Malindi Water & Sewerage Company Ltd* [2013] KEELRC 920 (KLR) and urged that it be declared that the Respondent's conduct amounted to constructively terminating his employment without justification and was unfair, unlawful, bull and void ab initio and his resignation be declared involuntary and unlawful.
41. The Claimant submitted that Sections 43 and 45 of the *Employment Act* places an obligation on the employer to show that the termination was fair and in circumstances of constructive dismissal, the employee is required to demonstrate his resignation was justified and the working conditions were so intolerable that he was unable to continue working, and that the employee would have continued working had the employer not created the intolerable working environment. Having proved the Respondent's action in this pattern, the Claimant urges the court to hold that the Respondent constructively dismissed him and the entire process was unlawful and award him 12-month salary compensatory damages.

Respondent's Submissions

42. The Respondent submitted on five issues: - whether the Claimant was lawfully and procedurally subjected to disciplinary proceedings; whether the Claimant was constructively dismissed or voluntarily resigned; whether the Claimant is entitled to pay in lieu of notice and other terminal dues; whether the Claimant is entitled to compensation for unfair termination or general damages; and who should bear the costs of the suit.
43. On the first issue, the Respondent submitted that contrary to the Claimant's claim, disciplinary proceedings were lawfully and procedurally commenced against him following the allegations of sexual harassment raised by employees at the hotel and brought to its attention.
44. The Respondent submitted that on 16th September 2019, it sent an email attaching the NTSC which contained brief claims from employees indicating the Claimant had been involved in instances that amounted to sexual harassment against them. RW1 testified that the employees had asked the hotel to protect their identities and reputation in the process and the Claimant was advised to collect further material on the sexual harassment claims from the hotel's General Counsel who is bound by advocate-client confidentiality with the intent to protect the victims.
45. It is the Respondent's submission that the Claimant confirmed in his testimony that he visited the General Counsel's chambers and received the material and identities of the stated victims and wrote and email confirming receipt.
46. The Respondent submitted that having received sufficient information, the Claimant sought more time to respond to the NTSC. On 17th October 2019, the Respondent granted the extension and instructed him to respond on 18th October 2019, instead the Claimant resigned before the disciplinary panel was set out and stayed away from work.
47. The Respondent submitted that the Claimant failed to demonstrate what prejudice he suffered or was likely to suffer on the instructions by the Respondent's instruction to engage with to engage with the General Counsel in relation to collecting the material.



48. It is the Respondent's submission that the Claimant was deceitfully and deliberately trying to avoid a lawful and procedural disciplinary process.
49. The Respondent submitted that the Claimant was afforded adequate time and opportunity to respond to the NTSC and the allegations of sexual harassment directed against him and on numerous occasions he sought extension to respond, which extensions were always granted. The Claimant was furnished with all relevant documents including witness statements and exhibits which he acknowledged receipt on 8th October 2019 by signing against each complaint.
50. The Respondent submitted that the Claimant was adequately notified of the complaints and was accorded an opportunity to respond to the claims within the meaning of Section 41 of the Employment Act.
51. On the second issue, the Respondent submitted that the Claimant's resignation was voluntary and it was not caused by any action or omission on the Respondent's part that would constitute constructive dismissal.
52. The Respondent submitted that constructive dismissal as defined in Coca Cola East & Central Africa Limited v Maria Kagai Ligaga (*supra*) requires proof of a fundamental breach of contract by the employer; an intolerable working environment; and the employee resigning in response to that breach.
53. The Respondent submitted that the Claimant has not demonstrated any of the above; he was facing a legitimate disciplinary action and opted to resign during the process, without exhausting internal remedies or raising complaints at the time. The law does not permit an employee to resign to avoid accountability and then allege dismissal.
54. On the third issue, the Respondent submitted that the Claimant having voluntarily tendered his resignation notice contrary to the terms of his contract and failed to turn up to work the next day, summarily dismissing himself from employment thus he is not entitled to any pay in lieu of notice; actually, the Claimant ought to have paid the Respondent in lieu of notice.
55. The Respondent submitted that the Claimant resigned on his own volition, therefore, he is not entitled to notice pay. Additionally, the Claimant did not provide any evidence of unpaid dues or entitlements upon resignation.
56. On the fourth issue, the Respondent submitted that Section 47(5) of the Employment Act places the burden of proof of unfair termination on the employee. The Claimant has failed to demonstrate that he was dismissed or that the dismissal was unfair. It relied in Walter Ogal Anuro v Teachers Service Commission [2013] eKLR which the court held that for a termination to be deemed unfair, both substantive justification and procedural fairness must be lacking, which is not the case in this suit.
57. It is the Respondent's submission that general damages are not ordinarily awarded in employment disputes unless a constitutional violation or tort is proven, which the Claimant has not done.
58. On the final issue, the Respondent submitted that the Claimant's claim is unmerited, unsupported by evidence and was brought without basis. Therefore, in line with Section 12(4) of the Employment and Labour Relations Court Act, the Claimant should bear the costs of the suit.
59. I have examined all evidence and submissions of the parties herein. The issues for his courts determination are as follows:-
1. Whether the claimant was constructively terminated.
 2. Whether the claimant is entitled to the remedies sought.



Issue No 1

60. It is indeed true that the claimant resigned from employment vide his letter dated 18/10/2019. In the resignation letter, the claimant indicated that he was forced to resign following allegations of sexual harassment against him which were baseless.
61. He indicated that the allegations lacked specificity and did not disclose identities of the complainants to allow him respond factually, empirically and adequately. He indicted that the way the respondents treated him was against procedure and that he was forced to visit the respondents lawyers offices in order to get the evidence of allegations against him.
62. He indicated further that he felt treated unfairly and so opted to tender his resignation. The claimant was first served with a show cause letter dated 25th September 2019 which contained allegation of sexual harassment from unnamed staff members “X”, ‘Y’, ‘Z’ and ‘K’. The notice to show cause letter further suspended the claimant from work and he was asked to respond to the allegations therein on or before 27th September 2019.
63. The claimant responded to the notice to show cause vide his dated 25th September and 30th September 2019 wherein he asked for further details to enable him respond adequately. He sought to be supplied with the company investigation report on the subject details of complainants and their signed statements and supporting evidence, signed company policy on sexual harassment, signed copy of code of conduct and signed copy of disciplinary procedures.
64. He also took issue with the respondent’s decision to refer him to the company general counsel for some information. The respondents on their part denied treating the claimant unfairly. They sought to rely on some written statements of 4 persons who they never called as witnesses. They also sought to rely on some email correspondence of persons who were also never called as witnesses. They produced an investigation report whose author they also did not call as a witness.
65. It is true that the claimant was suspected of offences of sexual harassment and sent on suspension. He was served with a notice to show cause which he responded to seeking further details. He avers that he was now referred to the respondent’s counsel office which was against the respondent’s own internal disciplinary process. The respondents witness admitted referring the claimant to their general counsel to collect detailed statements of witnesses.
66. The respondents also aver that the claimant was supplied with all the documents requested for. There is however no evidence that the claimant was supplied with the documents requested for. The act of referring the claimant to their counsel to get details of the information sought for was also in bad light.
67. Section 41 of the [Employment Act](#) 2007 details how an internal disciplinary process should be conducted including an opportunity to cross-examine any witness who testifies against him.
68. It is unfortunate that in this case, the claimant was given statements of faceless persons as his accusers and it was indeed difficult to respond to accusations against him. He was supposed to be supplied with evidence against him. He was however referred to the respondents counsel to pick some documents. There is however no evidence that the documents requested for were finally supplied. There is no evidence of any letter to the respondents forwarding the said documents or releasing them to the claimant.
69. The [Fair Administrative Action Act](#) provides at section 6 also provides as follows:



- (1) Every person materially or adversely affected by any administrative action has a right to be supplied with such information as may be necessary to facilitate his or her application for an appeal or review in accordance with section 5.
 - (2) The information referred to in subsection (1), may include–
 - (a) the reasons for which the action was taken; and
 - (b) any relevant documents relating to the matter.
 - (3) The administrator to whom a request is made under subsection (1) shall, within thirty days after receiving the request, furnish the applicant, in writing, the reasons for the administrative action.
 - (4) Subject to subsection (5), if an administrator fails to furnish the applicant with the reasons for the administrative decision or action, the administrative action or decision shall, in any proceedings for review of such action or decision and in the absence of proof to the contrary, be presumed to have been taken without good reason.
 - (5) An administrator may depart from the requirement to furnish adequate reasons if it is reasonable and justifiable.
70. In the case of the claimant, the respondent failed to adhere to the law by following a flawed process and thus failing to give the claimant an opportunity to defend himself. It is therefore my finding that the respondent's action pushed the claimant to actually resign and thus he was constructively terminated.

Issue No 2

71. Having found that the claimant was constructively terminated, I find for claimant and award him compensation of:-
1. 6 months' salary based on the fact that he was treated in an unfair manner and denied an opportunity to present his case = $8 \times 420,000 = 3,360,000/-$.
 2. Service pay kshs 1,260,000/-.
 3. 2 months' salary as notice time = 820,000/.
- Total kshs 5,416,000/- less statutory deductions.
4. The respondents will also pay costs of this suit plus interest at court rates with effect from the date of this judgment.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 15TH DAY OF JULY 2025.

HELLEN WASILWA

JUDGE

