



**Wanjala v Majid Al-Futaim Limited (Cause E675 of 2022)
[2024] KEELRC 780 (KLR) (28 March 2024) (Judgment)**

Neutral citation: [2024] KEELRC 780 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E675 OF 2022**

**J RIKA, J
MARCH 28, 2024**

BETWEEN

TIMOTHY JUMA WANJALA CLAIMANT

AND

MAJID AL-FUTAIM LIMITED RESPONDENT

JUDGMENT

1. This Claim, presented through a Statement of Claim dated 6th September 2022, is undefended.
2. There is an Affidavit of Service on record, sworn by the Claimant's Advocate, Samwel Wakoli Wafula on 6th September 2022, showing that the Statement of Claim was served upon the Respondent at its Two Rivers Mall premises, on 6th September 2022.
3. Hearing proceeded on 7th November 2023 by way of formal proof. The Claimant gave evidence and rested his case on this date. He confirmed filing of his Closing Submissions, at the last appearance before the Court, on 30th November 2023.
4. He pleads, and told the Court that, he was employed by the Respondent as a Checker, on 28th December 2017. He was suspended on 23rd September 2021.
5. He was called by the Human Resource Assistant Manager, and told to resign. He resigned on 30th September 2021.
6. The Respondent then issued him a letter of termination, dated 1st October 2021, terminating his contract with immediate effect. His last salary was Kshs 29,635.
7. He asks the Court to find that termination was unfair and unlawful, and grant him the following orders: -
 - a. 1-month salary in lieu of notice at Kshs 29,635.



- b. 21 days of unpaid leave of 4 years, at Kshs 84,000.
 - c. NHIF for 8 months at Kshs 6,400.
 - d. NSSF for 8 months at Kshs 1,600.
 - e. Travel allowance at Kshs 4,000.
 - f. House allowance at Kshs 2,600.
 - g. Service fees for 4 years at Kshs 120,000.
 - h. General damages for loss of employment and future earnings.
 - i. Costs.
 - j. Interest.
8. The Claimant told the Court that his role entailed receiving and checking products entering the Respondent's warehouse. He arranged items. He resigned, because he was being forced to do the work of a supervisor. He feared he would be blamed if things went wrong. He was locked out and could not access his office. He was suspended and resigned. He was not heard, and holds that he was constructively dismissed.

The Court Finds : -

- 9. The evidence given by the Claimant through his oral evidence and documents on record, is not sufficient to establish a claim for constructive dismissal.
- 10. The Claimant was suspended on 23rd September 2021 with full pay for 14 days. He was given details of the accusations against him. He was advised that he would be required to show cause, why he should not be disciplined. He would be taken through a disciplinary hearing if necessary.
- 11. Instead of waiting for the disciplinary hearing, he wrote a letter of resignation, dated 29th August 2021. He stated that the effective date was 1st September 2021.
- 12. His resignation did not amount to constructive dismissal. The Claimant resigned, to avoid the disciplinary process. Such resignation does not amount to constructive dismissal.
- 13. The Court of Appeal in *Coca Cola East and Central Africa Limited v Maria Kagai Ligaga* [2015], set out the principles of constructive dismissal.
- 14. Constructive dismissal occurs when an Employee is compelled to resign, because the Employer's behaviour, has become so intolerable and the working environment become so hostile, that the Employee is no longer able to discharge his contractual responsibilities.
- 15. The behaviour of the Employer must be shown to entail repudiatory breach of the contract, behaviour that signifies that the Employer is no longer willing to be bound by the contract. The Employee has the burden of proving repudiatory breach. The Employee must show that he resigned, because he believed the conduct of his Employer, amounted to termination.
- 16. The Respondent simply issued the Claimant a letter of suspension, with accusations and advice that disciplinary action was contemplated. This was not breach of the fundamental terms of the contract. It was not repudiatory breach, and there was no ground for the Claimant to consider his contract terminated.



17. The contract executed by the Claimant made provision for termination through summary dismissal, on the grounds set out in the *Employment Act* 2007. Other reasons stated in the contract that would justify summary dismissal include: breach of obligation under the contract; breach of company policy; conduct which brought the company into disrepute; and incompetence.
18. The letter of suspension specifically gave details to the Claimant, relating to dishonesty, bribery, breach of company policy, code of ethics and employment law. The Respondent issued the letter of suspension within the terms and conditions of service, prescribed under the contract.
19. Instead of resigning on 1st September 2021, the Claimant ought to have responded to the accusations in the letter of suspension. It was wrong to allege that the accusations were improper, and that there was unfavourable working environment. The Respondent acted within its managerial prerogative, and within the contract, by issuing the Claimant with the suspension letter. The Claimant was advised, in keeping with fair procedure, that disciplinary hearing against him was intended.
20. The Court does not see how an Employer, exercising disciplinary control over an Employee, can be said to have created a hostile work environment, and constructively dismissed an Employee.
21. It would completely disable the managerial prerogative, if letters of suspension, notice to show cause, and invitation to disciplinary hearing, are deemed as hostile workplace actions by an Employer, warranting an affected Employee to resign and claim constructive dismissal. The managerial prerogative of Employers, to have disciplinary control over their Employees, must be protected. The Court can only intervene where the prerogative is exercised unreasonably, unfairly, contrary to the law and contract to which parties are subject.
22. The Claimant ought to have held his horses, and waited for the disciplinary hearing, and the decision to dismiss or retain him, as an Employee of the Respondent. He ought to have answered the grave accusation made against him, that he received Kshs 75,000 from a Mr. Omari, to facilitate a corrupt sugar deal. It was the wrong option, to run away from the workplace, away from the grave accusation, and bring a claim for constructive dismissal.
23. He bolted, and placed himself beyond the disciplinary control of the Respondent. He has not established constructive dismissal.
24. He came up with other allegation during the hearing, about conduct he considered amounted to repudiatory breach of the contract, on the part of the Respondent. He alleged that he was made to do the work of a supervisor, which made him apprehend that he would be blamed, if things went wrong. He did not give details of supervisory work he did, or give any foundation to his apprehension that he would be blamed if things went wrong. He did not suggest to the Court which things were likely to go wrong. He also alleged that the Respondent locked him out. He did not tell the Court how and when this lockout happened. He did not plead that he was wrongfully assigned supervisory role, or locked out, in his Statement of Claim. These were just empty allegations, made on formal proof.
25. The Court does not think that the Respondent issued the Claimant any termination letter; the letter dated 1st October 2021 from the Respondent to the Claimant, merely informed the Claimant that the Respondent had received and accepted the Claimant's letter of resignation. It is not correct as pleaded by the Claimant at paragraph 7 of his Statement of Claim, that the Respondent immediately terminated his contract, vide a letter dated 1st October 2021. If indeed there was such a letter, the claim for constructive dismissal would not have been made at all, termination having in the pleading of the Claimant, been initiated by the Respondent.



26. He does not merit notice and damages. He has not established the prayers for annual leave, statutory refunds, travel allowance, house allowance and service fee.

It Is Ordered : -

- a. The Claim is dismissed.
- b. No order on the costs.

DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY AT NAIROBI, UNDER PRACTICE DIRECTION 6[2] OF THE ELECTRONIC CASE MANAGEMENT PRACTICE DIRECTIONS, 2020, THIS 28TH DAY OF MARCH 2024.

JAMES RIKA

JUDGE

