



**Wachira v Vibe Lounge Limited (Cause E956 of 2022)  
[2024] KEELRC 1646 (KLR) (24 June 2024) (Judgment)**

Neutral citation: [2024] KEELRC 1646 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E956 OF 2022  
NZIOKI WA MAKAU, J  
JUNE 24, 2024**

**BETWEEN**

**CLEMENT KENNEDY WACHIRA ..... CLAIMANT**

**AND**

**VIBE LOUNGE LIMITED ..... RESPONDENT**

**JUDGMENT**

1. The Claimant filed his suit on 22<sup>nd</sup> December 2022 seeking relief against his erstwhile employer Vibe Lounge Limited. He averred that he was employed as a general manager at the Respondent in March 2022. The Claimant asserted that he was paid Kshs. 100,000/- as a monthly salary with airtime, late night duty allowance and night taxi allowance forming the additional payments he was entitled to. He averred that he worked diligently but in August 2022, the Respondent stopped paying his salary despite continuing to work for the Respondent company. He averred that on 25<sup>th</sup> October 2022 he was asked to take a one week off after which he would be notified when to resume work. The Claimant averred that someone was appointed to act in his position and as at the time of filing suit, the Respondent had not communicated about his return to work. The Claimant averred he sought to know formally when he was to resume work but the Respondent did not communicate. The Claimant avers he reported to work in November 2022 and found someone seated at his desk and that there was nowhere for him to sit. He thus averred that he treatment by the Respondent amounts to unfair treatment and unlawful termination from employment. He sought a declaration that the Respondent's actions amounted to unlawful termination from work and that he is entitled to salary and other allowances from August 2022 till the date of filing the suit, terminal dues, compensation as well as certificate of service. He also sought costs of the suit.
2. The Respondent never entered appearance nor filed a defence despite service. The matter proceeded to formal proof and the Claimant testified on 14<sup>th</sup> May 2024. He stated that he was notified not to attend work on 25<sup>th</sup> October through a message in the finance group. He stated that he was to report



after 1 week and upon resumption found someone in his place. He wrote seeking clarification and the Respondent declined to engage him or his lawyer in any correspondence. He stated that he was unlawfully dismissed and was therefore seeking recompense.

3. The Claimant was to file submissions but none had been filed as of the time of penning the Judgment. From all accounts, the matters leading to the filing of the suit amounts to constructive dismissal. In the case of *Coca Cola East and Central Africa Limited v Maria Kagai Ligaga* [2015] eKLR, the Court of Appeal outlined the principles relevant in determining constructive dismissal as follows:
  - 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 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.
4. From the facts in this case, the Claimant was bundled out of his employment ostensibly on a short leave which has become indeterminate. It is apparent the Respondent has taken steps to replace the Claimant and has not undertaken any proper separation with the Claimant. In my considered view, the refusal to recall the Claimant after his one week leave of absence at the behest of the employer as well as refusal to engage the Claimant in communication despite his efforts to get a word from the Respondent amounts to a repudiatory breach of the employment contract and therefore, constructive dismissal. In the mind of the court, the employer could have properly separated with the employee if there was cause to do so. None has been availed and the inescapable conclusion is that there is none. Consequently, I find for the Claimant as follows:
  - a. Salary for August – November 2022 – Kshs. 440,000/-
  - b. One month's salary as notice – Kshs. 110,000/-
  - c. 2 months salary as compensation – Kshs. 220,000/-
  - d. Certificate of service.
  - e. Interest at court rates on the sums in (a), (b) and (c) above from date of judgment till payment in full.
  - f. Costs of the suit.



It is so ordered.

**DATED AND DELIVERED AT NAIROBI THIS 24<sup>TH</sup> DAY OF JUNE 2024**

**NZIOKI WA MAKAU**

**JUDGE**

