



**Kiambi v Haco Tiger Brands (EA) Limited (Cause 1059 of 2017)
[2023] KEELRC 3399 (KLR) (8 December 2023) (Judgment)**

Neutral citation: [2023] KEELRC 3399 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 1059 OF 2017
SC RUTTO, J
DECEMBER 8, 2023**

BETWEEN

CAROLINE MUKIRI KIAMBI CLAIMANT

AND

HACO TIGER BRANDS (EA) LIMITED RESPONDENT

JUDGMENT

1. The Claimant avers through her Statement of Claim filed on 8th June 2017 that in 2012, she was employed by the Respondent as a Human Resource Manager. According to the Claimant, she executed her duties diligently with an impeccable record through hard work and commitment to the company’s rules, regulations and code of conduct. The Claimant further avers that her troubles at the Respondent entity commenced when one Peter Kangethe was appointed the Acting Managing Director.
2. She contends that the hostility of the said Peter Kangethe made her continued stay in the Respondent’s employment untenable resulting in her resignation on 5th April 2016. That due to the hostile environment and frustration occasioned to her by the Respondent through its Acting Managing Director, she lost her legitimate expectation to work for the Respondent. Terming the Respondent’s action cruel, vindictive, unjust, inequitable and laden with malice and bad faith, the Claimant seeks the following reliefs against the Respondent:
 - a. A declaration that the Claimant’s constitutional rights have been infringed and/or violated by the Respondent.
 - b. A declaration that the Claimant was wrongfully constructively dismissed by the Respondent.
 - c. A declaration that the Claimant’s constructive dismissal by the Respondent was unfair and caused the Claimant mental anguish.



- d. The sum of Kenya Shillings Three Million Eight Hundred and Thirty Eight Thousand Four Hundred and Four (Ksh3,838,404) being twelve (12) months' salary as compensation for loss of employment opportunity by reason of constructive dismissal.
 - e. General damages in the sum of Kenya Shillings Three Million Eight Hundred and Thirty Eight Thousand Four Hundred and Four (Ksh3,838,404) for wrongful termination of employment.
 - f. Damages for mental anguish.
 - g. An order that the Respondent issue a Certificate of Service to the Claimant.
 - h. Any other appropriate reliefs as the Court may deem fit to grant.
 - i. Cost of the suit.
3. Opposing the Claim, the Respondent has denied the Claimant's assertions that her contract of employment was unlawfully terminated. Putting the Claimant to strict proof, the Respondent denies that the Claimant lost her legitimate expectation to work as a result of constructive dismissal due to a hostile work environment and frustration occasioned to her through its Acting Managing Director. The Respondent contends that the Claimant's resignation was borne out of her own misconceptions, illusions and prejudices. In the Respondent's view, the Claimant is not entitled to the reliefs sought and consequently, has asked the Court to dismiss the Claim with costs.
 4. The matter was canvassed by way of oral evidence and production of exhibits.

Claimant's case

5. When the Claimant's case proceeded on 27th April 2023, she testified in support of her case and sought to adopt all the documents filed on her behalf to constitute her evidence.
6. The Claimant testified that as the Human Resource Manager, she was responsible for overseeing policy formulation of the Human Resources and implementation, recruitment and retention of staff as well as performance review management. It was her further testimony that she spearheaded the administration wing and was in charge of handling all disciplinary issues, talent management, staff welfare, training, development of the departmental budget and the company's medical scheme.
7. The Claimant testified that on 18th September 2015, she received a letter signed by the Respondent's Acting Manager Director suspending her from duty for three weeks for alleged unethical conduct. During that encounter, the Acting Managing Director confiscated her laptop computer and personal mobile phone and instructed her not to make any contact with any employee of the company.
8. It was her evidence that during her suspension, the Acting Managing Director informed her that she was being suspended following a tip-off made by a whistle-blower through the company's whistle-blowing line.
9. Despite being informed by the Acting Managing Director that her suspension was necessary to allow for an investigation to be carried out, no investigation was carried out before, during or after the suspension. She believes that her suspension was not only unnecessary and unwarranted but also motivated by malice and ill will.
10. The Claimant further stated that at the time of her suspension, she was not made aware of the allegations preferred against her and only became aware of the same when she was summoned for a disciplinary hearing that was to take place on 27th October 2015. In spite of her concerted and extensive efforts to obtain information from senior executives of the Respondent on why she was on



suspension, they all remained mute heightening her suspicions, anxiety and apprehension on the fate of her reputation, career and means of livelihood.

11. On 8th October 2015, the Respondent extended her suspension for a further 15 working days citing more time required to complete investigations. Still, no investigation was carried out. She maintains that this act was uncalled for and was in furtherance of an illegal act because the Acting Managing Director knew very well that there was no investigation that was being undertaken at that time.
12. That on 19th October 2015, the Respondent through a letter notified her of a disciplinary inquiry which she was required to attend on 27th October 2015.
13. At the disciplinary hearing, she vigorously defended herself and on 29th October 2015, the disciplinary committee having considered all the matters tabled before it, found her not culpable at all of the allegations that had been levelled against her. As a result of the findings, she was directed to report back to work two weeks after the disciplinary committee cleared her.
14. Upon her return, she held a meeting with a Tiger Executive, one Mr. Vasu Moodley and the Acting Managing Director at which point she expressed her concern and displeasure with the way her suspension and disciplinary hearing were handled especially because they had occasioned her a lot of humiliation and embarrassment in the eyes of her colleagues.
15. It was the Claimant's evidence that she requested to be furnished with a copy of the whistle-blower report that had allegedly led to her suspension as well as the investigation report if any was in place. These were not availed and her numerous written follow-ups elicited no response apart from jibes and disdain from the Acting Managing Director.
16. She further averred that in the days and weeks that followed the disciplinary hearing, the Acting Managing Director, through various communications in various fora, continued to insinuate that she had committed fraud against the Respondent Company thereby continuously casting negative aspersions on her character and integrity.
17. She further stated that the Respondent through its agents engaged in silent and documented acts of witch hunt including commissioning investigations to investigate matters that had already been ruled on after the disciplinary hearing on 27th October 2015.
18. That in January 2016, the Respondent in pursuit of unlawful ends commissioned an investigation against her in total disregard of the fact that the Disciplinary Committee had cleared her of all allegations levelled against her. The investigation was based on the same allegation over which she had been exonerated earlier. She was never informed of the outcome or findings of that investigation.
19. The Claimant further testified that the Respondent through its Acting Managing Director, subsequent to her unequivocal reinstatement, engaged in a series of deliberate and calculated actions that had the sole and singular intention of frustrating her with the intention of rendering her irrelevant.
20. That the Respondent's Acting Managing Director would at any meeting where she was present state that she was a fraudster.
21. It was the Claimant's further evidence that the Respondent's Acting Managing director took over her roles and duties without assigning her any alternative work thereby rendering her idle and creating a clear picture that she was unwanted. Consequently, the Respondent painted her as a poor performer who was no longer fit to serve as its Human Resource Manager. The Respondent acted without any regard for the law and totally disregarded her long-standing career in the Human Capital Industry.



22. Further, she realized that most of her responsibilities had been taken up. By way of illustration, she stated that the medical scheme was taken up by another colleague and that an administrator to the medical scheme was appointed without her involvement. That further, the Respondent's Finance Director was terminated without her involvement. She only learnt of the same later. She further stated that there was a major change in the structure of the Finance Department and she was not informed of the same.
23. According to the Claimant, she was reporting to the Respondent's Acting Managing Director, who instead of coaching, mentoring and developing her skills, orchestrated the plan to frustrate, embarrass and demoralize her. That for the first time during her employment with the Respondent, she was poorly rated by the said Acting Managing Director in the annual performance appraisal.
24. The Claimant averred that the hostility by the Respondent and its employees, particularly the Acting Managing Director, made her continued stay under their employment untenable resulting in her reluctant yet necessary resignation on 5th April 2016 from the position of Human Resource Manager.

Respondent's Case

25. The Respondent called oral evidence through Mr. Edward Kariuki Njagi, who testified as RW1. At the outset, Mr. Njagi sought to adopt his witness statement as well as the bundle of documents filed on behalf of the Respondent, to constitute his evidence in chief.
26. RW1 stated that allegations of unethical conduct against the Claimant arose in September 2015. The said allegations were the subject of discussion between the management in Kenya and Tiger Brands Limited in South Africa. According to him, it was a consultative decision. It was determined that the Claimant was to go on suspension to allow investigations to be conducted in accordance with the Respondent's Disciplinary Code and Ethics Line Policy.
27. A letter of suspension was drafted and dated 18th September 2015, a Friday. However, before the Claimant was given the suspension letter, on Monday 21st September 2015 an anonymous Ethics report Ref 2015092082844 was made against the Claimant providing additional information on the alleged unethical conduct. This report was included in the letter of suspension that was then amended and thereafter handed over to the Claimant. That the delay between the drafting of the letter and the delivery that was pointed out by the Claimant was the weekend.
28. RW1 further stated that in the suspension letter, the Claimant was duly informed that there were allegations of serious misconduct/gross negligence that needed to be investigated. She had been issued with a laptop and mobile phone that were the property of the company and the same were to be used for official duties only and in her official capacity hence she was required to hand these items over prior to proceeding for suspension.
29. In addition to being informed of her suspension, he (RW1) was informed by the then Acting Managing Director that he was to assume responsibility over the Human Resource function.
30. RW1 further stated that the Claimant's suspension was neither premeditated nor was it preconceived with malicious intent. The same was simply to allow for the company to investigate the serious allegations made. That the investigations were therefore commenced before the Claimant's suspension and were finalized during the period of her suspension.
31. RW1 contended that the Respondent Company had the right to investigate allegations made against the Claimant in a confidential manner and not to prematurely disclose full details to ensure that evidence and/or witnesses are not tampered with in the process bearing in mind that the Claimant was



part of the management and had influence over the other employees. For this reason, the Respondent extended the investigation period for an additional 15 days to allow for a finalization of the ongoing investigations.

32. The Respondent Company concluded the investigations and by a letter dated 19th October 2015, the Claimant was informed of the disciplinary inquiry that was to be held on 27th October 2015.
33. In the letter, the precise nature of the complaints was that in her capacity and role as the Human Resource Manager, the Claimant was involved in a scheme to defraud the company by making false claims using inflated expense receipts. He cited the following instances; staff gifts, funeral expenses, travel expenses to South Africa and medical expenses.
34. RW1 further stated that the Claimant was informed of her rights at the inquiry including the right to representation, right to call witnesses and furnish evidence and argue on the question of whether or not she committed the allegations and right to submit documentary evidence.
35. The inquiry proceeded on 27th October 2015 and the Claimant provided evidence to her defence. The disciplinary Committee found that the Claimant was not guilty of the first three allegations relating to staff gifts, funeral expenses and travel expenses to South Africa. On the fourth allegation relating to the charge on medical expenses, the committee found that the Claimant had no case to answer as she had obtained the necessary approvals.
36. Upon conclusion of the disciplinary inquiry and a decision being reached by the Committee that the Claimant was not guilty, her suspension was lifted with immediate effect and she was to resume her duties. The Committee's findings were communicated to the Claimant by a letter dated 29th October 2015.
37. After the Claimant had resumed her duties, the issue of fraudulent receipts and inflation of expenses was raised by the Group Auditors. The Group's Internal Auditors under Tiger Brands Limited initiated their own investigations. RW1 averred that this was not an internal decision by the management in Nairobi.
38. RW1 was categorical that the January 2016 investigation was not initiated on the basis of the previous Ethic Report referred to in the letter dated 18th September 2015. The Respondent staff members participated in the Group Internal Audit. He maintained that the Claimant was therefore not the subject of the investigation and on the contrary, it touched on the top management as a whole.
39. RW1 further stated that at a Board meeting held on 11th February 2016, the Group Internal Audit indicated that there was a need to firm up the procurement process in the company as it was deemed weak and susceptible to manipulation after audit, to reduce instances of fraud. Questions were raised on the issue of the medical cover and instances of payment of medical bills over and above the limit set by the cover.
40. RW1 further averred that the Claimant underwent a performance appraisal in which she scored 4 out of a possible 5 marks. She was not marked down or maliciously given a low score in the appraisal.
41. According to RW1, upon resuming her duties after the conclusion of the disciplinary inquiry the Respondent went back to an open environment.
42. There was no hostility from the Respondent, its employees, or at all leading to her resignation due to an allegedly untenable employment. He maintained that the Claimant resigned on her own accord and purely because of ill-perceived alleged misdeeds on the part of the Respondent.



43. RW1 further maintained that there was no ill will, malice, bias or bad faith in the manner in which the process was handled from the investigations to the conclusion of the disciplinary inquiry. The Respondent's actions were well within its rights while at the same time being very sensitive to the rights of the Claimant.
44. He further stated that the Claimant's work environment was not hostile, neither was there discrimination, abuse, psychological torture and ridicule and her decision to resign was borne out of her own misconception of facts.

Submissions

45. The Claimant submitted that whenever an employee is forced to tender their resignation due to a hostile work environment and or frustration at the workplace, the employer can be said to have terminated the said employment wrongfully, unjustly and unfairly as is the current position in her case.
46. It was the Claimant's position that the report on which her suspension was based, was dated and released on 21st September 2015, 3 days after she had already been suspended. She argued that when she was suspended, there was no report being relied on hence her suspension was unprocedural.
47. The Claimant further argued that the Respondent was unreasonable in all its dealings with regards to her suspension and reintegration to the workplace after her suspension. She posited that for these reasons, she was more than justified to leave her employment even without notice based on the Respondent's conduct.
48. The Claimant further submitted that her responsibilities were taken up by her colleagues and she was kept in the dark concerning decisions being made in her department. She maintained that she had to endure ill-intentioned comments about the suspension and had to stay at the Respondent's workplace with no work assigned to her which made her presence nugatory and purposeless.
49. The Claimant maintained that she was employed to perform certain tasks at the Respondent's company and the said tasks were taken away from her leaving her with nothing to do.
50. According to the claimant, she had been able to prove that the reason she left the Respondent company was because of the toxic environment created by her employer. In support of her submissions, the Claimant invited the Court to consider the determination in the case of Coca-Cola East & Central Africa Limited v Maria Kagai Ligaga [2015] eKLR.
51. On the Respondent's part, it was submitted that constructive dismissal should not be invoked simply because an employee is unhappy or dissatisfied with their job. It was the Respondent's position that this requires concrete evidence that the conditions were objectively intolerable. On this score, reliance was placed on the case of Josephat Kibet Kipruto v Gajipara Builders Limited (2019) eKLR.
52. The Respondent stated in further submission that the Claimant has not shown instances where its conduct is in "fundamental breach that goes to the root of the contract of employment" as well as any instances where its conduct is so intolerable as to make it impossible for the Claimant to continue working.
53. In further submission, the Respondent argued that the Claimant did not provide any evidence to corroborate her claims that her roles were taken up and that she was not signed alternative work. According to the Respondent, the email correspondences provided by the Claimant failed to demonstrate any tangible evidence of the terms of employment, any change in the execution of those terms and any conduct attributable to the Respondent and/or its acting Managing Director in usurpation of the Claimant's roles.



54. The Respondent further drew the Court’s attention to the email correspondences exhibited by the Claimant, and argued that the Acting Managing Director had deliberately assigned diverse tasks to various teams including the Claimant. In the Respondent’s view, the correspondences bear evidence that the Claimant was not left idle as contended but rather played an integral role within cross-departmental tasks that involved individuals from different departments. To this end, it disputed the Claimant’s contention that her role was reduced to a mere onlooker.
55. Referencing the case of Coca-Cola East & Central Africa Limited v Maria Kagai Ligaga [supra], the Respondent urged the Court to consider the matter from an objective lens and assess whether the evidence presented, genuinely demonstrates a fundamental breach if any of the terms of employment through usurpation of the Claimant’s roles, duties and/or responsibilities as per her terms of contract of employment.
56. It was the Respondent’s further submission that the mere dissatisfaction of the Claimant with her role in the organization as can be deduced from the evidence she wishes to rely on, is not sufficient evidence of actual and justified dissatisfaction in reality.
57. It was further submitted that the claims pertaining to the Claimant’s suspension cannot be reasonably used as justification for her claim for constructive dismissal as she was subjected to a standard suspension pending the conclusion of investigations of alleged work-related misconduct.

Analysis and Determination

58. Flowing from the pleadings before Court, the evidence on record and the opposing submissions, the issues falling for determination can be distilled as follows: -
 - i. Whether there is a case of constructive dismissal;
 - ii. What reliefs if any, avail to the Claimant?

Constructive dismissal?

59. It is common ground that the Claimant resigned from the Respondent’s employment on 5th April 2016. The Claimant has attributed her resignation to what she terms as a hostile environment and frustration occasioned to her by the Respondent through its Acting Managing director. This position has been refuted by the Respondent, maintaining that the Claimant’s resignation was borne out of her own misconceptions, illusions and prejudices.
60. The *Employment Act* 2007, has not defined the concept of constructive dismissal. This notwithstanding, the concept has been the subject of many decisions emanating from this Court and the Court of Appeal. In the leading case of Coca-Cola East & Central Africa Limited v Maria Kagai Ligaga [2015] eKLR the Court of Appeal had this to say:

“What is the key element and test to determine if constructive dismissal has taken place? The factual circumstances giving rise to constructive dismissal are varied. The key element in the definition of constructive dismissal is that the employee must have been entitled or have the right to leave without notice because of the employer’s conduct. Entitled to leave has two interpretations which gives rise to the test to be applied. The first interpretation is that the employee could leave when the employer’s behavior towards him was so unreasonable that he could not be expected to stay - this is the unreasonable test. The second interpretation



is that the employer's conduct is so grave that it constituted a repudiatory breach of the contract of employment - this is the contractual test."

61. The Court proceeded to highlight the following, as the guiding principles in determining a case 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 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 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.

62. The Black's Law Dictionary (10th Edition) defines the term constructive dismissal to mean: -

"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."

63. In a nutshell, constructive dismissal occurs when an employee is left with no choice but to leave his or her job owing to the employer's conduct. Therefore, in as much as the employee is not actually dismissed from employment, the working conditions created by the employer are so intolerable or there is a breach of fundamental terms of the employment contract by the employer such that the employee is entitled to regard himself or herself as having been unfairly dismissed.

64. Revisiting the facts herein, the reasons for the Claimant's resignation can be discerned from her letter dated 5th April 2016, which I will reproduce in part:

"It is a hard decision I have had to make but I feel that I am left with no choice but to resign. In the recent past, I have both formally and informally communicated my dissatisfaction on a number of issues I have been facing both as an individual and in the delivery of my duties as the HR Manager. Below are some of which I have specifically brought to your attention:

- a. The irregular suspension on September 2015 and irregular disciplinary hearing which was thereafter concluded and I was cleared and reinstated by the board selected disciplinary committee in November 2015.



- b. Your continued reference on the fraud allegations and the fact that you have confirmed I am guilty even after my clearance.
- c. Interference in the delivery of my duties as the HR Manager.

In view of the above, I consider this to be a fundamental breach of contract on your part, I feel that I am being subjected to unwarranted treatment that has negatively affected my health and career. I have been mentally distressed for a while now and hence my decision.

My resignation is not voluntary but due to the continued frustration that has amounted to a constructive dismissal.”

- 65. It is therefore apparent that the reasons for the Claimant’s resignation were majorly based on her suspension in September 2015 and what she termed as continued reference to the fraud allegations by the Acting Managing Director and interference in the delivery of her duties as the Human Resource Manager.
- 66. With regards to her suspension, the Claimant averred that the Respondent created false and tendentious reasons to legitimise her suspension and dismissal hence denying her right to a fair trial. She further averred that the Respondent sent her on suspension on the pretext of conducting investigations that never took place and refused to avail the whistle-blower report that was allegedly used to suspend her.
- 67. The Respondent denied that the suspension was premeditated and preconceived with malicious intent. It maintained that the investigations were commenced before the Claimant’s suspension and were finalized during the period of her suspension. It was the Respondent’s position that the Claimant’s suspension was necessary and warranted to enable it conduct conclusive investigations. The Respondent further contends that it had a right and duty to investigate the allegations made against the Claimant in a confidential and comprehensive manner and not prematurely disclose full details to ensure witnesses and evidence are not tampered with.
- 68. The record bears that through a letter dated 18th September 2015, the Claimant was placed on suspension for a period of three weeks. She was notified that the information available and supported by reports made on the confidential ethics line gave rise to prima facie evidence of serious misconduct and or gross negligence on her role and responsibility as the Human Resource Manager.
- 69. Notably, the Ethics Report which was exhibited by both parties, was made by an anonymous person on 21st September 2015. This was after the Claimant’s suspension. It is also notable that the allegations contained in the said report are on all fours with the allegations that were levelled against the Claimant during the disciplinary inquiry held on 27th October 2015.
- 70. This contradicts the Respondent’s position that the allegations against the Claimant had been raised prior to the date of suspension. Indeed, the Respondent did not state how and which allegations were made against the Claimant prior to her suspension. From the record, the only allegations levelled against the Claimant and which formed the basis for the disciplinary inquiry are those contained in the Ethics Report dated 21st September 2015. The Respondent did not point the Court to another report containing the allegations against the Claimant prior to 18th September 2015.
- 71. In light of the foregoing, it is apparent that the Respondent has not proved that it had a basis to suspend the Claimant on 18th September 2015, there being no evidence of existence of allegations against her at that time.



72. Indeed, this position is confirmed by the general observations made by the Disciplinary Committee to the effect that the Claimant's suspension preempted the ethics line. The Committee further noted that suspension of staff should only be in very serious cases where it is apparent that the staff could tamper with the evidence.
73. That said, the pertinent question is whether the Claimant was entitled to treat herself as having been constructively dismissed on account of the said suspension.
74. One of the guiding principles established in the case of *Coca-Cola East & Central Africa Limited v Maria Kagia Ligaga* [2015] eKLR is that the employee must within a reasonable time terminate the employment relationship pursuant to the breach.
75. In this case, the Claimant was suspended on 18th September 2015, taken through a disciplinary hearing on 27th October 2015, and on 29th October 2015, she was notified that her suspension had been lifted and was directed to resume her duties as the Human Resource Manager. Her resignation came almost five months later after she had resumed duty.
76. In my view, the intervening period between the Claimant's suspension, subsequent disciplinary hearing and resignation was not reasonable to constitute constructive dismissal. A considerable amount of time had passed.
77. In any event, by then the Claimant had been exonerated and cleared of all the allegations that had been levelled against her.
78. Therefore, in my view, the suspension despite being irregular, could not in the circumstances be construed as entitling the Claimant to consider herself constructively dismissed.
79. The Claimant further cited interference in the delivery of her duties, as being one of the reasons behind her resignation. In her testimony before Court, the Claimant stated that her duties were taken up and that she was sidelined when official decisions which naturally required her input were made. Essentially, the Claimant was asserting that there was a repudiatory breach of the fundamental terms of her contract through the conduct of the Respondent.
80. On this issue, it is notable that the Claimant's comprehensive job description enumerating her core duties and responsibilities, as the Human Resource Manager, was not exhibited. This being the case, the Claimant exhibited her 2014 final performance review which contained her areas of focus in 2015. These areas were captured as follows: medical budget overruns, presentation skills for self and support, HR strategic competencies.
81. In her testimony before Court, the Claimant gave instances which she termed as amounting to interference with her duties as the Respondent's Human Resource Manager. In this regard, she made reference to the manner in which a new administrator was appointed to handle the Respondent's medical scheme. The Claimant averred that she was not involved when the change was made.
82. From the record, the Respondent's Acting Managing Director communicated the changes regarding the appointment of an Administrator to the medical scheme through an email dated 15th January 2016. In the said email, he stated that all claims would be forwarded to the Managing Director's office for verification and then checked by the Human Resource Manager before payments are made.
83. What is notable from the record is that the Claimant's exact role and level of participation with regards to the medical scheme is not clear. In this regard, her 2014 final performance review only indicated that her area of focus was medical budget overruns.



84. Therefore, it is not possible to tell for a fact that the Claimant's role with regards to the medical scheme had been usurped. Indeed, it is not clear from the record whether all issues regarding the medical scheme were to be solely handled by the Claimant as the Human Resource Manager.
85. The Claimant further stated that she was not notified of the termination of the Respondent's Finance Director and only came to learn about it much later. It was her evidence that she also requested for his termination letter and performance review but the same was not given to her. In an email dated 12th March 2016, the Claimant addressed a Mr. Anand as follows:
- “Hi Anand,
- Following Steve's concerns, I would like to highlight the following:
- All issues regarding Steve's termination, salary, acting allowance and leave payment were all executed by Peter. However, in regards to Steve's termination, I had given my input which was not honored. To date I have never received Steve's termination letter as FD and neither have I received his end year performance appraisal despite several follow ups with Peter on the same.”
86. The trail of emails relevant to this issue reveals that the said Finance Director resigned from his position and his letter of resignation was received on 10th March 2016. In an email dated 11th March 2016, the said Finance Director addressed the Acting Managing Director as follows:
- “Dear Peter,
- Thank you for acknowledging receipt of my resignation letter. I need to point out a few pertinent issues that led to the build up to my resignation...”
87. In light of the foregoing and the Claimant's assertions that she was not involved in the termination of the Finance Director, it is not clear whether there was a termination process separate from his resignation. And further, whether there was a performance appraisal leading up to the said termination. Needless to say, this issue was not properly contextualized by the Claimant as to bring out the manner in which she was excluded from the entire process.
88. The Claimant further stated that she was not involved when major changes were made in the structure of the Finance Department. Again, on this issue, the Claimant's level of participation with regards to the changes to the Respondent's organization's structure was not evident.
89. Further, in one of the email extracts exhibited, the Claimant stated that changes in the finance processes were discussed between Steve, Annand and herself. It is therefore not clear at what point she was left out. I must point out that this was another aspect the Claimant failed to contextualize and bring out the manner in which she was excluded in decision making by the Respondent.
90. In light of the foregoing, it is not clear how the Claimant's execution of duty as the Respondent's Human Resource Manager was interfered with. This is more so noting that her core duties and responsibilities with respect to the highlighted areas were not made clear to the Court.
91. It is instructive to note that one of the principles set out in the case of Coca-Cola East & Central Africa Limited v Maria Kagai Ligaga [supra], is that the burden to prove repudiatory breach or constructive dismissal is on the employee.
92. Drawing from the above determination, it was incumbent upon the Claimant to prove that there was a repudiatory breach of the fundamental terms of her contract of service by the Respondent. Put



another way, it was imperative for her to prove that she was not allowed to undertake her core duties and responsibilities as contractually agreed.

93. If I may add, a case of constructive dismissal ought to be very clear from the facts and evidence on record. This was not the case herein. The Claimant's assertion that there was interference with the execution of her duties as Human Resource Manager ought to have been brought out in a very distinct manner. In my considered view, a case of constructive dismissal cannot be inferred by reading between the lines.
94. The upshot of the foregoing is that the Claimant has failed to prove on a balance of probabilities that she was constructively dismissed from employment.

Reliefs

95. As the Court has found that the Claimant has failed to prove that she was constructively dismissed the Claim with regards to compensatory damages and declaratory reliefs cannot be sustained.

Orders

96. In the final analysis, I dismiss the Claim in its entirety with an order that each party bears their own costs.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 8TH DAY OF DECEMBER, 2023.

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STELLA RUTTO

JUDGE

Appearance:

For the Claimant Ms. Aswani

For the Respondent Ms. Nderu

Court Assistant Abdimalik Hussein

ORDER

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court had been guided by Article 159(2)(d) of *the Constitution* which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of *the Constitution* and the provisions of Section 1B of the *Civil Procedure Act* (Chapter 21 of the Laws of Kenya) which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

STELLA RUTTO

JUDGE

