



**Wokabi v British American Tobacco Kenya Limited (Cause 31 of 2016)  
[2022] KEELRC 12694 (KLR) (29 September 2022) (Judgment)**

Neutral citation: [2022] KEELRC 12694 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE 31 OF 2016  
J RIKA, J  
SEPTEMBER 29, 2022**

**BETWEEN  
CHRISTOPHER CHEGE WOKABI ..... CLAIMANT  
AND  
BRITISH AMERICAN TOBACCO KENYA LIMITED ..... RESPONDENT**

**JUDGMENT**

1. The claimant filed his statement of claim on January 15, 2016.
2. He states, he worked for the respondent for 18 years, initially as a management trainee, from January 15, 1997. He left employment in the position of HR Business Partner Commercial, on April 30, 2015, upon execution of a mutual separation agreement with the respondent, dated April 27, 2015.
3. He pleads that he was constructively dismissed.
4. He states that from August 2012, the respondent embarked on an elaborate and malicious process, that culminated in constructive dismissal. The process consisted profiling and targeting of employees within the HR team, with Area Head of Human Resources, East & Central Africa, Razeeah Belath, insulting the employees by calling them 'bitch,' 'clown,' 'monkey,' 'donkey,' 'asshole' and 'idiot.' All the employees were systematically exited through unfair termination.
5. The process entailed systematic limitation of the claimant's career progression. He was excluded from the respondent's succession plans.
6. He was denied enhanced bonus of 50% for the years 2012, 2013 and 2014.
7. His role was restructured. The strategic content was transferred to the new role of Senior HR Business Partner.



8. The respondent circumvented redundancy process and declined to pay the claimant full redundancy benefits.
9. The claimant therefore pleads that the mutual separation agreement was involuntary, and resulted in constructive dismissal. He prays for loss of monthly salary, car allowance, provident funds, redundancy package and enhanced bonus- totalled at Kshs 98,639,130. Other prayers include declaration that termination was unfair; that he was compelled to sign the mutual separation agreement; that his constitutional rights were violated under articles 28, 35, 41, 47 and 50; general damages; costs; and interest.
10. The respondent filed its statement of response on February 22, 2016. The claimant was not constructively dismissed. He voluntarily terminated his employment, through a letter of resignation. He requested for and executed a mutual separation agreement. He was paid Kshs 10,038,836 which he acknowledged was in full and final payment.
11. His letter of resignation dated March 25, 2015 demanded that the respondent either releases him on redundancy, or through a mutual separation agreement. He told the respondent that his last day of work would be April 30, 2015.
12. The respondent accepted resignation. The respondent believed that the claimant resigned, after securing employment with Unilever Kenya Limited.
13. The claimant has no right to draw into this dispute, other employees who exited the respondent. Their contracts and mode of exit, were specific to them. The claimant demanded to leave on redundancy. He was advised that his role had not been declared redundant, and he was ineligible to exit on redundancy.
14. He is not entitled to any of the prayers pleaded. The respondent prays for dismissal of the claim with costs
15. Parties were partly heard before Hon Justice Byram Ongaya and the undersigned judge. The claimant conceded on cross-examination that he was paid Kshs 10,036,836 pursuant to the mutual separation agreement. He confirmed that he was no longer eligible for bonus as stated in a letter dated March 14, 2012.
16. Lucy Evara, Head of Human Resource East Africa Market, confirmed that the claimant and the respondent executed the mutual separation agreement on record. The claimant initiated separation. His role remained. He discharged the respondent from future claims. He secured another job with Unilever Kenya Limited, effective May 4, 2015. The mutual separation agreement was signed on April 29, 2015. Evara told the court on cross-examination, that the claimant gave ultimatum to the respondent on his termination. There was no duress for the claimant to sign the mutual separation agreement.
17. The matter was last mentioned on June 29, 2022, when parties confirmed the filing and service of their submissions.

**The Court Finds: -**

18. Termination in this dispute was clearly voluntarily initiated by the claimant. There were no hostile working conditions created by the respondent, which would compel the claimant to resign. There was nothing to show that the claimant considered the respondent to have repudiated the contract of employment, and there was nothing to show that the respondent no longer considered itself bound by the contract. The claimant did not prove that he considered himself to have been dismissed, leading up to his letter of resignation and execution of the mutual separation agreement. He did not prove



elements of constructive dismissal, as established in *Coca Cola East & Central Africa Limited v Maria Kagai Ligaga* [2015] eKLR.

19. He wrote to the respondent on March 25, 2015, demanding that the respondent releases him on redundancy. There was no evidence that his role had been phased out, and the respondent had not advised him that there was no more work for him, or that work had diminished. He alternatively asked to be released through a mutual separation agreement. He even notified the respondent that he would be leaving on April 30, 2015.
20. The claimant sought clarification on restructuring of his role, through his letter of resignation. He was advised in a letter dated April 20, 2015. It was emphasized that his role remained a key component of the HR function.
21. The respondent accepted the claimant's resignation and parties entered mutual separation agreement dated April 27, 2015, effective April 30, 2015- the date anointed by the claimant.
22. He was paid a sum of Kshs 10,038,836. It was agreed that payment was in full and final settlement of all and any claims or rights of action that the claimant "has or may have arising out of his employment with the employer, of its termination, whether under common law, contract, or statute or otherwise, whether such claims are, or could be, known to the parties or in their contemplation at the date of this agreement in any jurisdiction and including, but not limited to, the claims specified in schedule 2 [each of which is intimated and waived] but excluding any claims by the employee to enforce this agreement, any personal injury claims or any claims in relation to accrued pension entitlements."
23. The claimant was confirmed to have been consulted in relation to the agreement, and that he was satisfied with the agreement in its entirety. He is confirmed to have received independent advice [legal or otherwise] as to the terms and effect of the agreement. The agreement constituted the entire understanding between the parties and superseded any previous agreement between them, relating to the claimant's employment and termination.
24. The mutual agreement is comprehensive, and left the claimant no room to wriggle out.
25. He has no room at all, to bring claims outside the areas circumscribed by the mutual separation agreement; this claim is not about enforcement of that agreement; it is not about his personal work injury; or about accrued pension entitlements.
26. Bonus would not be payable in any event, the claimant having been advised through a letter dated March 14, 2012, that he was no longer in a qualifying role.
27. There is no evidence at all, that the claimant was compelled to execute the agreement. He initiated the agreement through his letter of resignation. He was given the opportunity to seek legal and non-legal advice, before execution of the agreement.
28. The respondent told the court, and this was not discounted by the claimant, that the claimant left employment, to take up a similar role at Unilever Kenya Limited. He left on April 30, 2015, and on May 4, 2015, a mere 5 days later, reported to work at Unilever Kenya Limited, in the same role he worked at the respondent.
29. This claim smacks of pursuit of unjust enrichment.

**It Is Ordered: -**

- a. The claim is declined.
- b. Costs to the respondent.



DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY, AT NAIROBI,  
UNDER THE MINISTRY OF HEALTH AND JUDICIARY COVID-19 GUIDELINES, THIS 29TH  
DAY OF SEPTEMBER 2022.

JAMES RIKA

JUDGE

