

2026 March | Employment

DENYING AN EMPLOYEE OFFICE SPACE AND SUBJECTING THEM TO INTOLERABLE WORKING CONDITIONS MAY AMOUNT TO CONSTRUCTIVE DISMISSAL

[Lake Basin Development Authority v Obiero \[2026\] KECA 286 \(KLR\)](#)

1. Background

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| <p>1.1. The Respondent was employed by the Appellant as a Legal Officer II with effect from 1 September 2014.</p> <p>1.2. During the course of his employment, the Respondent's office was arbitrarily reallocated to the personal assistant of the Authority's Managing Director, leaving him without designated office space. As a result, he was required to operate from a common hall alongside drivers and other junior employees.</p> <p>1.3. The Respondent was thereafter transferred from the head office in Kisumu to the Trans Nzoia branch and assigned a different role as an Administrator, without justification. He was further barred from accessing the head office in Kisumu.</p> <p>1.4. Subsequently, he was issued with a notice to show cause on allegations of absconding duty. Although he</p> | <p>responded to the notice, he was thereafter placed on suspension.</p> <p>1.5. On one occasion, when he attempted to access the premises, he was beaten up by the office guards and had to file a police report</p> <p>1.6. The Appellant's conduct, taken cumulatively, rendered the working environment intolerable and left the Respondent with no alternative but to resign from employment.</p> <p>1.7. The Respondent subsequently filed a constitutional petition before the Employment and Labour Relations Court. The trial court found that the denial of access to the head office, coupled with the reallocation of his office without provision of an alternative, formed part of a pattern of conduct by the Appellant intended to frustrate the Respondent and which resulted in a hostile working environment.</p> |
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- 1.8. The trial court awarded a compensation of Kshs. 200,000/= for unfair termination on grounds of constructive dismissal.
- 1.9. Aggrieved by the decision, the Appellant filed an appeal challenging the award by the trial court.

2. Court of Appeal's Determination

Upon examination of the facts and evidence, the Court of Appeal held as follows:

- 2.1. Constructive dismissal arises when an employee resigns with or without notice due to an employer's fundamental breach of a contract or intolerable conduct, making continued employment impossible.
- 2.2. The Appellant did not deny arbitrarily taking away the Respondent's office

space and assigning it to a junior employee, leaving him to find space in a general area used by junior staff. The Appellant also did not deny the altercation involving the guards. Even though the police did not charge anyone, the environment created was sufficient to convey that the Respondent could not access the office and that his presence was unwelcome.

- 2.3. In upholding the award, the Court of Appeal stated that the sum of Kshs. 200,000/= was not compensation for a violation of the Respondent's constitutional rights but was intended to address the intolerable working environment which made it difficult for him to work. The Court further noted that the assessment of damages is within the discretion of the trial court and found no basis to interfere with the award.

Key Contacts



Anne Muema
Advocate / Managing Partner

Email: amutheu@mutieadvocates.com



Maureen Kubai
Associate

Email: mkubai@mutieadvocates.com

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Website: www.mutie-advocate.com

Phone: +254 768 042 180

E-mail: info@mutieadvocates.com

Address: Assi Centre, School Lane, Westlands

P O Box 211-00621, Nairobi

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