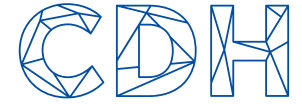


Employment Law

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**EMPLOYMENT LAW
ALERT**

Protecting dignity in the workplace: Court reinforces employers' duties in sexual harassment claims

The Employment and Labour Relations Court in *Faith Viloko v Grand Café Indian Cuisine & Another* [2025] KEELRC 2688 (2 October 2025) (Judgment) has reaffirmed that sexual harassment in the workplace is not only a statutory breach but also a constitutional violation. The court found that the employer failed to protect the employee from sexual harassment and degrading treatment and awarded her KES 1,150,000 in damages for the violations and constructive dismissal. This decision underscores that all employers, regardless of size, have an obligation to uphold employee dignity, provide a safe work environment, and respond decisively to complaints of sexual misconduct.

Background

Faith Viloko (the Petitioner) was employed by the Grand Café Indian Cuisine (the 1st Respondent), in 2022 as a waiter and later promoted to barista. On 5 February 2025, following a minor misunderstanding with a manager of the 1st Respondent (the 2nd Respondent), she was summoned to the 2nd Respondent's office, where she was grabbed by the collar and assaulted. The 2nd Respondent later called her back, at which point he subjected her to severe sexual harassment, including repeated threats of oral rape and degrading insults in English, Swahili and Hindi, in the presence of other employees.

The Petitioner discreetly recorded the encounter, during which she was audibly distressed and crying. She reported the matter to a director of the 1st Respondent, who instructed her to delete the video evidence and personally searched her phone to ensure compliance, conduct that she argued violated her right to privacy under Article 31 of the Constitution. When a copy of the video later circulated on social media, the 1st Respondent's management attempted to offer her monetary compensation to remain silent and subsequently dismissed her constructively.

She filed a constitutional petition on 10 February 2025, alleging that the Respondents' conduct violated her rights under the constitution, including her rights to dignity (Article 28), freedom from degrading treatment (Articles 25(a) and 29(f)), freedom and security of the person (Article 29(c) and (d)), privacy (Article 31), and fair labour practices (Article 41). She further claimed that the Respondents' actions contravened sections 6(1)(b), 6(2), and 6(3) of the Employment Act, which prohibit sexual harassment and impose a duty on employers to develop preventive workplace policies.

The Petitioner sought declarations of the violations, damages for sexual harassment and constructive dismissal, and compensation equivalent to 12 months' salary for unlawful termination.

Parties' arguments

The Petitioner submitted that the 2nd Respondent's actions, including threats to "*put his genitalia in her mouth*", constituted sexual harassment under section 6(1)(b) of the Employment Act and degrading treatment under Article 25(a) of the Constitution. She further argued that calling her a prostitute was an intentional and contemptuous attempt to strip her of dignity, while the

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employer's failure to investigate the complaint or protect her amounted to a violation of her rights under Article 41 on fair labour practices.

She also contended that the 1st Respondent bore both direct and vicarious liability: directly, for failing to maintain a sexual harassment policy as required under section 6(2) of the Employment Act, and vicariously, for the actions of its employee (the 2nd Respondent). She relied on authorities, including *Teachers Service Commission v WJ & 5 others* [2020] KECA 741 (KLR), for the proposition that employers are liable for wrongful acts committed by their employees in the course of employment.

The Respondents denied all allegations, arguing that the Petitioner had fabricated the story to extort money and that she absconded work without cause. They claimed that, as a small business with fewer than 20 employees, they were exempt from the requirement to adopt a formal sexual harassment policy under section 6(2) of the Employment Act. They further asserted that the Petitioner had no credible evidence since she deleted the recording, and that any alleged verbal altercation did not rise to the level of a constitutional violation.

Court's analysis and determination

The court identified two key issues for determination:

- whether the Respondents violated the Petitioner's constitutional rights; and
- whether the Petitioner was entitled to the remedies sought.

Citing Article 28 of the Constitution, the court found that the words and conduct of the 2nd Respondent demeaned and humiliated the Petitioner, violating her right to dignity. Further, the language used was "*laced with connotations of sexual harassment*" and met the statutory definition under section 6(1)(b) and (d) of the Employment Act, which includes the use of sexually explicit language or behaviour that is unwelcome and has a detrimental effect on an employee's work environment.

The court held that the harassment occurred in the course of employment and within the 1st Respondent's premises, thereby engaging the protections of Article 41(1) of the Constitution on fair labour practices. The judge underscored that every employee is entitled to work in an environment free from humiliation and sexual intimidation.

Consequently, the court declared that the Respondents violated the petitioner's rights under Articles 25(a), 28, and 41 of the Constitution and her protections under section 6 of the Employment Act. The court further found that the Petitioner's departure from the workplace following the incident amounted to constructive dismissal, as the 2nd Respondent's conduct rendered continued employment intolerable.

The court awarded the Petitioner KES 1,000,000 as general damages for the violation of her constitutional rights and KES 150,000 (equivalent to 10 months' salary) as compensation for constructive dismissal, together with costs and interest.

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Key takeaways for employers

This decision reaffirms the constitutional dimensions of workplace sexual harassment. The court's interpretation reinforces that sexual harassment is not a mere human resource issue but a constitutional and statutory breach that attracts both civil and constitutional remedies. The ruling underscores that employers are vicariously liable for the conduct of their employees where harassment occurs in the course of employment, and that failure to act promptly or to protect a complainant constitutes a separate breach.

Notably, the court's reasoning pierces through the statutory threshold under section 6(2) of the Employment Act, which only requires written sexual harassment policies for employers with 20 or more staff. The court's approach implies that all employers, regardless of size, owe a duty to provide a safe and dignified workplace, and the absence of a formal policy cannot shield them from liability once harassment occurs.

Next steps for employers

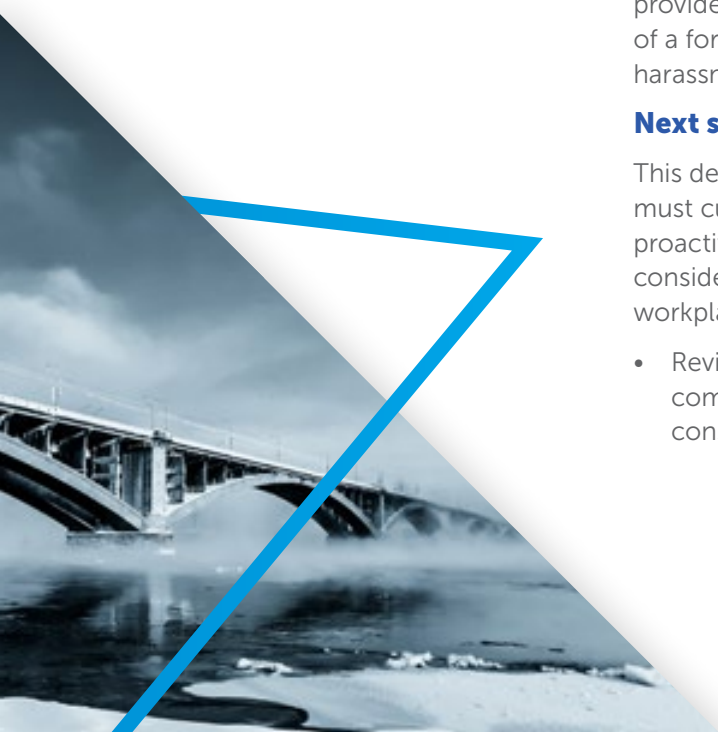
This decision serves as a stark reminder that employers must cultivate a culture of respect, accountability and proactive prevention. In light of this, organisations should consider the following steps to strengthen compliance and workplace protection mechanisms:

- Review internal sexual harassment policies and complaint mechanisms to ensure alignment with both constitutional and statutory obligations.

- Establish clear reporting structures for sexual harassment complaints, ensuring employees know how and where to report incidents.
- Train management and supervisors on appropriate workplace conduct, the handling of complaints and the prevention of retaliation.
- Maintain confidentiality and sensitivity throughout the complaints process to protect the dignity of all parties involved.
- Protect whistle-blowers and victims from retaliation or adverse treatment following complaints.
- Adopt internal guidelines and awareness programmes, even for small enterprises not statutorily required to have formal sexual harassment policies.
- Keep accurate and transparent records of all complaints received and actions taken to demonstrate compliance and accountability.

Failure to implement these measures exposes employers to significant legal, reputational and financial risks, even where statutory exemptions may appear to apply.

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