



**Owino v Nimble Group (K) Ltd (Cause E372 of 2025)  
[2025] KEELRC 2514 (KLR) (25 September 2025) (Ruling)**

Neutral citation: [2025] KEELRC 2514 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E372 OF 2025  
S RADIDO, J  
SEPTEMBER 25, 2025**

**BETWEEN**

**BILLY OWINO ..... CLAIMANT**

**AND**

**NIMBLE GROUP (K) LTD ..... RESPONDENT**

**RULING**

1. Billy Owino (the Claimant) was employed by Nimble Group Kenya Ltd (the Respondent) as the Chief Executive Officer from 12 October 2021.
2. The Claimant and Respondent entered into a Share Purchase Agreement, which the Claimant felt was not fulfilled by the Respondent.
3. The Claimant issued a notice of breach on 3 February 2025, followed by a notice of termination of the Agreement on 17 February 2025. The same day, the Respondent’s Director acknowledged the notice and instructed the Claimant to hand over all company assets.
4. On 20 February 2025, the Claimant made a demand for back pay and other entitlements. The Respondent issued a communication on 27 March 2025, that it was insolvent and that it would cease operations by 30 June 2025.
5. On 29 April 2025, the Claimant sued, alleging unfair termination of employment and breach of contract.
6. Filed with the Statement of Claim was a Motion dated 29 April 2025 seeking orders:
  - i. spent.
  - ii. Spent.



- iii. That this Honourable Court be pleased to direct the Respondent to deposit the sum of Kshs. 12,622,169.00, being the aggregate of the Claimant's salary arrears, contractual notice pay, and legal costs incurred, into this Honourable court or, in the alternative, into a jointly operated interest-earning account in the names of counsel for both parties, within 7 days of the Order or such other period as this Honourable Court may direct.
  - iv. That this Honourable Court be pleased to restrain the Respondent, whether by itself, its directors, servants, or agents, from disposing of, transferring, or in any manner dealing with any funds or assets which may be applied in satisfaction of the Claimant's entitlements herein, pending the hearing and final determination of the Claim.
  - v. That this Honourable Court be pleased to direct the Respondent to preserve and secure, without alteration, destruction, or disposal, all employment, payroll, financial, and contractual records relating to the Claimant's employment and entitlements from October 2021 to February 2025, whether maintained in physical, digital, or cloud-based form.
  - vi. In the alternative, and without prejudice to the foregoing prayers, this Honourable Court be pleased to direct the Respondent to furnish security in the sum of Kshs. 12,622,169.00, being the amount claimed under liquidated heads in the Statement of Claim, within such time as the Court shall direct; and in default thereof, this Honourable Court be pleased to enter conditional judgment or issue such further orders or alternative orders as may be just and expedient to secure the Claimant's right of recovery.
  - vii. That this Honourable Court be pleased to issue such further or other orders, including any interim or injunctive reliefs, as may be necessary for the preservation of the subject matter of this suit and to prevent the defeat of the ends of justice.
  - viii. That the costs of this application be provided for.
7. In support of the Motion, the Claimant asserted that he had a prima facie case for unfair termination of employment and breach of contract; the Respondent had denied him access to work facilities from 20 February 2025; there were ascertainable liquidated claims for back pay and terminal dues; the Respondent was wholly foreign owned with the risk of moving all its assets outside the reach of the Court; the Respondent's Director had admitted it was insolvent and would cease operations by 30 June 2025, and that the interest of justice favoured the grant of the orders sought.
  8. The Court gave directions on the Motion on 19 May 2025 and 23 June 2025.
  9. The Respondent filed a replying affidavit sworn by the sole Shareholder in opposition to the Motion on 29 May 2025.
  10. Therein, it was deponed that the Motion had misrepresentations; the Claimant had failed to fulfil his employment objectives and job description; consequently, the Respondent gave the Claimant 3 options in May 2024 – to wind up operations, management buyout by the deponent and Claimant, and lastly mutual separation; the Claimant opted for buyout on 7 June 2024; a draft Share Purchase Agreement was prepared; a Share Purchase Agreement was executed on 4 July 2024; the effect of the Agreement was that the Claimant transitioned from employee to owner and cannot claim back pay for the period after the Agreement; the Claimant was aware of the effect of the Agreement for he requested the Respondent for 3 months payroll support; the Claimant gave an indication to withdraw from the Share Purchase Agreement only on 28 January 2025 and this was followed with a formal notice on 3 February 2025; the notice was in bad faith and irregular leading to the Respondent restricting the Claimant's access to work facilities; the Respondent's ownership had changed with the Share Purchase



Agreement and execution of Transfer Deeds and that the Claimant had introduced without prejudice records before the Court.

11. The Claimant filed a further affidavit on 9 June 2025, asserting that the change of directors was made on 7 May 2025 after the filing of the instant proceedings but the changes had not been registered by the Registrar of Companies; no disciplinary notice had been issued; the options given were a commercial decision not based on his performance and that he declined to sign the Mutual Separation Agreement. The Claimant made several other assertions which in the Court's view are not relevant or material to the determination of the instant Motion.
12. The Claimant filed his submissions on 9 June 2025, and the Respondent on 22 June 2025.
13. The Court has considered the Motion, affidavits and submissions and makes the following determinations.
14. First, it is not necessary for the Court to get into an exegesis of the legal authorities cited by the parties in their submissions in making the determinations hereunder.
15. Second, the Claimant entered into an employment contract with the Respondent, a company registered in Kenya.
16. A copy of the records kept by the Registrar of Companies indicates that the Respondent has 3 Directors and 2 Shareholders. The Shareholders are legal persons, while the Directors are of South African nationality.
17. The Respondent and its Directors and Shareholders have distinct legal personalities and generally, the Respondent would bear legal liability for its actions or omissions apart from the Directors and Shareholders.
18. The alteration or change in directorship or shareholding on its face should not affect the Respondent's legal liabilities and obligations.
19. If the Respondent owes the Claimant any liabilities in the nature of back pay, it is the Respondent and not its Directors or Shareholders who would be liable in the first instance.
20. Third, the Claimant did not provide any evidence through his affidavits that there was a likelihood that the Respondent would destroy any of his employment records to warrant a preservatory order from the Court.
21. Section 74 of the *Employment Act*, 2007, already obligates employers to keep employment records with certain prescribed particulars. If, perchance, the Respondent did not keep such records or destroyed them and is unable to produce them in Court after due notice to produce, it would be open to the Court to draw adverse inferences against it.
22. Fourth, the Claimant and the Respondent (and another person) entered into a Sale of Shares and Shareholder Loans Agreement on 4 July 2024. The Claimant repudiated the Agreement on 17 February 2025.
23. At this interlocutory stage, the Court cannot determine whether the Claimant remained as an employee of the Respondent or assumed the character of employer or director after the Agreement, thus entitled or not to the benefits (including back pay from October 2024 to February 2025) which accrue to employees under the *Employment Act*, 2005 and the contract of employment and whether such back pay should be secured by payment into Court before a hearing on the merits.



24. Lastly, the parties have given opposed interpretations of the contractual documents in place, and it would not be legally prudent for the Court to grant the orders sought.

**Orders**

25. The Court declines to grant any of the orders sought in the Motion dated 29 April 2025.

**DELIVERED VIRTUALLY, DATED AND SIGNED IN MERU ON THIS 25<sup>TH</sup> DAY OF SEPTEMBER 2025.**

**RADIDO STEPHEN, MCI Arb**

**JUDGE**

Appearances

For Claimant Odera Obar & Co. Advocates

For Respondent Daly Inamdar Advocates LLP

Court Assistant Kemboi & Wangu

