

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS
COURT AT NAIROBI
CAUSE NO. 835 OF 2019**

**ALEX GATOTO
CLAIMANT**

v

**QED SOLUTIONS LIMITED
RESPONDENT**

**EMPLOYMENT AND LABOUR RELATIONS COURT
JUDGMENT**

1. Qed Solutions Ltd (the Respondent) offered Alex Gatoto (the Claimant) employment as a Business Development Manager on or around 15 August 2016.
2. On or around 31 October 2017, the Claimant executed a Discharge Letter indicating that he had voluntarily resigned.
3. However, on 13 December 2019, the Claimant sued the Respondent, alleging unfair termination of employment and breach of contract.
4. The Respondent filed a Response and Counterclaim on 10 February 2020.

5. The Claimant filed a Response to the Counterclaim on 24 February 2021, prompting the Respondent to file a Reply to the Response to the Counterclaim on a date which is not clear in June 2023.

6. The parties filed Joint Issues on 5 February 2025, and the Cause was heard on 9 February 2025 and 4 March 2025.

7. The parties did not comply with initial directions on the filing and exchange of submissions, and the Court gave new directions on 7 May 2025.

8. The Claimant's submissions were not on record by the new timeline of 31 May 2025. The Respondent filed its submissions on 1 October 2025.

9. The Court has considered the pleadings, evidence and submissions.

Voluntary resignation or unfair termination

10. The Claimant signed a Discharge Letter on 31 October 2017, and it provided:

I, Alex Gatoto of ID number 22934697

Do hereby confirm as follows:

a) That I have been an employee of QED Solutions Ltd, and I voluntarily hereby terminate my services with effect from 31 October 2017.

b) That QED Solutions Ltd has paid me the money due to me in full and final settlement on this 31st October 2017. I hereby confirm

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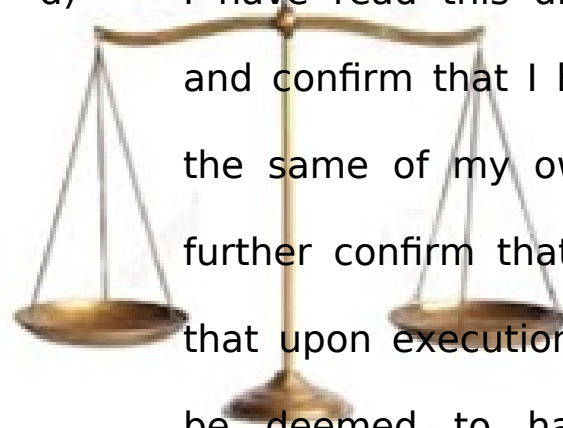
and declare that I have no other claim against QED Solutions Ltd whatsoever.

c) Accordingly, I hereby discharge QED Solutions Ltd from all liabilities, claims, suits, proceedings or any other

obligation to me howsoever arising. I declare and confirm that I have no claim or cause of action against the said QED Solutions Ltd, based or arising from my relationship with the said company.

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d) I have read this discharge letter and confirm that I have executed the same of my own free will. I further confirm that I understand that upon execution hereof, I will be deemed to have fully and unconditionally discharged and



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released the said QED Solutions Ltd of any and all obligations, legal, equitable or otherwise, howsoever to me, my estate or any persons claiming through or under me.

DATED at Nairobi this day of 31st October
2017.

SIGNED BY

Witnessed by

ACCEPTED ON BEHALF BY OED Solutions Ltd.

EMPLOYMENT AND LABOUR RELATIONS COURT
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11. Before the Court, the Claimant testified that on 31 October 2017, the Respondent's Chairman invited him to a meeting without an agenda through email and that when he honoured the invitation, he was informed that his services were no longer required.

12. According to the Claimant, he was given a pre-drafted Discharge Letter and was coerced into signing it; otherwise, he would not be paid his terminal benefits.

13. The Claimant stated that the Respondent instigated the termination because by the time

of the invitation to the meeting, he had no intention of separating from the Respondent.

14. The Respondent's witness denied that the Claimant was coerced into resigning and that he voluntarily resigned.

15. It is not in dispute that the Claimant signed the Discharge. He confirmed reading it before signing, but he was not forthcoming on the circumstances that preceded the signing of the Discharge. The Respondent's witness was also not forthcoming on details leading to the signing of the discharge.

16. The Claimant did not disclose exactly who coerced him to sign the Discharge or how many people were in the meeting. He did not disclose whether he was not aware of all the surrounding facts at the time of signing the Discharge.

17. The Claimant's signature in the Discharge was witnessed.

18. The Claimant did not reveal the name of the person who witnessed his signature. Perhaps the witness could have shed some light on the circumstances obtaining before he witnessed the signing of the Discharge. He was not called to testify.

19. Pursuant to section 107(1) of the Evidence Act, it was incumbent upon the Claimant to prove on a balance of probabilities that he was coerced into signing the Discharge. He did not discharge the burden. The Discharge constituted a valid contract.

20. The Court finds that the Claimant voluntarily resigned and was not terminated unfairly from employment.

21. Compensation and pay in lieu of notice are thus not remedies available to the Claimant.

Breach of contract

Unpaid House allowance

22. The Claimant sought to be awarded Kshs 210,000/- on account of house allowance.
23. The Claimant's contract granted him a gross/consolidated salary net of taxes.
24. In terms of section 31(2) of the Employment Act, 2007, the Court finds that the salary was inclusive of house allowance.

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Counterclaim

25. The Respondent Counterclaimed against the Claimant for breaching a confidentiality clause in his contract by participating in the development of *Mtenders*, an e-procurement solution, and approaching the Respondent's clients and taking away the Respondent's business.



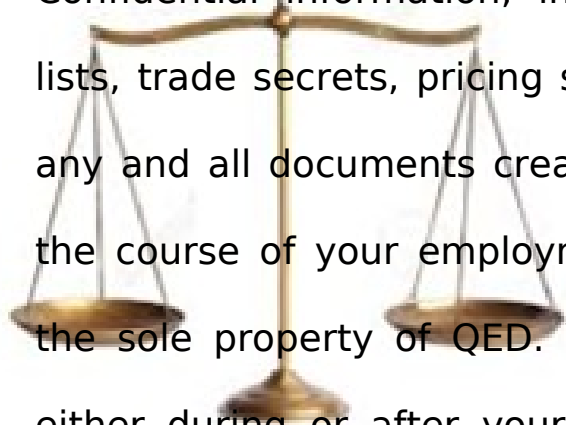
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26. The listed clients were LVCT, UNAITAS, Resolution Health, KCB, Karen Country Club, Davis and Shirliff, Britam and Waumini Sacco.
27. The Claimant's contract had a confidentiality clause stating:

Confidentiality of Information

During your employment, you may become aware of information relating to the business of QED, including but not limited to client lists, trade secrets, client details and pricing structures.

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Confidential information, including client lists, trade secrets, pricing structures and any and all documents created by you in the course of your employment, remains the sole property of QED. You shall not, either during or after your employment, without prior consent of QED, directly or indirectly divulge to any person or use the confidential information for your own or another's benefit.

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28. The Respondent admitted that it did not have any proprietary interest in the e-procurement system, *Tendersure*, and that it was the

intellectual property of a partner in South Africa.

29. The Respondent's Director testified that he received calls and emails from the Respondent's clients informing him that the Claimant had approached them to sell to them *intenders* and discourage them from dealing with the Respondent.

30. The oral testimony was not corroborated by any of the Respondent's clients, allegedly contacted by the Claimant, and the Court concludes that the Respondent did not discharge the burden of proving this head of the claim on a balance of probabilities.

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Special damages for loss of business

31. The Respondent also counterclaimed for lost business worth Kshs 7,750,000/-.

32. The action for Kshs 7,750,000/- was in the nature of special damages, and the

Respondent acknowledged as much in the Counterclaim.

33. The Respondent was expected to prove the special damages strictly. It did not discharge the burden of proving the special damages on a balance of probabilities, and the Court so finds.

Conclusion and Orders

34. Flowing from the above, the Court finds both the Cause and Counterclaim not proved and both are dismissed.

35. None of the parties succeeded and so each party to bear own costs.

Delivered virtually, dated and signed in Nairobi on this 27th day of November 2019

Radido Stephen, MCI Arb
Judge

Appearances

For Claimant

Amalemba &
Associates
Advocates

For Respondent

Otwal & Partners

LLP

Court Assistant

Wangu

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