



**Livoi v Biodeal Laboratories Ltd (Cause E848 of 2024)
[2025] KEELRC 3680 (KLR) (18 December 2025) (Judgment)**

Neutral citation: [2025] KEELRC 3680 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E848 OF 2024
CN BAARI, J
DECEMBER 18, 2025**

BETWEEN

CLIFFORD OTWERE LIVOI CLAIMANT

AND

BIODEAL LABORATORIES LTD RESPONDENT

JUDGMENT

1. The Claimant lodged this suit vide a Memorandum of Claim dated 7th October, 2024. He seeks the following reliefs:
 - i. A declaration that his employment was unfairly terminated by the Respondent
 - ii. Compensation for unlawful termination
 - iii. One month's salary in lieu of notice
 - iv. Unpaid wages
 - v. Costs of the claim.
2. The Respondent entered an appearance and subsequently filed a Statement of Response to the Claim dated 30th November, 2024, denying the Claimant's allegations of unfair termination, and asserting that he voluntarily resigned.
3. The suit was heard on 2nd October, 2025, when the Claimant testified in support of his case, adopted his witness statement, and produced his documents as exhibits in the case. The Respondent's case was similarly heard on the same date, when one Ms. Christine Mutambu testified in support of the Respondent's case, adopted her witness statement, and produced the Respondent's documents as exhibits in the cause.
4. Submissions were received from both parties and have been duly considered.



The Claimant's Case

5. The Claimant states that he was employed by the Respondent as a Category Sales Team Leader under a contract signed on 15th October 2021.
6. He avers that he worked without any disciplinary issues until December 2021, when he was issued a termination letter citing redundancy. The Claimant states that upon inquiry, he was informed that the redundancy was due to harsh economic conditions.
7. It is his case that the termination was malicious, ill-intended, and unfair. He argues that the Respondent failed to follow due process, including failing to notify the labour officer and relying on unfair and discriminatory reasons that violated the principles of natural justice.
8. The Claimant states that the Respondent's actions were unlawful, unfair, and actuated by malice, and seeks appropriate remedies from the court.
9. On cross-examination, the Claimant admitted that he resigned from the service of the Respondent in April 2022 and that his last day of work was 14th May 2022, per his letter of resignation.
10. The Claimant further confirmed that, though he resigned, he did not indicate this fact in his claim, but had instead stated that he had separated.
11. It is his further testimony that he had requested to be deployed, but did not ask to be deployed as a sales leader. It is his evidence that he did not protest that he did not want to be deployed as a medical rep, and that he did not agree to work as a medical representative.
12. It is his further testimony that he had not realized that he was being underpaid.
13. The Claimant urges the court to allow his claim as prayed.

The Respondent's Case

14. The Respondent's case is that the Claimant failed to disclose material facts by not informing the Court that he voluntarily resigned from his position on 7th May 2022, and was never declared redundant.
15. The Respondent further states that the redundancy issue became irrelevant because the Claimant asked to be redeployed as a Medical Representative instead of being rendered redundant, and was earning Ksh.40,000 per month, and which request the Respondent granted.
16. The Respondent states the Claimant's allegations are misleading, irrelevant, and based on falsehoods. It further contends that the Claimant's statements are contradictory, and which calls his integrity into question.
17. The Respondent avers that the Claimant's memorandum of claim is baseless and an afterthought, describing the allegations as a deliberate attempt to unjustly enrich himself by misleading the Court.
18. The Respondent urges the Court to view the Claimant's actions as an intentional scheme to deceive the court.
19. The Respondent concludes that, based on the matters raised, the Claimant's suit amounts to an abuse of the court process, is misconceived, lacks a proper factual or legal foundation, and is devoid of merit.
20. The Respondent's witness told this court on cross-examination that the Claimant was employed as a medical representative, but that his initial contract indicates that he was employed as a sales team



leader. It is her testimony that she has not produced another contract showing that the Claimant was later employed as a medical representative.

21. It is RW1's position that the Claimant was terminated on account of redundancy vide a letter dated 2nd December 2021, and that procedure was followed, but had no evidence of the procedure applied.
22. RW1 further told the court that the Claimant's salary was reduced from Kshs.85,000 to KshS.40,000, and further that his travel allowances were also reduced.
23. On re-examination, RW1 told the court that the Claimant resigned from the service of the Respondent, and that he had a discussion with the CEO prior to the resignation.
24. The Respondent prays that this suit be dismissed with costs.

Analysis and Determination

25. Having considered the pleadings, the witnesses' testimony, the evidence adduced, and the submissions by both parties, the following issues arise for determination:-

- i. Whether the Claimant's employment was terminated or whether he voluntarily resigned;
- ii. If the Claimant was terminated, whether the termination was unfair; and
- iii. Whether the Claimant is entitled to the remedies sought.

Whether the Claimant's employment was terminated or whether he voluntarily resigned

26. The Claimant's case is that the Respondent terminated his services on account of redundancy in December 2021. Under cross-examination, however, he admitted that he resigned in April 2022, with his last working day being 14th May 2022.
27. The evidence before the court shows that indeed the Claimant was earlier terminated on account of redundancy vide the Respondent's letter dated 2nd December 2021. It is also evident that the Claimant continued work after 3rd December 2021, which was the date his termination was supposed to take effect.
28. The Claimant's confirmation that he voluntarily resigned from the service of the Respondent in April 2022, corroborates the Respondent's assertion that he asked to be redeployed instead of being terminated on redundancy grounds.
29. In my considered view, the Claimant's continued service until May 2022 negates any claim that his employment ended in December 2021 through a declaration of redundancy.
30. I therefore agree with the Respondent that the redundancy issue was overtaken by events, as both parties continued the employment relationship for several months thereafter.
31. Resignation is a unilateral act by an employee that does not require the employer's acceptance. In *Josephat Njuguna v Highrise Self Group Ltd* [2019] eKLR, the Court held:-

“A resignation cannot constitute termination by the employer. It is a voluntary act that ends the employment relationship.”
32. Similarly, in *Kennedy Obala Oaga v Kenya Ports Authority* [2018] eKLR, the Court held that once an employee tenders resignation, the employment relationship ends at the employee's initiative.



33. I note that the Claimant has attempted to introduce the aspect of constructive dismissal under his submissions of 14th October, 2025. As correctly submitted by the Respondent, parties are bound by their pleadings, and a party cannot plead through submissions.
34. Further, it is now settled that submissions are not pleadings and cannot be used to introduce new issues, claims, or prayers. In *Daniel Toroitich Arap Moi v Mwangi Stephen Muriithi* [2014] eKLR, the Court of Appeal held:-
- “Submissions cannot take the place of evidence. Submissions are generally a summary of the evidence adduced and analysis of the law.”
35. It therefore follows that the Claimant’s admission of voluntary resignation is fatal to his claim of unfair termination.
36. I therefore find and hold that the employment relationship between the parties herein ended by voluntary resignation, and not termination.
37. The second issue, which is whether the Claimant was unfairly terminated, falls by the wayside in view of the finding that the Claimant resigned voluntarily.

Whether the Claimant is entitled to the remedies sought

38. The Claimant sought a declaration that his employment was unfairly terminated, compensation for unlawful termination, one month’s salary in lieu of notice, unpaid wages, and costs of the claim.
39. Save for the claim of unpaid wages, the other prayers are only available upon the establishment of an unfair termination. Since no termination has been proved, these claims fail.

Unpaid wages

40. The Claimant did not plead or prove any specific unpaid wages contrary to the requirement under Sections 107 of the *Evidence Act*. The claim is thus for dismissal, and is hereby dismissed.
41. In the end, the Claimant’s Memorandum of Claim dated 7th October 2024 is devoid of merit and is hereby dismissed in its entirety.
42. Parties shall bear their own costs of the suit.
43. It is so ordered.

SIGNED, DATED, AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS 18TH DAY OF DECEMBER, 2025.

C. N. BAARI

JUDGE

Appearance:

Mr. Clifford Otwere Claimant present in person

Mr. Biyogo Silas present for the Respondent

Ms. Esther S- C/A

