

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT NAIROBI

CAUSE NO. E750 OF 2023

(Before Hon. Lady Justice Agnes Kitiku Nzei)

LIPA LATER LIMITEDCLAIMANT

VERSUS

CAROLINE WANINIRESPONDENT

JUDGMENT

1. The Claimant company sued the Respondent herein vide a Statement of Claim dated 11th September, 2023 and sought the following reliefs:-

(i) *A declaration that the Respondent breached Clause 13 and 14 of the Employment Contract dated 29th July, 2022 being the confidentiality and non-compete clauses.*

(ii) *An injunction barring the Respondent from being engaged, interested or concerned whether as principal agent, representative, partner, director,*

employee consultant or any other capacity in any competing **(sic)** as per the terms of clause 14 of the Employment Contract dated 29th July, 2022.

(iii) An injunction barring the Respondent from enticing, or soliciting any of the Claimant's clients in relation to provision of services similar and/or related to the **Buy Now Pay Later** business as per the terms of Clause 14 of the Employment Contract dated 29th July, 2022.

(iv) An injunction barring the Respondent from employ, enticing or soliciting any of the Claimant's key employees with a view to such key employees working for or providing services to a competing business as per the terms of Clause 14 of the Employment Contract dated 29th July, 2022.

(v) A permanent injunction barring the Respondent from disclosing and/or sharing any confidential information, files, records, correspondence, memoranda, notes or other documents (including, without limitation, those in computer readable form) including all materials authored, prepared or

contributed to by the Respondent to any third party.

- (vi) A declaration that the Claimant is entitled to **damages for breach of contract of Kshs.10,080,000/=** together with interest thereon at Court rates from the date of filing the claim herein until payment in full.
- (vii) Costs of the suit together with interest thereon at Court rates from the date of the Judgment until payment in full.
- (viii) Such other and further relief as this Court may deem just and fit.

2. The Claimant pleaded, **inter-alia:-**

- (a) that the Claimant company is engaged in **Buy Now Pay Later (BNPL)** business whereby it provides short-term financing that allows consumers to make purchases and pay for them at a future date.
- (b) that the Claimant employed the Respondent as its Head of Partner Success Manager - Kenya, which employment was to take effect from **1st August,**

2022 to 31st July, 2024, at a monthly gross pay of **Kshs.420,000/=**, to be paid net of tax and other statutory deductions.

(c) that the terms of the contract were:-

(i) **Clause 12 of the Contract:** All confidential information, files, records, correspondence, memoranda, notes or other documents (including, without limitation, those in computer readable form) or property relating to or belonging to the Claimant shall be the exclusive property of the Claimant and shall be delivered to the Claimant and not retained by the Respondent upon termination of employment.

(ii) **Under Clause 13 of the Contract of Employment:** The parties agreed that the Respondent would not at any time during the period of employment or after the termination of employment disclose any confidential information including materials authored, prepared or contributed to the Respondent.

(iii) **Under Clause 14 of the Contract of Employment:-** It was agreed that the Respondent would not, without the Claimant's written consent for a period of twelve (12) months from the date of termination of employment, be engaged as a principal, agent, representative, partner, director, employee, consultant or any other capacity with a competing company/business.

(iv) **Under Clause 14 of the Employment Contract:-** It was agreed that the Respondent would not, for a period of twelve (12) months from the date of termination of employment, entice or solicit any of the Claimant's clients in relation to provision of similar services or related business services to the Claimant.

3. The Claimant further pleaded:-

(a) that the Respondent's position as Head of Partner Success Manager - Kenya entailed, **inter-alia:-**

- (i) responsible for the overall growth of the partnership business, partner-relationship management and partner success.*
 - (ii) management of teams, structure formulation, department standard operating procedure and service-level agreements documentation.*
 - (iii) consumer marketing and sales revenue growth.*
 - (iv) process formulation and team leadership.*
- (b) that as part of senior management, the Respondent took part in various management meetings where the Claimant engaged in high level strategy meetings, development of products and software updates/improvements towards serving their clients better.*
- (c) that the Respondent worked for the Claimant in the aforementioned capacity from 1st August, 2022 until 1st July, 2023 when she tendered a resignation letter dated 1st July, 2023; citing various reasons, which were contrived and false, and meant to conceal the Respondent's true*

intention which was to join the Claimant's business competitor, being **Craft Silicon Kenya** as the Head of Product.

- (d) that sometimes in July 2023, the Respondent joined **Craft Silicon Kenya** as Head of Product, and the company launched a **Buy Now Pay Later** product on or about 1st August, 2023 in direct competition with the Claimant.
- (e) that the Respondent was directly involved in the development of **BNPL** products and marketing them on behalf of **Craft Silicon Kenya** using the proprietary information and process, products and confidential information obtained at the Claimant to their detriment.
- (f) that **the Respondent has a background in marketing and was suddenly appointed a Head of Product to use confidential knowledge that was obtained from the Claimant's management meetings to develop products for the competitor.**

(g) that the Respondent failed to notify the Claimant of her intention to join a competitor and knowingly showing confidential information.

4. Documents filed alongside the Claimant's statement of Claim included a written witness statement of **Michael Maina** dated 11th September, 2023 and an evenly dated list of documents listing five documents. The listed documents are the Employment Contract dated 29th July, 2022, Management Minutes from May to July 2023, resignation letter dated 1st July, 2023, the Respondent's LinkedIn Biography as at 7th July, 2023 and The Star Newspaper Website article dated 1st August, 2023.
5. The Respondent defended the suit vide a statement of defence dated 26th January, 2024, denying the Claimant's claim. The Respondent, however, admitted having been employed by the Claimant as pleaded, but denied the pleaded terms of the contract of employment. The Respondent also filed a witness statement dated 26th January, 2024 and a list of documents dated 24th January, 2024, listing 5 documents.

6. Trial opened before me on 3rd February, 2025. The Claimant's witness, **Michael Maina**, told the Court that he was a director of the Claimant company. He adopted his filed witness statement as his testimony and produced in evidence the documents referred to in paragraph 4 of this Judgment.

7. Cross-examined, **CW-1** testified:-

(a) that the Respondent held a high level management position in the Claimant company and was privy to high level strategic trade information given her position in the company, and that within a month of her resignation, she was already working with a competitor organization which within that time lodged a similar product as the Claimant.

*(b) that the Claimant **is not the only company in Kenya which engages in Buy Now Pay Later business concept, but was the premier company in that field.***

(c) that the Claimant **had not patented any concept that it had developed.**

(d) that the Respondent had signed a 2 years contract with the Claimant, but resigned one year into the contract.

(e) that the Claimant had suffered loss and damages as a result of the Respondent working for a competitor.

8. Re-examined, **CW-1** testified that the Respondent managed teams and oversaw revenue growth and marketing in the Claimant company, and was in contact with the Claimant's customers and merchants. That in the Claimant's bundle of documents/exhibits **at page 29 thereof, the Respondent was pictured with the Competitor's (Craft Silicon) CEO, Mr. Peter Kamau on 1st August, 2023,** and that according to an article **at page 30 of the bundle,** the Respondent is shown to have launched products similar to the Claimant's on **1st August, 2023,** one month after resigning.

9. The Respondent testified **on 3rd July, 2025**. She adopted her filed witness statement and produced in evidence the documents referred to in paragraph 5 of this Judgment. Cross-examined, the Respondent testified:-

(a) that she had signed a contract of employment with the Claimant on 29th July, 2022, and was appointed as Head of Partners Success Kenya.

(b) that her roles included ensuring that the Claimant had healthy partner portfolio (in terms of revenue) and ensuring proper management of 40 people/staff in her department.

(c) that she (the Respondent) had direct contact with the Claimant's partners/merchants, though direct contacts were account managers, of whom the Respondent was head. That the merchant was the middle person in terms of the business model.

(d) that the Respondent had details of all the merchants that the Claimant had signed in.

(e) that the Respondent came across confidential information during her employment, and had knowledge of management meetings, of which she was part; until she resigned. That she worked

until **7th July, 2023**, and had issued notice to the Claimant.

- (f) that the confidentiality clause was binding even after the employment tenure.
- (g) that the post-termination clause required the Respondent **to seek the Claimant's written consent before working for any of their competitors in business**. That she joined **Craft Silicon Kenya** on **1st August, 2023**; that her LinkedIn profile showed that she had joined in July 2023.
- (h) that the meaning of **BNPL** as stated in the Respondent's LinkedIn Profile meant **"Buy Now Pay Later"**; and was the same business concept that the Claimant was involved in.
- (i) that the Respondent's picture **appeared in The Star News Paper** (at page 29 of the Claimant's bundle of exhibits/documents) on the launching of **Craft Silicon's business**.
- (j) that the Respondent did **not seek the Claimant's consent before attending the**

launch, and did not seek consent before taking up employment with craft silicon.

- (k) that the Respondent had nothing to show that her contract with the Claimant had ever been converted into a consultancy; and that she (the Respondent) was not given a termination letter.
- (l) that the payslips exhibited by the Respondent indicating that she was being paid as a consultant were system generated, and were neither dated nor signed.
- (m) that the Respondent had access to the Claimant's merchant list, confidential information on how the business was run, and technology that the Claimant used.
- (n) that the Respondent did not help the competitor to launch a similar business, barely a month after leaving employment.
- (o) that the competitor's business concept was similar to that of the Claimant; **and that the Claimant did not own the concept.**

(p) *that the Respondent did **not** breach her contract with the Claimant by failing to seek their consent before joining **Craft Silicon**.*

10. Re-examined, the Respondent testified that her employment with the Claimant **terminated on 31st July, 2023, after she had utilized her leave days, and that she joined Craft Silicon as a new employee on 1st August, 2023.**

11. The Respondent further testified, on being re-examined; that the reason why she did not seek the Claimant's consent was because the two companies, **both licensed by the Central Bank of Kenya**, were not in a competing business. That one **(the Claimant)** was lending while the other **(Craft Silicon)** provided payment solutions.

12. Having considered the pleadings filed by both parties and the evidence presented thereon, issues that present for determination, in my view, are as follows:-

(a) Whether the Respondent was in breach of the Employment Contract signed by both parties herein on 29th July, 2022.

(b) Whether the reliefs sought are merited.

13. On the first issue, it was a common ground that parties herein had, in paragraph 14.1 & 14.2 of the contract of employment signed by them on 29th July, 2022, covenanted that the Respondent **would not**, without the Claimant's **written consent**, be engaged, interested or concerned, whether as principal, agent, representative, partner, director, employee, consultant or any other capacity in any competing business within 12 months of termination of her employment with the Claimant.
14. The Respondent admitted in evidence **(under cross-examination)** that the **"Buy Now Pay Later"** business that her new employer, **Craft Silicon Kenya**, launched on **1st August, 2023**, was similar to that in which the Claimant was involved, but stated that the Claimant, did not own the business concept. She admitted having been in contact with the Claimant's customers and partners (merchants) during her employment in the Claimant company, and to having been privy to the Claimant's critical business information

and technology used by the Claimant company; having been part of the Claimant's management.

15. It was the Respondent's evidence that her employment with the Claimant terminated **on 31st July, 2023** as having tendered her resignation and given notice, she worked **upto 7th July, 2023**, and that she had leave days. **That she joined Craft Silicon on 1st August, 2023 as a new employee.**
16. Both parties' evidence in Court is on record, and is substantially summarized herein above. I need not re-state it fully in this determination.
17. Based on the evidence on record, I make a finding that the Claimant established, on a balance of probabilities, and I am convinced, that the Respondent breached **Clause 14. 1 and 14.2** of the contract of employment dated 29th July, 2022 by taking up employment in a competing business (**Craft Silicon**) within 12 months of termination of her employment with the Claimant without **first** seeking and obtaining written consent from the Claimant. I so declare.

18. The Black's Law Dictionary (Tenth Edition) defines a breach of contract as:-

“A violation of a contractual obligation by failing to perform one's own promise, by repudiating it, or by interfering with another party's performance.”

19. It is worthy noting that the Claimant **did not** present evidence to show that the aforestated **breach**/act of the Respondent of taking up employment by a competing business within 12 months of her resignation without first seeking the Claimant's written consent **translated into financial loss or loss of customers or partners/merchants; and the magnitude of the loss.** No evidence on the Claimant's sales and profits **before** and **after** the Respondent's employment by a business competitor was presented in Court.

20. No evidence was adduced by the Claimant to demonstrate that the Respondent had **enticed or solicited the Claimant's clients** in relation to provision of services

similar and/or related to Buy Now Pay Later or was likely to do so; and no evidence was adduced to show that the Respondent had employed, enticed or solicited any of the Claimant's key employees for employment by a competing business.

21. Further, no evidence was presented in Court to demonstrate that the Respondent had **shared** confidential information, files, records, correspondences, memoranda, notes or other documents (including those in computer readable form) and materials authored, prepared or contributed to by the Respondent to any third party.
22. The Orders of injunction sought in **prayers (c), (d) and (e)** in the Claimant's statement of claim cannot issue, in view of the foregoing. The Court's decision in **Giella - vs - Cassman Brown Co. Ltd [1973] EA 358** is called in aid.
23. The prayer for an order of injunction barring the Respondent from being engaged, interested or concerned whether as a principal, agent, representative, partner, director, employee, consultant or any other capacity in any competing [business]

in terms of prayer (b) in the statement of claim as per the terms of **Clause 14** of the Employment Contract dated 29th July, 2022 cannot issue, as it is **two and a half years** from the date of termination of the Respondent's employment by resignation, **far beyond the 12 months'** non-compete period stated in Clause 14.1 and 14.2 of the said Employment Contract.

24. The prayer for a declaration that the Claimant is entitled to damages for **breach** of contract of **Kshs.10,080,000/=** together with interest thereon at Court rates from the date of filing claim until payment in full cannot be granted because, as already stated in this Judgment, **the Claimant did not demonstrate that it suffered damage and/or loss as a result** of the Respondent being employed by a competing business within 12 months of termination without first obtaining a written consent from the Claimant in breach Clauses 14.1 & 14.2 of the Contract of Employment.

25. The Court of Appeal stated as follows in the case of **Total Kenya Limited (formerly Caltex Oil Kenya) Limited) - vs Janevams Limited [2015] eKLR:-**

“. . . As a general rule, there can be no damages for breach of contract. This was the holding of this Court in *Provincial Insurance Co. East Africa Ltd - vs - Nandwa LLR NO. 867 (CAK)*. In *Habib Zurich Finance (K) Limited - vs - Muthoga & Another [2002] I EA 81* at page 88 the Court cited with approval the decision of the Court of Appeal for Eastern Africa in the case of *Dharamshi - vs - Karan (Supra)* where the Court held as follows:

“This case has been accepted by this Court as an authority for the proposition that general damages cannot be awarded for breach of contract and that proposition makes sense because damages arising from a breach of contract are usually quantified and are not at large. Where damages can be quantified they cease to be general . . .”
(See *Securicor Courier (K) Limited - vs - David Benson Onyango [2008] eKLR*).

26. The Court in the afore-cited decision further stated:-

“However, where there has been some loss arising from such breach, then damages may be awarded so as to put the Claimant in a good position as if there had been no such loss. This was the holding of the Court in *Visoi Saw Mills Ltd - vs - The Attorney General [1997] eKLR (Civil Appeal No. 78 of 1996)*.

“But whether the claim is in contract or tort the only damages to which the appellant is entitled is a pecuniary loss: it is to put the appellant into as good position as if there had been no such breach or interference. Normally, this would entitled the appellant to recover damages for the expenses caused by and gains foregone because of the breach or interference.”

27. Save as stated (declared) in paragraph 17 of this Judgment, the rest of the Claimant’s claim herein fails, and is hereby dismissed.

28. Each party shall bear its own costs of the suit.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS
20TH DAY OF FEBRUARY 2026**

AGNES KITIKU NZEI

JUDGE

ORDER

This Judgment has been delivered via Microsoft Teams Online Platform. A signed copy will be availed to each party upon payment of the applicable Court fees.

AGNES KITIKU NZEI

JUDGE

Appearance:

Mr. Kisinga for the Claimant

Mr. Mullomi for the Respondent