

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

CAUSE NO. E535 OF 2025

(Before Hon. Lady Justice Agnes Kitiku Nzei)

CECILIA WANJIRU KARANJA CLAIMANT

VERSUS

TIA CLINICS LIMITED 1ST RESPONDENT

FLOWRICH PHARMA LIMITED 2ND RESPONDENT

REGENERA PHARMA LIMITED 3RD RESPONDENT

ARSHNI JAYESH MALDE 4TH RESPONDENT

RULING

1. The Claimant sued the 1st, 2nd, 3rd and 4th Respondents herein vide a Memorandum of Claim dated 11th June, 2025, and sought various reliefs against the Respondents, jointly and severally. The Claimant seeks both declaratory and compensatory reliefs as set out in the said Memorandum of Claim.

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

(a) *that under a verbal contract of employment, she was employed by the Respondents **from 2023 as a Marketing Manager, doubling up as a Medical Representative**; and was later issued with a written contract.*

(b) *that the Claimant's net monthly salary was Kshs.200,000/=, paid partly in cash or M-pesa through the 4th Respondent's bank accounts or minimally through set offs of the Respondents' products for resell as encouraged by the 4th Respondent.*

(c) *that the Respondents, particularly the 4th Respondent and her parents, created a toxic work environment characterised by severe micromanagement, demeaning insults and abuses, shouting and screaming at the slightest opportunity, unexplained and unilateral salary deductions, delayed salaries and arbitrary police arrests.*

(d) *that the Respondents subjected the Claimant to an unapproved chemical peel procedure, using her as*

a test subject without proper consent or safeguards in place; resulting to severe facial burns that caused physical harm, emotional distress and financial loss on medical treatment.

(e) that the Claimant was verbally told to go away by the 4th Respondent on 23rd April, 2025 for resisting an arbitrary salary deduction, and that she tendered her circumstance-compelled involuntary resignation on 23rd April, 2025 by WhatsApp; and that this constituted constructive dismissal.

3. The Respondents filed a Memorandum of Reply dated 28th July, 2025, which includes a Counter-claim by 1st Respondent.

4. The 2nd, 3rd and 4th Respondents filed identical applications dated 6th August, 2025 seeking Orders:-

(a) That the Court be pleased to strike out the Claimant's suit against the 2nd, 3rd and 4th Respondents for failure to disclose any reasonable cause of action.

(b) That costs of the applications be borne by the Claimant.

5. The applications are not supported by any affidavits.
6. It is to be noted that the Rules of Procedure applicable to proceedings before this Court are the Employment and Labour Relations Court Procedure Rules, 2024. The Civil Procedure Rules only apply where those Rules are specifically saved either in this Court's said Rules of Procedure or in the Employment and Labour Relations Court Act, or where both the Act and this Court's Rules are silent on a particular procedural issue, and the Court deems it appropriate to refer to the Civil Procedure Rules on the particular issue in question.
7. Rule 33 of the Employment and Labour Relations Court Procedure Rules 2024 provides as follows:-

“33. A party may, by notice, object to a pleading and in that notice, state the grounds of objection except that no objection may be

raised to a pleading on the ground of any want of form.”

8. The Applicants have raised objections to the Claimant’s suit **on grounds that there was no employer-employee relationship between them and the Claimant, the suit does not disclose a reasonable cause of action against them, and that the suit is scandalous, frivolous and an abuse of this Court’s process.** These grounds are set out on the face of the applications.
9. The Claimant has pleaded to there having existed **both an oral and written contracts of employment between herself and the Respondents**, which allegation the 2nd, 3rd and 4th Respondents have denied. The issue of whether or not there existed an employer-employee relationship between the Claimant and the Applicants is one that **must** go for trial. **Evidence must be taken on the same.**
10. Section 2 of the Employment Act defines the term **“employer”** as follows:-

“ “employer” means any person, public body, firm, corporation or company who or which has entered into a contract of service to employ any individual and includes the agent, foreman, manager or factor of such person, public body, firm, corporation or company.”

11. The **Black’s Law Dictionary (10th Edition)** defines **“a factor”** as:-

“Someone who acts for another . . . and differs from a broker because the factor possesses or controls the property . . .”

12. In my view, a director of a company which has entered into a contract of service to employ any individual falls in the category of **“a factor”** of that employing company. Such director/factor may be sued jointly with the employing company, and particularly where he or she is accused of having **personally** committed actions which are actionable in law, or which reasonably suggest that he/she, too, was an employer.

13. I decline to strike out the Claimant's suit against the Applicants, and the applications dated 6th August, 2025 are hereby dismissed with no order as to Costs. The suit herein shall be fast-tracked, and shall be fixed for hearing.

14. It is so ordered.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS
10TH DAY OF APRIL 2026**

AGNES KITIKU NZEI
JUDGE

ORDER

This Ruling 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. Mudao for the Claimant

Mr. Rukwaro for the 2nd Respondent

No appearance for 1st, 3rd and 4th Respondents

ORIGINAL