



**Mugo v Biodeal Laboratory Limited (Cause E401 of 2022)  
[2025] KEELRC 193 (KLR) (31 January 2025) (Judgment)**

Neutral citation: [2025] KEELRC 193 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E401 OF 2022  
J RIKA, J  
JANUARY 31, 2025**

**BETWEEN**

**CHARITY KAWIRA MUGO ..... CLAIMANT**

**AND**

**BIODEAL LABORATORY LIMITED ..... RESPONDENT**

**JUDGMENT**

1. The Claimant filed her Statement of Claim, on 13<sup>th</sup> June 2022.
2. She avers that she was employed by the Respondent on 16<sup>th</sup> February 2016, as a Medical Sales Representative, on a monthly salary of Kshs. 30,039.
3. She received an e-mail from the Respondent's Human Resource Manager on 18<sup>th</sup> October 2018, informing her that her services were no longer needed.
4. She sought the assistance of her Trade Union, who engaged the Respondent, without resolution. The dispute was reported to the Ministry of Labour.
5. Parties were heard by the Conciliator. The Conciliator recommended that the Claimant is paid by the Respondent, benefits under clauses 11,16, 20, and 22 of the CBA, all allowances, notice, salary for days worked, pro-rata leave, annual leave, and compensation for unfair termination, equivalent of 8 months' salary.
6. The Respondent did not comply with the Conciliator's recommendation.
7. The Claimant seeks Judgment against the Respondent, as recommended by the Conciliator, as follows:
  - a. Declaration that termination was unfair and unlawful.



- b. The Respondent is compelled to pay to the Claimant, 1-month salary in lieu of notice at Kshs. 40,000; 18 days' salary at Kshs. 27,692; leave allowance at Kshs. 96,951; pro-rata leave at Kshs. 24,620; gratuity/ service over a period of 3 years at Kshs. 69,255; and compensation for unfair termination at Kshs. 480,084 – total Kshs. 738,602.
  - c. Certificate of Service to issue.
  - d. Costs.
  - e. Interest.
  - f. Any other suitable relief.
8. The Respondent filed its Memorandum of Appearance, and a Replying Affidavit sworn by Mital Shah, dated 1<sup>st</sup> July 2022. Its position is that the Claim is anchored on a CBA which did not apply to the Claimant's contract. Her job as a Medical Representative, was not governed by any CBA. She was not a member of the Kenya Chemical & Allied Workers Union.
  9. It is the Respondent's position that the Claimant was a perennial absentee. She absconded. The Respondent expressed its concern about her absenteeism through e-mail. She was warned. The Respondent did not terminate her contract. She absconded. The Respondent urges the Court to dismiss the Claim with costs.
  10. The Claimant, and the Respondent's Manager Mital Shah, both gave evidence on 19<sup>th</sup> March 2024, closing the hearing.
  11. The Claim was last mentioned in Court on 14<sup>th</sup> October 2024, when it was confirmed that both Parties had filed their closing submission, and an order made for transmission of the file to the Trial Judge for preparation of the Judgment, the Trial Judge having since been moved from the trial station.
  12. The Claimant, prosecuting her case personally, relied on her witness statement and documents [1-8] in her evidence-in-chief. The witness statement restates the facts as narrated in the Claimant's pleadings.
  13. Cross-examined, she confirmed that she was a Sales Representative. She was not aware what jobs were covered under the CBA. She did not lie, by pleading that she was covered under the CBA. She did not have a copy of the e-mail from the Respondent, informing her that her services were terminated, because of non-performance.
  14. Page 10 of the Statement of Claim, states that she was not issued a Certificate of Service. She also stated on cross-examination, in very clear terms, that she disowns the Statement of Claim, and that the Court should not rely on it. She conceded that she filed a Reply to the Respondent's Response, agreeing with the statements made by the Advocates for the Respondent. She explained that she is a layperson, and had not contradicted herself in her pleadings and evidence.
  15. Mital Shah confirmed that the Claimant was employed by the Respondent as Medical Sales Representative. He adopted the contents of his Replying Affidavits and annexed documents. He relied on supplementary documents comprising the CBA and e-mails exchanged between the Parties.
  16. On cross-examination, he told the Court that the Claimant was a perennial absentee. She absconded. The Respondent made enquiry concerning her whereabouts. The Respondent stopped her salary, after she absconded. Redirected, Shah told the Court that there was a reporting system at the workplace, which regulated Employees, even when they were out in the field. The Claimant simply absconded and did not report.



17. The issues are whether the Claim in light of the Claimant's evidence is tenable; whether her contract was terminated by the Respondent unfairly and unlawfully; and whether she merits the prayers sought.

**The Court Finds: -**

18. The Claimant acted in person throughout, from filing to the hearing of the Claim. Her pleadings, although drawn in person, conform to the procedural standards, under the E&LRC [Procedure] Rules, 2016.
19. Her presentation of evidence was however, completely below the standards required, in establishing a Claim. It was shambolic. She explicitly told the Court on cross-examination that, " I deny my Statement of Claim. It should not be considered."
20. How is the Court to consider and grant the Claim, in light of such evidence?
21. While the Court grants wide latitude to Parties who come before it, acting in person, there is a limit to what the Court can do, a limit to how far it can stretch backwards, in accommodating Parties who act in person. The Court cannot advise Parties on what to say in their evidence, or correct what they have stated on oath. The Claimant disowned her Claim, while stating on oath, that she agreed with the statements of the Advocate for the Respondent.
22. The Claim is untenable. The Court has no duty to look beyond the first issue- whether the Claim, in light of the evidence by the Claimant disowning the Claim- is tenable.

It Is Ordered: -

- a. The Claim is declined.
- b. No order on the costs.

**DATED, SIGNED AND DELIVERED TO THE PARTIES ELECTRONICALLY, AT NAIROBI, UNDER PRACTICE DIRECTION 6[2] OF THE ELECTRONIC CASE MANAGEMENT PRACTICE DIRECTIONS, 2020, THIS 31<sup>ST</sup> DAY OF JANUARY 2025.**

**JAMES RIKA**

**JUDGE**

