



**Nyaoro v Cold Solutions Services East Africa Limited (Cause E225 of 2023) [2025] KEELRC 277 (KLR) (6 February 2025) (Judgment)**

Neutral citation: [2025] KEELRC 277 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E225 OF 2023  
L NDOLO, J  
FEBRUARY 6, 2025**

**BETWEEN**

**ALICE AKINYI OPIYO NYAORO ..... CLAIMANT**

**AND**

**COLD SOLUTIONS SERVICES EAST AFRICA LIMITED ..... RESPONDENT**

**JUDGMENT**

**Introduction**

1. By her Statement of Claim dated 15<sup>th</sup> March 2023, the Claimant accuses the Respondent of unlawful termination of employment, failure to pay her terminal dues, discriminatory labour practices, and violation of her rights to privacy, human dignity, and fair hearing.
2. The Respondent filed a Response dated 15<sup>th</sup> April 2023. At the trial, the Claimant testified on her own behalf and the Respondent called its Human Resource Consultant, David Kiambi. Thereafter, the parties filed written submissions.

**The Claimant's Case**

3. The Claimant states that sometime in July 2020, the Respondent head-hunted and offered her a 4-month consultancy contract, with an assignment to deliver letters of intent for 5,000 temperature controlled units/pallets.
4. The Claimant claims to have been entitled to an initial monthly remuneration of USD 6,500. She avers she surpassed her target under the consultancy contract, by 3,000 pallets, for which she was paid a performance bonus.
5. In December 2020, the Respondent offered the Claimant full time employment in the position of Business Development Manager, at a monthly salary of Kshs. 715,000, effective 1<sup>st</sup> January 2021.



6. Under the employment contract, the Claimant was to serve a 3 months' probation period. She was confirmed in her appointment on 1<sup>st</sup> July 2021. She states that she was awarded a performance bonus payable in 2 instalments, in December 2021 and March 2022.
7. The Claimant pleads that during the course of her employment, she fell ill. She states that instead of the Respondent offering her support, she was subjected to violation of her right to privacy and dignity. In this regard, the Claimant cites the following particulars of violation by the Respondent:
  - a. Requesting to be furnished with the Claimant's detailed medical report under the guise of supporting her, but instead using this information against her;
  - b. Intentionally and unlawfully divulging the Claimant's personal data and information to third parties without her consent;
  - c. Perpetuating irregular, discriminatory and unethical labour practices.
8. The Claimant states that she worked for the Respondent until 15<sup>th</sup> March 2022, when her employment was terminated. She lists the following particulars of irregular, unlawful and unfair termination as against the Respondent:
  - a. Failing to offer the Claimant a fair hearing as required under the *Employment Act*;
  - b. Backdating the termination to take effect on 1<sup>st</sup> March 2022, thus failing to afford the Claimant proper notice as required under the Act and the employment contract;
  - c. Failing to sufficiently inform and explain to the Claimant the reason for the termination;
  - d. Failing to pay the Claimant the sum of Kshs. 2,145,000 being 3 months' salary in lieu of notice, in breach of the employment contract;
  - e. Failing to issue the Claimant with a certificate of service, in breach of the Act.
9. The Claimant tabulates her claim as follows:
  - a. 12 months' salary in compensation.....Kshs. 8,580,000
  - b. 3 months' salary in lieu of notice.....2,145,000
  - c. Leave pay for 25.5 days.....841,500
  - d. General damages for discrimination
  - e. General damages for violation of the right to privacy
  - f. General damages for violation of the right to human dignity
  - g. Certificate of service
  - h. Costs plus interest

### **The Respondent's Case**

10. In its Response dated 15<sup>th</sup> April 2023, the Respondent denies the Claimant's claim and states that the Claimant's employment was subject to mutual understanding and agreement that:
  - a. Upon the setup of the Respondent's affiliate M/S Cold Solutions Kiambu SEZ Limited, the Claimant's employment and duties would be transferred to the said affiliated organisation on the same terms and conditions;



- b. Sometime in the year 2021, the said M/S Cold Solutions Kiambu SEZ Limited was successfully set up and the Claimant's employment duly transferred to the said affiliate entity;
- c. The Claimant signed a new contract of employment dated 21<sup>st</sup> March 2022 with the affiliate entity, in which she assumed the role of Business Development Manager under her original terms and conditions;
- d. The Claimant's signing of her new contract of employment necessitated termination of her old contract pursuant to which the said termination was signed on even date on 21<sup>st</sup> March 2022;
- e. The Claimant's subsequent employment was taken up without protest and termination of her previous contract was effected on the basis of necessity, mutual understanding and sufficient prior notice;
- f. The Claimant's employment was not terminated by the Respondent; it was transferred as notified to the Claimant in her letter of offer of employment.

### **Findings and Determination**

11. There are two (2) issues for determination in this case:
  - a. Whether the Claimant has proved a case of unlawful termination of employment against the Respondent;
  - b. Whether the Claimant is entitled to the remedies sought.

### **Unlawful Termination?**

12. The Claimant's claim of unlawful termination stems from a letter dated 15<sup>th</sup> March 2022, addressed to her as follows:

“Dear Alice,

Reference: Termination of Employment Contract with Cold Solutions Services East Africa Ltd

This is to officially inform you that we hereby terminate the current Employment Contract between yourself and Cold Solutions Services East Africa Limited that took effect as from 1<sup>st</sup> January 2021. Following this decision, we will be issuing you with a new Employment contract with Cold Solutions Kiambu SEZ limited which takes effect as from 1<sup>st</sup> March 2022.

We would like to thank you for your continued hard work and commitment to the company and look forward to working with you into the existing future of Cold Solutions.

Yours Sincerely,

(signed)

Serah N. Njoroge

Human Resource Manager”



13. This letter must be read alongside the offer of employment dated 22<sup>nd</sup> December 2020, which reads in part:

“Dear Alice,”

Offer of Employment

We are pleased to offer you a position with Cold Solutions Services East Africa Limited as a Business Development Manager effective from 1<sup>st</sup> January 2021. Both parties agree that at the appropriate time and prior to the conclusion of 2021, the employment position will be transferred to the related party entity Cold Solutions Kiambu Limited on the same terms and conditions.”

14. It is worth noting that the Claimant accepted the letter of offer dated 22<sup>nd</sup> December 2020, on 26<sup>th</sup> December 2020. In addition, she went ahead to take up employment with Cold Solutions Kiambu SEZ Limited, as evidenced by a fresh employment contract, which she duly accepted.
15. From the foregoing, it is evident that the express intention of the parties was that in the long term, the Claimant was to be an employee of Cold Solutions Kiambu SEZ Limited, with the Respondent playing a transitional role. It is a basic principle of law that courts should not rewrite contracts between consenting parties.
16. To my mind, the letter dated 15<sup>th</sup> March 2022, was no more than execution of the parties’ agreement entered into at the commencement of the employment relationship. I find nothing in the subject letter to suggest unlawful termination of employment, as defined in law.
17. The claims for compensation and notice pay are therefore without basis and are dismissed.
18. The claims for leave pay and general damages were not proved and are also dismissed.
19. Finally, the Claimant’s entire claim fails and is dismissed with an order that each party will bear their own costs.
20. Orders accordingly.

**DELIVERED VIRTUALLY AT NAIROBI THIS 6<sup>TH</sup> DAY OF FEBRUARY 2025**

**LINNET NDOLO**

**JUDGE**

Appearance:

Ms. Shah for the Claimant

Mr. Etemere for the Respondent

