



**Kimani v Technobrain Kenya Ltd (Employment and Labour Relations Cause E478 of 2020) [2025] KEELRC 1173 (KLR) (24 April 2025) (Judgment)**

Neutral citation: [2025] KEELRC 1173 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
EMPLOYMENT AND LABOUR RELATIONS CAUSE E478 OF 2020**

**HS WASILWA, J**

**APRIL 24, 2025**

**BETWEEN**

**SOLOMON GATURU KIMANI ..... CLAIMANT**

**AND**

**TECHNOBRAIN KENYA LTD ..... RESPONDENT**

**JUDGMENT**

1. The Claimant instituted this claim vide a Statement of Claim dated 31<sup>st</sup> August 2020 on grounds that he was discriminated upon by the Respondent. He prays for judgment against the Respondent for: -
  - a. The sum of Kshs. 502,333.89 together with interest thereof at court rates from the date hereof until payment in full together with interest at court rates.
  - b. General damages for discrimination for breach of Article 27, 41 and 47 of *the Constitution* and breach of the provisions of the Fair Administrative Actions Act No. 4 of the Laws of Kenya, together with interest at court rates.
  - c. Costs of this claim together with interest at court rates.
  - d. Such further and/or other reliefs and/or reliefs as this Honourable Court may deem fit and just to grant in the circumstances of this case.

**Claimant's Case**

2. The Claimant states that vide a letter dated 29<sup>th</sup> June 2015, he was appointed by the Respondent as a Pre-sales Consultant in the Solutions Sales Division reporting to Infrastructure and Pre-sales based at the Respondent's corporate office at Nairobi.
3. The Claimant avers that the terms of his employment contract dated 9<sup>th</sup> June 2015 provided that his gross salary and allowances be Kshs. 179,000 per month. It further provided that after completion



of the probation period, he would be considered for confirmation on an indefinite basis or his employment terminated by either party giving notice or salary in lieu of notice.

4. It is the Claimant's case that on 7<sup>th</sup> April 2017, the Respondent appraised his services which met the expectation and in recognition of his performance in the 2016 fiscal year, the Respondent recorded its appreciation for achieving the expected goal and objectives and increased his salary from 1<sup>st</sup> January 2017 to Kshs 192,168 and confirmed his role.
5. The Claimant avers that vide a transfer letter dated 7<sup>th</sup> August 2017, the Respondent transferred his employment contract from Techno Brain (Kenya) Ltd to Techno Brain IT Solutions PLC – Ethiopia terminating the previous contract of 9<sup>th</sup> June 2015.
6. It is the Claimant's case that the transfer letter provided that he will be paid his per diem allowances during his service in Ethiopia at a rate of Kshs 25,750, however, he was not paid for the same for his period of service from July to September 2017.
7. The Claimant avers that he resigned on 2<sup>nd</sup> September 2017 with effect even date and received a computation of final settlement at Kshs 432,752. However, the Respondent had deducted training costs of Kshs 762,303 in respect of recovery of costs of his training in South Africa from 3<sup>rd</sup> April 2016 to 16<sup>th</sup> July 2016 which he did not apply or sign up for.
8. It is the Claimant's case that other employees who were trained and working with such as David Ayiele was never charged for the training. It was understood that the Respondent will cater for the training costs of trainings which was to be from time to time.
9. The Claimant avers that vide a demand letter dated 5<sup>th</sup> September 2017, he demanded payment of his terminal dues less statutory dues of Kshs 134,402.69 and with that the Respondent withdrew its demand against him for training costs as it was not justified.
10. The Claimant avers that the Respondent responded on 19<sup>th</sup> September 2017 but being unsatisfied with the same, he responded on 5<sup>th</sup> February confirming the Respondent's actions was discriminatory considering 3 other employees working in Ethiopia who undertook the training in South Africa with him and Mr. Ayiele were not charged for the same training. Further, when David Ayiele resigned on 31<sup>st</sup> December 2017, he was not charged for the training.
11. The Claimant avers that in response to his letter, the Respondent invited him for a 'without prejudice' meeting on 23<sup>rd</sup> February 2018. The meeting was attended by the Respondent's lawyer to make proposal, however, despite several reminders, no proposals has ever been sent.

### **Respondent's Case**

12. In opposition, the Respondent filed a Statement of Response and Counterclaim dated 22<sup>nd</sup> September 2020.
13. The Respondent avers that it never advised the Claimant that he would be paid "Per diem" allowance during his employment in Ethiopia upon the transfer of his employment and puts the Claimant to strict proof thereof.
14. The Respondent avers that the Claimant was aware of the Respondent's Learning & Development Policy provided under clause 12 of the employment contract formed part of the terms and conditions governing the employer-employee relationship.



15. It is the Respondent's case that in the interest of fostering good and fair labour relations, it has on a number of occasions exercised its discretion as an employer to reach an amicable compromise with its employees.
16. The Respondent avers that the Claimant resigned 2<sup>nd</sup> September 2020 which took effect immediately, as such the claim for salaries, wages and allowances for 29 days in September 2017 is unsubstantiated. Further, he only had 48 accrued leave days and not 50 as pleaded by the Claimant.
17. The Respondent avers that despite constant reminders that final dues would only become payable upon clearing, the Claimant has failed to clear with the Respondent.
18. In its counterclaim, the Respondent prays for judgement against the Claimant: -
  - a. That the Claimant's suit be dismissed with costs.
  - b. For Judgment against the Claimant for the sum of Kshs.155,376 being one month's salary in lieu of notice.
  - c. For Judgment against the Claimant for the sum of Kshs.762,303 being amount owed by Claimant under training bond.
  - d. Interest at court rates on the amount stated in (b) and (c) from the 19<sup>th</sup> September 2017 until settlement in full.
  - e. Costs of this suit.
19. The Respondent avers that clause 8 of the employment contract read with Schedule 1 provides for one month notice of termination or payment of one month's salary in lieu of notice. The Claimant having resigned without notice with the resignation taking effect immediately, the Respondent claims a sum of Kshs.155,376 being one month's salary in lieu of notice.
20. It is the Respondent's case that Article 6.5 of its Learning & Development Policy provides for the bonding of employees who attend substantive training courses at the cost of the Respondent. The Claimant made representations that he would execute the training bond which representations the Respondent relied on to its detriment.
21. The Claimant avers that in the course of the Claimant's employment, the Respondent sponsored the Claimant to attend five trainings at a total cost of Kshs.762,303. On account of the Claimant's failure to honour the training bond by resigning, the Respondent claims from the Claimant the total training cost.

### **Evidence in Court**

22. The Claimant (CW1) adopted his witness statement and produced his list of documents dated 31<sup>st</sup> August 2020 and further list of documents dated 9<sup>th</sup> March 2024 as his evidence in chief and exhibits.
23. CW1 testified that when working for the Respondent, he sent for training in South Africa from 3<sup>rd</sup> April 2017 to 16<sup>th</sup> April 2017; two days he was sent training letters via email and was asked to sign attached documents which he was not comfortable to sign.
24. CW1 testified that he was later posted to work in Ethiopia and told he would be paid per diem per month, however, this was never paid. He worked in Ethiopia from May 2017 to August 2017 when he came back to Nairobi, Kenya and subsequently resigned on 2<sup>nd</sup> September 2017.
25. CW1 testified that pursuant to his resignation, he forfeited his 50 leave days.



26. During cross examination, CW1 testified that the employment contract provided that the contract could be terminated by either party giving 30 days' notice or salary in lieu of notice; clause 8 provides for summary termination.
27. CW1 testified that Clause 12 of the employment contract provides that all other terms not in the contract are provided in the Respondent's employee handbook and company policy: It was his responsibility to familiarise himself with these documents.
28. CW1 testified that his transfer letter to Ethiopia did not vary the terms and conditions of the employment contract and was just a transfer.
29. CW1 testified that in the course of his employment, he was taken for training to South Africa and was told to sign a for bonding which he declined; the training was catered for by the Respondent.
30. CW1 testified that clause 6.5.6 of the Respondent's Learning & Development Policy indicates that an employee resigns. Takes voluntary redundancy or is dismissed in period following the completion of the course, the total costs of the fees incurred on pro-rata basis will be owed.
31. CW1 testified that subsequent to the training, he received an email dated 20<sup>th</sup> April 2017 requesting him to sign some documents which he declined. Mr. Hursh informed him it was standard policy to all employees but he still had an issue and he was called back to Kenya to determine the issues; when they did not agree on the issues, he resigned.
32. CW1 testified that upon resignation, he forfeited his leave days as his notice period. He had 48 leave days and the Respondent acknowledged and accepted his resignation: his last working day was to be on 1<sup>st</sup> October 2017.
33. CW1 testified that he does not owe the Respondent training costs as he did not sign any bonding forms.
34. CW1 testified that two of his colleagues who attended the same training with him and resigned on December 2017 were not asked to pay anything. However, he has not produced any document to prove these allegations.
35. The Respondent's witness (RW1) Joe Mwangi, testified that he has worked for the Respondent since October 2015 in the Human Resource Department. He adopted his witness statement and filed documents dated 6<sup>th</sup> May 2024 as his evidence in chief.
36. RW1 testified that the Claimant was sent the training undertaking and the cost of bonding by the Respondent, however, he refused to sign the bond though he completed the training.
37. RW1 testified that the bond and training undertaking has 3 signatories, the employee, HR personnel and Finance personnel.
38. During cross examination, RW1 testified that none of signatories signed the bond and therefore it is unenforceable.
39. RW1 testified that three other employees were trained in South Africa together with the Claimant and he is not aware whether or not they were charged for the training.
40. It is RW1's testimony that the Claimant had 48 leave days which he forfeited in lieu of notice.
41. During re-examination, RW1 testified that the despite not agreeing to the undertaking letter, the Claimant still underwent training.



### **Claimant's Submissions**

42. The Claimant submitted he denies the entire counterclaim as the Respondent had no claim against him for training as none of the other employees trained alongside him in South Africa were asked to pay for training costs.
43. The Claimant submitted that the claim for general damages of Kshs 762,303 is based on the Respondent's act of discrimination by not demanding the refund of training fees from the other 3 employees who underwent the same training with the Claimant in South Africa; and only demanded the refund from the Claimant.

### **Respondent's Submissions**

44. The Respondent submitted on three issues: whether the Claimant is entitled to general damages sought as well as terminal dues of Kshs. 502,333.89; whether there was a valid training bond between the Claimant and Respondent and whether the Claimant was in breach entitling the Respondent Kshs. 762,303 as claimed as well as one-month salary in lieu of notice; and who is entitled to the costs of the claim and counterclaim.
45. On the first issue, the Respondent submitted that it is trite law that whoever alleges must prove. Further, section 5(7) of the *Employment Act* provides that an employer alleged to have engaged in discriminatory practice must give reasons for taking such actions: The Respondent through its witness testimony demonstrated that its Learning & Development policy provided for a training bond between the organization and the employee.
46. The Respondent submitted that the decision to recover the amount used for training was at its discretion. The Claimant failed to call David Ayiele to testify and confirm the allegation that he was not asked to reimburse the Respondent for the training. It is the Respondent's submission that the employee information is confidential and the Claimant was never privy to it.
47. The Respondent submitted that the Claimant's allegations would not suffice to establish discrimination as it remains hearsay: such is inadmissible in the law evidence which demands originality of testimony to test its reliability.
48. It is Respondent's submission that it is not in dispute that the Claimant attended a training sponsored by the Respondent and that there exists Learning & Development policy which the Claimant was aware of the policy and it was subject to his employment contract: Clause 12 of the contract stated under paragraph 'e' that all other terms and conditions of employment other than those specifically in the new contract remain the same, therefore, the policy formed part of the employment contract. It relied on the case of *Attorney General of Belize v Belize Telecom Ltd* [2009] 1 W.L.R.,1988, where Lord Hoffmann held that:

“...in every case in which it is said that some provision ought to be implied in an instrument, the question for the court is whether such provision would spell out in express words what the instrument read against the relevant background, would reasonably be understood to mean...”
49. The Respondent submitted that although the training bond was not executed by both parties, the Claimant made representations to the Respondent that he would execute it which the Respondent



relied on. The Respondent urged the Court to be guided by the doctrine of estoppel which according to the Halsbury's Laws of England 3<sup>rd</sup> Ed. Vol. 15 at paragraph 344 is defined:-

”when a party has, by his words or conduct, made to the other a promise or assurance which was intended to affect the legal relations between them and to be acted on it, the other who gave the promise or assurance has been made by him, but he must accept their legal relations subject to the qualification which he himself has so introduced .”

50. It is the Respondent's submission that in respect to the claim herein, there is a valid training bond which it is entitled to recover; as it is presumed that both parties understood the full implications of the undertaking so given and the promissory cannot thereafter be allowed to renege on his undertaking.
51. The Respondent submitted that the Claimant resigned without following due process which would have entailed issuance of one month's notice or payment of Kshs. 155,356 being payment in lieu of notice.
52. I have examined all evidence and submissions of the parties herein. It is clear that the claimant worked for the respondent having been employed vide a contract of service dated 10<sup>th</sup> June 2015. The contract was to be governed by applicable local laws i.e the laws of Kenya. Vide a letter dated 7/4/2017, the claimant was transferred to Techno Brain Ethiopia and the letter indicated that upon his agreement the contract with techno Brain Kenya was to cease to exist from 31/3/2017 but all other terms of the contract were to remain the same.
53. It is also true that the respondent sponsored the claimant to go for a training in South Africa on 8/2/2017. The respondent had wanted the claimant to sign an undertaking to bond him to the respondent but the claimant did not sign the bond. The bond having not been signed cannot therefore in the circumstances bind the claimant or compel him to pay the respondents the training costs. It was indeed the duty of the respondents to ensure the same was signed before the training which they failed to do and so cannot benefit from their own laxity. The claimant thereafter resigned from the respondent's employment but did not give a months' notice as expected.
54. It is therefore my finding that the claimant is entitled to his terminal dues less the one-month pay in lieu of notice not given. I find for claimant and I award him accordingly:
  1. His salary and wage up to 29/9/2017 = Kshs 150,196/-.
  2. 48 days leave = Kshs 277,164.22.
  3. Total Kshs 427,360.22/-
  4. Less Kshs 150,196/-
  5. Balance is Kshs 277,164.22/-
55. The claim for discrimination is found without merit and is dismissed. The counter claim is also found without merit and is dismissed accordingly.
56. The respondents will pay costs of this suit plus interest at Court rates with effect from the date of this judgement.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 24<sup>TH</sup> OF APRIL, 2025.**

**HELLEN WASILWA**

**JUDGE**

