



**Moturi v Ean Kenya Limited & another (Cause 2081 of 2014)
[2025] KEELRC 1153 (KLR) (24 April 2025) (Judgment)**

Neutral citation: [2025] KEELRC 1153 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 2081 OF 2014
L NDOLO, J
APRIL 24, 2025
[FORMERLY HIGH COURT CIVIL CASE NO 624 OF 2004]**

BETWEEN

SAMUEL ALOYS MOTURI CLAIMANT

AND

EAN KENYA LIMITED 1ST RESPONDENT

GSi KENYA LIMITED 2ND RESPONDENT

JUDGMENT

Introduction

1. This matter was initially filed in the High Court at Nairobi, as HCCC No 624 of 2004. The file was placed before Mabeya J on 11th November 2014, who formed the opinion that the claim arose from an employment relationship and the High Court did not therefore have jurisdiction to determine it.
2. By an order of the same day, the learned Judge transferred the matter to this Court, on account of jurisdiction.
3. The 1st Respondent filed a Defence and Counterclaim dated 12th July 2004, to which the Claimant responded on 19th July 2004. The 1st Respondent then filed a Reply to Defence to Counterclaim dated 27th July 2004.
4. On its part, the 2nd Respondent filed a Response dated 3rd November 2020.

The Claimant's Case

5. The Claimant commenced his claim by way of a plaint dated 11th June 2004, which was subjected to a number of amendments, culminating with a final amendment on 14th November 2018.



6. By a contract dated 16th June 2000, the Claimant was employed by the 1st Respondent, in the position of Executive Director.
7. The Claimant states that it was an express term of the contract that if the employer terminated the contract without lawful cause, the Claimant would be paid compensation equivalent to the total wages and benefits that he would have earned in the unfinished term of the contract.
8. The Claimant claims that he had a legitimate expectation that the contract would be renewed at its expiry, but owing to the 1st Respondent's breach, the Claimant lost the expected earnings and reputation in the five-year period that would follow the automatic renewal.
9. According to the Claimant, the establishment and incorporation of the 1st Respondent was his brainchild, in liaison with EAN International and EAN South Africa. He states that one of his principle duties, as founder member and Executive Director, was to get all Kenyan companies that had enlisted as members of EAN South Africa to enlist as members of the 1st Respondent.
10. The Claimant accuses the 1st Respondent of breaching the employment contract by marketing another person as its Executive Director in March 2003, while the Claimant was performing his duties as Executive Director.
11. The Claimant avers that the 2nd Respondent was incorporated, for the purpose of taking over the activities and affairs of the 1st Respondent. He maintains that the 2nd Respondent is the successor of the 1st Respondent and had thus assumed responsibility for staff.
12. By his letter dated 19th May 2003, the Claimant served the 1st Respondent, through the Chairman, Kassim Owango, with six (6) months' notice to terminate the employment contract.
13. By a return letter dated 22nd May 2003, from the Chairman and copied to Board members, the Claimant was informed that his resignation had been declined. The letter was delivered to the Claimant on 30th May 2003.
14. Subsequently, the Chairman addressed a letter to the Claimant dated 21st May 2003, by which the Claimant was summarily dismissed. According to the Claimant, the dismissal letter was delivered to him on 30th May 2003.
15. The Claimant claims that his dismissal was wrongful and consequently seeks the following remedies:
 - a. A declaration that the Claimant was a founder member and an employee of the 1st Respondent;
 - b. A declaration that the 2nd Respondent was founded and incorporated for the purpose of taking over the activities and affairs of the 1st Respondent in Kenya, when it was incorporated on 9th April 2009 and thus assumed responsibility for the Claimant's claim in this suit;
 - c. An order for damages with interest thereon as pleaded and calculated at paragraphs 14 and 18 of the claim or as the Court shall deem just;
 - d. Damages for breach of contract, trust and confidence and mental anguish, including damages for loss of property in the idea of setting up EAN Kenya Limited from which GSI Kenya Limited emerged and grew;
 - e. Compensation for wrongful termination of employment under the *Employment Act*, in such sum as the Court deems fit and just to award in the circumstances of this case, as well as compensation for the lost opportunity of automatic renewal of contract of employment.



16. The Claimant also asks for costs of the case.

The Respondents' Case

17. In its Defence and Counterclaim dated 12th July 2004, the 1st Respondent states that the Claimant ceased being a director of the Company with effect from 21st May 2003, following his summary dismissal for gross misconduct.
18. The 1st Respondent concedes that the Claimant was a founder member but had not subscribed to ordinary membership.
19. The 1st Respondent contends that there was no board resolution appointing the Claimant as Executive Director and challenges the terms of employment contained in the contract relied on by the Claimant. The 1st Respondent denies having paid the Claimant any salary or allowances on the basis of the subject contract.
20. The 1st Respondent asserts that the Claimant was liable to dismissal for gross misconduct, citing the following particulars:
- a. Drawing a loan of Kshs. 1,000,000 without the approval of the Board of Directors;
 - b. Making a false claim for Kshs. 120,000 to travel to Tunisia while he did not actually travel;
 - c. Causing financial loss to the 1st Respondent on his sale of motor vehicle registration number KAD 502E to the 1st Respondent at an overvalue of Kshs. 137,500;
 - d. Unauthorised payment of Kshs. 186,525 to Avenue Cyber Café for services that the 1st Respondent could do in-house;
 - e. Unauthorised withdrawal of Kshs. 67,000 for insurance cover of motor vehicles that did not belong to the 1st Respondent;
 - f. Drawing Kshs. 28,000 to cover the education of the Claimant's daughter;
 - g. Making false VAT bills, receipts and failing to account to the VAT authorities leading to a VAT liability on the part of the 1st Respondent of Kshs. 11,065,234 plus an audit cost of Kshs. 230,000;
 - h. Failure to account for PAYE to the income tax authorities leading to an income tax liability on the part of the 1st Respondent;
 - i. Having and receiving the amount of US\$ 15,000 in cash from Well Cop Ltd on 24th December 2001 and failing to account to the 1st Respondent.
21. By way of Counterclaim, the 1st Respondent seeks the following from the Claimant:
- a. Kshs. 13,638,257 being financial loss sustained by the 1st Respondent plus PAYE tax liability;
 - b. Special damages in the sum of Kshs. 230,000 being auditor's fees;
 - c. General damages for loss of business;
 - d. Costs plus interest.
22. In its Response dated 3rd November 2020, the 2nd Respondent denies any nexus between it and the 1st Respondent, pointing to a difference in the listing of directors of the two companies.



23. The 2nd Respondent maintains that the two companies are separate and distinct entities and denies any responsibility over the Claimant's claim.
24. The 2nd Respondent complains that the order for its joinder in these proceedings was granted in its absence, contrary to the rules of natural justice.
25. The 2nd Respondent terms the Claimant's decision to join it in the proceedings as an afterthought, given the period between the filing of the claim and its joinder.

Findings and Determination

26. Although the parties made extensive submissions on this dispute, they failed to address a central issue being, the effect of the Claimant's resignation notice dated 19th May 2003, which the 1st Respondent purported to reject, and instead proceeded to summarily dismiss the Claimant.
27. Black's Law Dictionary (Ninth Edition) defines resignation as:

“ A formal notification of relinquishing an office or position.”
28. By definition, resignation is a unilateral action by an employee and emerging jurisprudence is to the effect that the efficacy of a termination notice is not dependent on acceptance by the employer. In other words, there is no provision in employment law requiring that a termination notice issued by an employee will only take effect once it is accepted by the employer.
29. This position has been restated in several decisions of this Court (variously constituted); *Ayonga v Falcon Signs Ltd* [2023] KEELRC 300 (KLR), *Apudo v Azure Hotel Limited* [2024] KEELRC 321 (KLR) and *Hemlanaik v Super Steelcon Limited* [2025] KEELRC 137 (KLR).
30. In this case, the Claimant himself expressed his desire to leave employment and the purported rejection of the resignation notice by the employer was of no legal consequence.
31. An employee who has himself issued a resignation notice cannot sustain a claim of wrongful dismissal. This is therefore the end of the road for the Claimant's claim, which is premised on an allegation of wrongful dismissal.
32. Regarding the 1st Respondent's Counterclaim, the only to say is that no evidence was adduced to support the various heads. The Counterclaim therefore fails in its entirety.
33. In light of the foregoing findings and conclusions, the Court did not find it necessary to delve into the collateral issues of the Claimant's role in setting up the 1st Respondent Company and joinder of the 2nd Respondent Company.
34. Finally, both the claim and the counterclaim fail and are dismissed with an order that each party will bear their own costs.
35. Orders accordingly.

DELIVERED VIRTUALLY AT NAIROBI THIS 24TH DAY OF APRIL 2025

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JUDGE

Appearance:

Mr. Mwenesi for the Claimant



Mr. Ratemo for the Respondent

