



**Amunga v Capsule Limited t/a Flare (Cause E903 of 2022)  
[2025] KEELRC 2341 (KLR) (30 July 2025) (Judgment)**

Neutral citation: [2025] KEELRC 2341 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E903 OF 2022**

**JW KELI, J  
JULY 30, 2025**

**BETWEEN**

**BENA AMUNGA ..... CLAIMANT**

**AND**

**CAPSULE LIMITED T/A FLARE ..... RESPONDENT**

**JUDGMENT**

1. Vide a statement of claim dated 17<sup>th</sup> November 2022, the claimant sued the respondent and sought the following Orders:-
  - a) General Damages for breach of employment contract.
  - b) Kshs.59,730,111/- being wages withheld in terms of unpaid bonuses.
  - c) Costs of the suit.
  - d) Interest on (a) and (b) above.
  - e) Any other relief the court deems fit.
2. The claimant in support of the claim filed her list of witnesses dated 17<sup>th</sup> November 2022; list of documents of even date with the bundle of documents attached; and witness statement dated 15<sup>th</sup> March 2023. The Claimant also filed a supplementary list of documents dated 23<sup>rd</sup> September 2024.
3. The Respondent entered appearance through the law firm of Jared Kangwana & Company Advocates and filed a response to statement of claim dated 26<sup>th</sup> April 2023, denying the allegations in the memorandum of claim. In support of the defence, the respondent filed a witness statement of Miriam Nyanjau Mugo dated 26<sup>th</sup> April 2023; and a list and bundle of documents of even date. Following a change of advocates by the Respondent, the said Response to Statement of Claim was amended pursuant to the leave of the court granted on 24<sup>th</sup> October 2023, and dated 9<sup>th</sup> November 2023. The



Respondent also filed a supplementary list and bundle of documents dated 9<sup>th</sup> November 2023; and a supplementary witness statement of Miriam Nyanjau Mugo dated 9<sup>th</sup> November 2023.

### **Hearing and evidence**

4. The claimant's case was heard on the 24<sup>th</sup> March 2025 where the claimant testified on oath, adopted his witness statement dated 15<sup>th</sup> March 2023, produced documents under the list dated 17<sup>th</sup> November 2022 and the supplementary bundle of documents dated 23<sup>rd</sup> September 2022 as his evidence in chief. Counsel cross-examined him for the respondent, Ngoge. The respondent's case was heard on the same date as Miriam Nyanjau Mugo, testifying on oath as RW1, adopted her witness statements dated 26<sup>th</sup> April 2023 and 9<sup>th</sup> November 2023, produced documents under the list dated 26<sup>th</sup> April 2023 and supplementary bundle of documents dated 9<sup>th</sup> November 2023 as evidence in chief for the respondent. RW1 was cross-examined by counsel for the claimant, Abenga.

### **The Claimant's case in summary**

5. The Claimant pleads that she was employed by the Respondent in the position of Business Development and Sales Executive vide a contract dated 10<sup>th</sup> July 2021. One of the key terms of her contract of employment was that she was entitled to 15% bonus on sales generated on attainment of a target of five (5) times her monthly salary. It is the Claimant's position that she brought in sales in the form of grants for the Respondent totalling Kenya Shillings Three Hundred and Ninety Eight Million Two Hundred Thousand Seven Hundred and Forty (Kshs. 398,200,740/-), from the following clients: ITU, Hudson Sandler, Ashoka (Making More Health), EUEOM, Austrian Development Agency (Kofi Annan Award), Stepping Stones School, and Merck (MSD). All the listed clients subscribed to the Respondent's services. However, the Respondent breached the Claimant's legitimate expectation by failing to pay her bonus as agreed, causing the Claimant to resign due to the Respondent's lack of good faith towards her.

### **Respondent's case in brief**

6. The Respondent admits that it employed the Claimant to the position of Business Development and Sales Executive vide a contract of employment duly executed and dated by the Claimant on 15<sup>th</sup> June 2021. Her employment commenced on 19<sup>th</sup> July 2021. They also admit that the contract expressly contained a term on the issue of payment of a bonus as follows:
  - a) The bonus would be paid out on a quarterly basis;
  - b) The bonus would only be payable upon the Claimant attaining a minimum monthly sales target of Kshs. 600,000/-, which was equivalent to the three (3) times the Claimant's monthly gross salary of Kshs. 200,000/-, or attaining a minimum quarterly sales target of Kshs. 1,800,000/-;
  - c) The bonus payable to the Claimant for attaining the minimum monthly sales target of Kshs. 600,000/- was Kshs. 60,000, while the bonus payable to the Claimant for attaining the minimum quarterly sales target of Kshs. 1,800,000/- was Kshs. 120,000/-;
  - d) The Claimant would be entitled to a bonus of Kshs. 90,000/- if she attained a monthly sales target of Kshs. 1,000,000/-, which is five (5) times her gross salary, or a bonus of Kshs. 270,000/- if she attained a quarterly sales target of Kshs. 3,000,000/-;
  - e) In any event, the maximum bonus pay out was Kshs. 200,000/- per month and Kshs. 600,000/- per quarter.



7. With regard to the Claimant's sales performance during the material period, it is the Respondent's case that the Claimant did not achieve a sales target of Kshs. 398,200,740/- as alleged. The particulars of the Claimant's performance were as follows:
- a. The Claimant did not make any sales in quarter 3 (Q3) of 2021 (July to September 2021).
  - b. The Claimant only made one sale of Kshs. 75,000/- in quarter 4 (Q4) of 2021 (October to December 2021) with the Respondent entering a contract with Hudson Sandler LLP on 11th August 2021 for the period 5th November 2021 to 4th November 2022 at a cost of Kshs. 75,000/-. This amount had not been paid by the time the Claimant resigned.
  - c. The Claimant did not make any sales in quarter 1(Q1) of 2022 (January to March 2022).
  - d. The Claimant made Kshs. 397,840/- in sales in quarter 2 (Q2) of 2022, less the refund of Kshs. 131,833/- to the European Union Electoral Observation Mission. Of the amount made by the Claimant in this quarter, Kshs. 258,900/- emanated from a contract between the Respondent and Stepping Stones Kindergarten entered into on 26<sup>th</sup> May 2022; and Kshs. 345,340/- emanated from a contract between the Respondent and the European Union Electoral Observation Mission entered into on 20th May 2022. At the time of filing the Respondent's documents, the Respondent stated that Stepping Stones Kindergarten had only remitted Kshs. 52,500/-for the services. At the time the Claimant resigned, the European Union Electoral Observation Mission had paid Kshs. 345,340/-, however, the Respondent was forced to refund to them Kshs. 131,833/- on account of overstatement by the client on how long the electoral observers would be covered under the service agreement.
  - e. The Claimant did not make any sales in quarter 3(Q3) of 2022 (July to September 2022).
8. On the issue of the grants which the Claimant claims that she secured, the Respondent avers that it made arrangements for the Claimant to work with other team members on projects for securing grants from prospective grantees/donors as opposed to only making sales, since the Claimant was struggling to meet sales targets. The Respondent insists that grants are not sales, hence they are not covered by the Bonus clause in the Claimant's contract of employment. Grants are awarded to the Respondent at the grantee/donor's discretion to help facilitate the Respondent's operations. All grants received by the Respondent have prescribed budgets and use of funds for specific social impact projects and operations. The grants were secured by a team, the grants team, hence no single grant can be attributed solely or directly to the Claimant. In any event, even if the court were to find that the Claimant was entitled to bonus pay in respect of grants, the maximum bonus pay out would be capped at Kshs. 200,000/- per month and Kshs. 600,000/- per quarter per the terms of the Bonus Clause in the Claimant's contract of employment.
9. The grants team, during the time of the Claimant's employment, secured the following grants:
- a. A grant from International Telecommunication Union (ITU) (for USD 20,000/- (Kshs. 2,408,000/-). The award was signed on 28th March 2022.
  - b. A Koffi Annan Award from the Austrian Development Agency for EUR 250,000/-(Kshs.30,062,500/-). The award was signed on 11th July 2021.
  - c. A grant from Making More Health/Ashoka LLC for EUR 50,000/- (Kshs. 6,012,500/-).
  - d. A grant from Merck Sharp & Dohme LLC (MSD) for USD 1,500,000/-. MSD signed the award on 11th October 2022 after the Claimant had left the Respondent's employment.



10. The grants were awarded to the Respondent to facilitate the Respondent's specific social impact projects and operations as follows:
  - a. The grant from ITU had a prescribed budget and required the Respondent to use the grant amount to implement an emergency response network that offers transport to pregnant women during emergencies so as to reduce maternal and neonatal mortality.
  - b. The budget for the Koffi Annan Award from the Austrian Development Agency solely required the Respondent to set up operations in Ghana, hire a team consisting of a County Manager, Finance Manager and Data Specialist to run its operations in Ghana and to map and track ambulances and hospitals in Accra onto the Respondent's emergency response platform.
  - c. The grant from Making More Health/Ashoka LLC had a prescribed budget and required the Respondent to use the grant amount to provide training to paramedics on obstetrics and newborn care and to offer ambulance providers with emergency equipment and emergency training programmes. (see page 79 of the Claimant's Bundle).
  - d. The grant from MSD also had a prescribed budget and was intended to develop a project called 'MamaLink Coalition' designed to reduce maternal mortality in Kenya.
11. By an e-mail dated 20<sup>th</sup> July 2022, the Claimant tendered her voluntary resignation from the Respondent and indicated that her last working day would be 19<sup>th</sup> September 2022. The claimant admitted therein that she was working in a team and with the Respondent in a warm working environment. Thus the allegation that she resigned due to a lack of good faith on the part of the Respondent is false. It read:

“It has been a pleasure working with you and the entire team and I particularly feel honoured to have been part of Flare winning team and contributing to the remarkable work being done. I would like to thank you for providing me with a rewarding learning experience and a warm working environment. You have my full cooperation for a smooth transition of responsibilities.”
12. By a letter dated 12<sup>th</sup> September 2022, the Claimant particularized alleged bonus/commissions for grants secured by the Respondent's grants team. The Respondent responded vide a letter dated 16<sup>th</sup> September 2022, and clarified that the Claimant had failed to achieve any of the sales targets in the contract. They also clarified that she was not entitled to bonus/commissions on grants secured by the grants team. They ended the letter by including a breakdown of the Claimant's final dues.
13. It is the Respondent's case that the Claimant therefore does not qualify for the bonus/commission pay of Kshs. 59,730,111/-as alleged.

## **Determination**

### **Issues for determination**

14. The claimant did not file any submissions and the court considered her prayers in framing the issues for determination.
15. The respondent in submissions identified the following issues for determination in the suit-
  - a) Whether there was a breach of the Claimant's Employment Contract;
  - b) Whether there is a distinction between grants and sales under the Employment Contract;



- c) Whether the Claimant was eligible for a bonus on account of sales made
  - d) Whether the Claimant was eligible for a bonus on account of grants worked on; and
  - e) Whether the Claimant is entitled to the remedies sought in the Claim.
16. The court finds the issues for determination in the suit to be –
- a) Whether there was a breach of the Claimant’s Employment Contract;
  - c) Whether the Claimant is entitled to the remedies sought in the Claim.

**a) Whether there was a breach of the Claimant’s Employment Contract;**

16. The claimant sought for award of general damages for breach of contract. The particulars of the breach as per the claim were stated as follows:-

- “6. Breach of contract: As per her contract dated 10th July 2021, the Claimant is entitled to a bonus. 'Quarterly paid out with minimum sales target as 3x monthly gross salary (600,000 KES) per month or 1,800,000 KES per quarter with the structure as: 60,000 KES per month or 120,000 KES per quarter for hitting 3x, 90,000 KES per month or 270,000 KES per quarter for hitting 5x, and 15% thereafter with a max payout of 200,000 KES in bonus per month or 600,000 KES per quarter. In this regard, the Claimant is entitled to 15% commission on sales generated on attainment of a target equivalent to 5 times her monthly salary.
- 7. In breach of legitimate expectation, the Plaintiff went out of her way in performance of her duties with the expectation that she will be paid her commission for making sales for the Respondent herein. The Respondent however has declined to make the payment.
- 8. The Claimant further resigned due to lack of good faith demonstrated by the Respondent in paying her dues.” The claimant further itemized the special damages sought. In witness statement she said that she brought in sales in form of grants for the respondent totaling 398,200,740 of which she stated to have been entitled to 15% bonus on sales generated on attainment of a target of 5 times her monthly salary.” The claimant did not file written submissions.

**The respondent’s submissions**

17. In any dispute concerning the interpretation of the terms of an agreement, it is important to keep in mind the provisions of Section 97 of the *Evidence Act*, Cap 80 Laws of Kenya. This section provides that: “When the terms of a contract, or of a grant, or of any other disposition of property, have been reduced to the form of a document, and in all cases in which any matter is required by law to be reduced to the form of a document, no evidence shall be given in proof of the terms of such contract, grant or other disposition of property, or of such matter, except the document itself” (Emphasis added).
18. The relevance of section 97 of the *Evidence Act* in the present case is that the Claimant cannot adduce evidence not contained in the Employment Contract in a bid to prove or disprove the terms set out in her Employment Contract.



19. It is submitted that the relationship between the Claimant and the Respondent was governed by the terms which were set out in the Contract, which incorporated the terms of the Respondent's Employee Handbook as revised from time to time. The Claimant executed the Contract and by so doing agreed to be bound by the terms of the Contract. In *National Bank of Kenya Limited v Pipeplastic Samkolit (K) Ltd* and another [2002] 2 EA 503 (CAK) at page 507 the Court of Appeal held as follows: "A court of law cannot rewrite a contract between the parties. The parties are bound by the terms of their contract, unless coercion, fraud or undue influence are pleaded and proved. There was not the remotest suggestion of coercion, fraud or undue influence in regard to the terms of the charge." (Emphasis added).
20. CW1 took the stand on 24 March 2025, and admitted that her Employment Contract contained specific provisions that expressly outlined the minimum sales targets that the Claimant needed to achieve as the Respondent's Business Development and Sales Executive to be entitled to a bonus payment and the corresponding payout amounts based on her sales targets. The Employment Contract contained a clause titled 'Bonus', which has the following express provisions:
- a. The bonus would be paid out on a quarterly basis.
  - b. The bonus would only be payable upon the Claimant attaining a minimum monthly sales target of KES. 600,000/- which was equivalent to three (3) times her monthly gross salary of KES. 200,000/- or attaining a minimum quarterly sales target of KES. 1,800,00/-.
  - c. The bonus payable to the Claimant for attaining the minimum monthly sales target of KES. 600, 000/- is KES. 60,000/- while the bonus payable to the Claimant for attaining the minimum quarterly sales target of the KES. 1,800,000/- is KES. 120,000/-. The Claimant would be entitled to a bonus of KES. 90,000/- if she attained a monthly sales target of KES. 1,000,000/- which is five (5) times her gross salary or a bonus of KES. 270,000/- if she attained a quarterly sales target of KES. 3,000,000/- and 15% thereafter with a maximum payout of KES. 200,000/- per month or KES 600,000/- per quarter. In any event, the maximum bonus payout was capped at KES. 200,000/- per month or KES 600,000/- per quarter.
21. From commencement of the Claimant's employment on 19 July 2021 up to September 2022, the Claimant did not achieve the sales target to attract a bonus payment as evidenced by the invoices raised by the Respondent and the payment receipts and as summarised in the Respondent's Sales and Grant Tracker in relation to the Claimant attached at page 1 of the Respondent's Supplementary Bundle of Documents.
22. CW1 testified that the reason for her resignation was uncertainty as to whether the Respondent would honour the contractual provisions relating to bonus payments on sales. However, her resignation letter makes no mention of any such concern. Instead, it reflects an amicable and voluntary departure from employment, with no reference whatsoever to the alleged bonus dispute. The Claimant thanked the Respondent for providing her with "...a rewarding learning experience and a warm working environment." The Claimant's current assertions are therefore an afterthought and ought not to be entertained by this Honourable Court. Refer to the Claimant's resignation letter at page 36 of the Respondent's Bundle of Documents. Furthermore, during the examination in chief of CW1 on 22 February 2024 before the former trial judge, Hon. Kebira Ocharo, CW1 revealed that when she left the Respondent, she joined an NGO by the name of Oxfam in the position of a Bid Manager. CW1 reiterated this position during her cross examination on 24 March 2025. This is further proof that CW1 resigned to take up a senior and more lucrative position at Oxfam and not due to the alleged dispute over bonus payments. Based on the above, the Respondent submits that there was no breach of the Employment Contract.



23. On Whether there is a distinction between grants and sales under the Employment Contract; The *Employment Act*, 2007 does not define bonus payment. The Court of Appeal held in *Nicholas Mbuya & 4 others v Alice Gesare Moninda* [2015] eKLR, that “It would then appear that where a bonus dispute arises, such dispute is left exclusively to the province of the agreement between the parties. As such, bonus liability (if any) must be construed within the meaning and intent accorded by the parties under their contract...” (Emphasis added). The Employment Contract expressly provides the bonus structure which clearly set out the conditions under which the Claimant would be entitled to a bonus. It provided that bonuses would be paid quarterly and would only be payable if the Claimant met specific sales targets. To qualify, the Claimant had to achieve a minimum monthly sales target of KES 600,000 (three times her gross salary of KES 200,000) or a quarterly target of KES 1,800,000. If she met the monthly target, she would earn a bonus of KES 60,000, and if she met the quarterly target, she would receive KES 120,000. A higher monthly sales target of KES 1,000,000 (five times her salary) would attract a bonus of KES 90,000, while a quarterly target of KES 3,000,000 would result in a bonus of KES 270,000 and 15% thereafter with a maximum payout of KES. 200,000/- per month or KES 600,000/- per quarter. The contract specifically capped bonus payments at a maximum of KES 200,000 per month or KES 600,000 per quarter. During CW1’s cross-examination, she alleged that there was no difference between sales and grants. In fact, she expressly stated that grants are a form of sales and misled this Court by alleging that sales and grants were not distinguishable as they all generated revenue for the Respondent. This averment could not be further from the truth as will be demonstrated further below. The Respondent wishes to clearly distinguish between its two primary sources of funding: sales and grants. This distinction is critical due to the nature of the Respondent’s operations and has a direct bearing on employees’ compensation. The Respondent operates a digital platform that functions similarly to a ride-hailing service like Uber, but specifically for ambulances in Nairobi. The company is incorporated to provide a network of Kenya’s most qualified first responders. This network offers families, groups, and individuals access to medical dispatchers who are prepared to assist in emergencies 24/7. The Respondent utilises an integrated emergency response system that furnishes patients with a digital tool to locate an ambulance during a medical crisis. The platform accomplishes this by aggregating all emergency responders and tracking their availability to ensure rapid, reliable, and efficient emergency medical evacuation services with the support of certified emergency medical technicians.
24. The Respondent offers its services and runs its operation through two primary channels of funding:
- a. Subscription-based emergency response: This service caters to individuals, families, and corporations seeking guaranteed access to emergency medical services. Subscribers typically pay a recurring fee to ensure prompt assistance in the event of a medical emergency. The subscription-based emergency response constitutes sales as to gain access to the Respondent Company’s platform, users subscribe to an annual membership plan offered through Rescue.co. This membership offers services to a diverse clientele, including families, schools, corporations, and individual users for a profit. Therefore, for activities related to generating sales, such as promoting subscriptions to the Rescue.co platform, the Respondent’s standard bonus clause within employment contracts applies. The clause outlines the specific criteria and performance metrics employees must meet to qualify for bonuses or commissions based on sales performance. For the avoidance of doubt, that is a bonus would be unlocked upon meeting certain sales targets- 3 times the Claimant’s gross monthly salary.
  - b. Aid program: The Respondent offers a comprehensive Aid Program that extends emergency medical response services to underserved communities, free of charge or at a significantly reduced cost. This program aims to bridge the gap in accessibility to critical medical care,



particularly for expectant mothers experiencing labour pains in remote locations with limited medical resources. The Respondent secures funding for this program through partnerships with charitable organizations. By collaborating with charitable organizations, the Respondent can leverage grant funding to support the Aid Program. This approach ensures the financial sustainability of the program while enabling the Respondent to fulfil its social responsibility of providing vital emergency rescue medical care to those who need it most. Grants are awarded to the Respondent at the grantee/donor's discretion to help facilitate the Respondent's operations. Unlike revenue generated through subscriptions (sales), grants are not intended nor are they used as source of profit for the Respondent and therefore do not have profit margins. The funds received are used to adhere to an allocated strict budget specifically focused on improving community access to timely medical services, ultimately saving lives.

25. Consequently, activities associated with securing grants, such as grant proposal writing or grant management, do not qualify for bonuses or commissions under the sales clause within the Employment Contract. This is because grant funding is not considered sales revenue as the Respondent does not generate profit from these awards. The funds received are designated for specific purposes outlined by the grantor, every penny is directed towards the stated goals in supporting the Respondent's mission of community benefit. As a corollary, bonuses and commissions on account of grants are not provided for in the Employment Contract and do not apply to grant-related activities. The foregoing is affirmed by RW1's testimony that for a sale to occur, a product must be sold at a fee. She confirmed that for example in the MSD grant the benefit of the money advanced was not to go to the Respondent but to the Targets i.e. the mothers. Consequently, it could not be deemed a sale as the funds were not for the benefit of the Respondent but for third parties as a donation. As a corollary, the Respondent made no margin or profit from grant money which is intended for a specific purpose and with a set budget. RW1 similarly distinguished between sales and grants. She clarified that for a sale to be considered to have occurred, a product and/or service needs to be provided in exchange for money while grants are made at the discretion of the donor and are for specific charitable objects for purposes clearly outlined in the grant document for the benefit of the target and not the company. The Respondent submits that grants were not considered as income revenue for the Respondent. Instead, they were held in trust for the intended beneficiaries of the grants as briefly explained below:
- a. The International Telecommunications Union (ITU) Grant Agreement, aimed at reducing maternal and neonatal mortality by enhancing access to reliable and affordable transportation for women in Uganda. (Refer to the agreement on pages 9 to 40 of the Respondent's Supplementary Bundle of Documents)
  - b. The Kofi Annan Award Grant Agreement from Austrian Development Agency, intended to enhance ambulatory care standards in Ghana for the entire population lacking insurance and working in high-risk environments. (Refer to the agreement on pages 2 to 8 of the Respondent's Supplementary Bundle of Documents).
  - c. The Making More Health Grant from Ashoka LLC, focused on improving ambulance capabilities to provide specialized care through scalable initiatives. (Refer to the agreement on pages 41 to 61 of the Respondent's Supplementary Bundle of Documents).
  - d. The Merck Sharp & Dohme LLC (MSD) grant, directed towards advancing MSD's goals for mothers by addressing the problem of maternal mortality for the benefit of communities in low resource settings. (Refer to the agreement on pages 99 to 138 of the Claimant's Bundle of Documents dated 17 November 2022.



26. The Respondent asserts that it adhered to the restrictions imposed by donors and the specified budgets, which did not include provisions for employee bonuses or commissions. Furthermore, the Respondent strictly followed the ethical business practice policies of the donors, which prohibit embezzlement and require transparent and accurate record-keeping of funds advanced under the grants. Therefore, Respondents submit that grants are NOT a form of sales, and do not form a part of the bonus payments as the Claimant alleges.
27. On Whether the Claimant was eligible for a bonus on account of sales made-CW1 admitted during her cross-examination that her bonus payment was pegged on the sale proceeds realised by the Claimant that met the minimum sales targets as opposed to the actual value of a contract as claimed by the Claimant. RW1 also confirms this in her Supplementary Witness Statement. The Employment Contract provides that the Claimant would unlock her bonus upon meeting certain sales targets as indicated in the bonus clause of the Employment Contract. The Claimant did not achieve the sales target of KES. 398,200,740/- as posited in her Statement of Claim. Furthermore, the Claimant did not meet the minimum sales targets required to unlock the bonus payments, this was also admitted by Claimant on the stand. From the start of Claimant's employment, the Claimant consistently failed to meet the minimum sales targets as set out below:
- a. The Claimant made no sales during Q3 of 2021, which marked the start of her employment.
  - b. In Q4 of 2021, she made only one sale amounting to KES 75,000/=.
  - c. She did not make any sales during Q1 of 2022.
  - d. In Q2 of 2022, the Claimant made two sales valued at KES 397,840/=.
- She again failed to make any sales during Q3 of 2022.<sup>40</sup> The above show that the minimum sales targets were not met, thereby no bonuses were earned.
28. From the evidence on record, it is not in doubt that the Claimant did not meet any of her minimum sales targets in any quarter to entitle her to a bonus. The Claimant is seeking to reap where she did not sow, and this Court should not rubber-stamp her attempts to be unjustly enriched.
29. On Whether the Claimant was eligible for a bonus on account of grants worked on-The Respondent submits that when it became apparent that the Claimant was not meeting her sales targets, it opted to allow the Claimant to work with other team members on projects aimed at securing grants from donors. This was confirmed by RW1 in the hearing that took place on 24 March 2025. While working within a team of other four employees to secure grants between March and May 2022, the team managed to secure four grants from four donors, namely: International Telecommunication Union (ITU), Making More Health/ Ashoka LLC, Kofi Annan Award by Austrian Development Agency and Merck Sharp & Dohme LLC (MSD). The Respondent wishes to reiterate that the grants are secured to enable the Respondent to ensure that lifesaving services are available to everyone who has no access to medical care in emergencies. The Respondent asserts that the Employment Contract does not include any provision for bonuses related to grants, thus no bonus payments were made to the Claimant. During her testimony, CW1 was unable to direct the Court to any clause in the Employment Contract that provided for the payment of commissions and bonuses on grants and instead directed the Court to the clause that expressly and unequivocally provided for bonus on account of meeting sales targets. We invite this Court to rightly find that CW1 was unable to direct the court to the clause providing for a margin in any of the four grants she worked on together with other team members because grants won and awarded to the Respondent did not have a profit margin. The Claimant is inviting this Court to rewrite the Employment Contract. We urge this Court to decline such an invitation and uphold the hallowed legal maxim that it is not the business of Courts to rewrite contracts between parties. They



are bound by the terms of their contracts, unless coercion, fraud or undue influence are pleaded and proved as was held in the case of Pius Kimaiyo Langat versus Co-operative Bank of Kenya Ltd [2017] eKLR cited with approval by the Court of Appeal in the case of Five Forty Aviation Limited v Erwan Lanoe [2019] eKLR. Additionally, RW1 confirmed that grants were worked on by the grants team and not by one person. She further testified that when the Claimant was working for the Respondent, the grants team comprised of 5 team members i.e. Caitlin Dolkart, Maria Rabinovich, Dr. Sheila, Bena Amunga and Christine Kaveke. RW1 also confirmed to the Court that none of the team members who participated in preparing the grants were paid any commission or bonus. The Claimant is seeking differentiated treatment and to be unjustly enriched. CW1 was taken through the various grants she purportedly won as a member of the grants team and asked to confirm if the team met the criteria for an award of bonuses and commission as defined in the Employment Contract. She admitted that if the grants were to be considered sales which they are not, they did not attract any commission or bonus pay. For the avoidance of doubt, the Claimant admitted that:

- a. The USD 20,000/- (KES. 2,280,000/-) grant from the International Telecommunications Union (ITU) was signed on 28 March 2022. At the time the Claimant resigned from the Respondent's employment, ITU had only paid KES. 1,607,902/-. (Refer to the agreement on pages 9 to 40 and the invoices on pages 75 to 79 of the Respondent's Supplementary Bundle of Documents)
  - b. The EUR 250,000/- (KES. 29,702,500/-) Koffi Annan Award grant was signed on 11 July 2021. At the time the Claimant resigned from the Respondent's employment, the Austrian Development Agency had only paid KES. 22,631,957/-. (Refer to the agreement on pages 2 to 8 and the invoice on page 86 of the Respondent's Supplementary Bundle of Documents).
  - c. The EUR 50,000/- (Kshs. 6,049,00/-) grant from Making More Health/ Ashoka LLC was signed on 3 August 2022. At the time the Claimant resigned from the Respondent's employment, Ashok LLC had only paid Kshs. 6,049,000/-. (Refer to the agreement on pages 41 to 61 and the invoices on pages 80 to 83 of the Respondent's Supplementary Bundle of Documents).
  - d. The USD 3,000,000/- (Kshs. 362,910,000/-) grant award from Merck Sharp & Dohme LLC (MSD) as announced on 17 May 2022. The contract between MSD and the Respondent on the terms of the grant was still in the draft stages and was signed on 11 October 2022, over one (1) month after the Claimant had resigned from the Respondent's employment. (Refer to the agreement on pages 99 to 138 of the Claimant's Bundle of Documents and the invoices on pages 84 to 85 of the Respondent's Supplementary Bundle of Documents).
30. In summary, the Claimant admitted that even if she would have been entitled to bonus/commission pay on account of grants won, which we reiterate she was not, she would not have qualified for a bonus pay for failing to meet the minimum targets in the Employment Contract having due regard to the fact that any such grant proceeds would have needed to be apportioned between all employees of the Respondent who worked on sourcing the grants. Refer to the Sales and Grants tracker on pages 1 to 2 of the Respondent's Supplementary Bundle of Documents. Furthermore, the invoices, payment receipts, and grant tracker for the grants won have been provided on pages 1 to 2 and pages 75 to 86 of the Respondent's Supplementary Bundle of Documents as proof that the Respondent has not received the entire sum of grants secured. It therefore follows that the Claimant cannot claim bonus payment on the entire contract sum as she has. The Respondent submits that it would be both unethical and impractical for a startup business to allocate bonuses based on grants, especially when the grant agreements do not include provisions for such bonuses. The Respondent respectfully submits to the Honourable Court that even hypothetically, if bonuses were to be accrued from grants based



on the clause on bonuses from sales, the Claimant would still not be eligible to bonuses on the grants won by the grants team. This is because grants typically have a zero (0) margin, rendering the Claimant ineligible for a bonus payment on grants, which would have been calculated as 15% of no margin. In any event, the Employment Contract capped bonus payments at a maximum of KES 200,000 per month and KES 600,000 per quarter. The Respondent submits that the Claimant wrote a letter dated 12 September 2022 seeking clarification on her bonuses and salary increment. The Respondent responded via a letter dated 16 September 2022 clarifying that the Claimant was not entitled to any bonus payment and a salary increment as she had rejected the variation and instead resigned from the Respondent in order to take up a new role at Oxfam. The response letter from the respondent stated in part as follows, “...Finally, in June-July 2022, you were offered a new contract of employment with an increased salary and a new commission structure to earn an incentive bonus for successful grant applications. However, you rejected this offer and subsequently resigned from the Company. Therefore, the increased salary was never operationalized, and your salary remains at Kshs.250,000/=.” Refer to the letters dated 16 September 2022 and 12 September 2022 on pages 28 and 30, respectively, of the Claimant’s Bundle of Documents dated 17 November 2022. The Respondent reiterates that the Claimant was fairly remunerated and earned an above-average salary to compensate her for her duties and roles in the Respondent, of which grant sourcing was reasonably and fairly related to. It is disingenuous and an attempt to unjustly enrich herself, for the Claimant to allege that she was not paid for work done in this regard.

## Decision

31. The claimant sought for award of general damages for breach of contract. The particulars of the breach as per the claim were stated as follows:-

- ‘6. Breach of contract: As per her contract dated 10th July 2021, the Claimant is entitled to a bonus. ‘Quarterly paid out with minimum sales target as 3x monthly gross salary (600,000 KES) per month or 1,800,000 KES per quarter with the structure as: 60,000 KES per month or 120,000 KES per quarter for hitting 3x, 90,000 KES per month or 270,000 KES per quarter for hitting 5x, and 15% thereafter with a max payout of 200,000 KES in bonus permonth or 600,000 KES per quarter. In this regard, the Claimant is entitled to 15% commission on sales generated on attainment of a target equivalent to 5 times her monthly salary.
7. In breach of legitimate expectation, the Plaintiff went out of her way in performance of her duties with the expectation that she will be paid her commission for making sales for the Respondent herein. The Respondent however has declined to make the payment.
8. The Claimant further resigned due to lack of good faith demonstrated by the Respondent in paying her dues.” The claimant further itemized the special damages sought. In witness statement she said that she brought in sales in form of grants for the respondent totaling 398,200,740 of which she stated to have been entitled to 15% bonus on sales generated on attainment of a target of 5 times her monthly salary.”

32. The terms of contract were as per the contract dated 10<sup>th</sup> June 2021 (pages 1-23 of the claim of which the salary and benefits were stated as follows:-“ Offer details

Role: Business Development & Sales Executive

Acceptance Date: June 14th, 2021

Start Date: ASAP and to be agreed upon by June 14th, 2021.



Salary: 200,000 KES gross per month and a 6 month increase to 250,000 KES gross per month upon hitting targets.

Bonus: quarterly paid out with minimum sales target as 3x monthly gross salary (600,000 KES) per month or 1,800,000 KES per quarter with the structure as: 60,000 KES per month or 120,000 KES per quarter for hitting 3x, 90,000 KES per month or 270,000 KES per quarter for hitting 5x, and 15% thereafter with a max payout of 200,000 KES in bonus per month or 600,000 KES per quarter.

Benefits: flexible holiday schedule, comprehensive healthcare from day 1, rescue.co membership, life and short-term disability insurance and free breakfast and lunch at the office (all starts immediately)

Contract: Full-time

Contract duration: 3 years with extension/review options post 3 years

Probationary period: 6 months”(Page of Claimant’s bundle dated 17<sup>th</sup> November 2022.).

33. The claimant further produced a deed of variation of contract of April 2021 with new terms stated as follows:- ‘Deed of Variation To the Contract of Employment

This Deed of Variation to the Contract of Employment dated June 7, 2021 (the "Contract") enters into force on the 1st day of April 2022.

Between:

Capsule Limited ("flare") of Planning House, Wing A, Lower Kabete. Nairobi, Kenya P.O. Box 2578-00606 (hereinafter referred to as "Employer" or the "Company" which expression shall, unless it be repugnant to the context or meaning thereof be deemed to mean and include its successors and assigns), on the one part;

and

Bena Amunga National Identification No. 25140103, of Laiboni Close 19, off Magadi Road, Nkoroi, Ongata Rongai, Kenya (hereinafter referred to as the "Employee", which expression shall, unless it be repugnant to the context or meaning thereof, be deemed to mean and include its assigns) of the other part.

This Deed shall be binding upon both parties signing by way of all or one of the following ways: wet signature, electronic signature or email acknowledgement.

This Deed amends and modifies the Contract as follows:

#### A. Schedule A - Terms of Employment

1. The Terms of your Contract are amended as follows:

Employment Particulars

Terms of Employment

Salary

Amount gross KES 250,000 per month / KES 3,000,000 per annum (the "Salary").

The Company shall pay the Salary in monthly arrears. You authorize and consent the Company to deduct all taxes, including, but not limited to PAYE,



statutory contributions (as necessary) in accordance with all applicable laws from the Salary.

The Salary is consolidated and includes an amount intended to be used as rent to enable you to obtain reasonable accommodation.

### **Termination**

The Company may terminate this contract by giving you two months' written notice of its intention to terminate or upon payment in lieu of such notice of two month's pay.

### **Resignation**

Should you wish to resign, you will be required to provide two months' written notice.”(page 143 of supplementary list of documents dated 23<sup>rd</sup> September 2024)

34. The Respondent stated that following the low volume of sales the salary of the claimant was increased from 250000 to 200000 to cushion her. The responsibilities under the deed of variation were –‘Represent the organization and be the first point of contact for new and prospective clients within core focus areas.

Assess market and vertical opportunities and develop clear and well thought out business strategies to approach and secure grants and tenders.

Build a pipeline of leads for grants and tenders using online and offline methods.

Lead the review, assessment, writing, budgeting, and submission for all grants and tenders.

Lead the coordination across the team to ensure all inputs, reviews, and approvals are met before submission.

Build out systems in the company's knowledge management platform to document best practices, key strategies, and contacts for grants and tenders.

Keep well documented strategies, submissions, and frequently asked questions in the company's shared drive and knowledge management system to aid in the development of future proposals.

Ensure all grants and tenders align to the company's strategy, meet profitability targets, and are well managed.

Identify and share the submissions for grants across the team to inform provider, team hiring, and operational planning.

Coordinate the grant management process and communication back to donors for all secured grants.

This Deed forms part of the terms of the Contract upon execution by the parties.” (page 143 of claimant's documents). The claimant executed the variation.

35. The claimant resigned from employer vide letter dated 20<sup>th</sup> July 2022. The letter of resignation is reproduced as follows:-“Bena Amunga

Business Development and Sales Executive Business

Nairobi, Kenya



To: Caitlin Dolkart  
Managing Director/Founder Capsule Limited/Flare  
July 20th, 2022

Dear Caitlin,

Please accept this letter as notice of resignation from my role as Business Development and Sales Executive at Capsule Limited/Flare. I am giving my two-month notice, as per my contract. My final day will be 19 September 2022.

It has been a pleasure working with you and the entire team and I particularly feel honored to have been part of the Flare winning team and contributing to the remarkable work being done. I would like to thank you for providing me with a rewarding learning experience and a warm working environment.

You have my full cooperation for a smooth transition of responsibilities. I also remain available to complete any necessary admin tasks.

Thank you again for everything, I wish you and the team more wins and hope we can keep in touch.

Kind regards,

Bena Amunga.”(page 36 of the Respondent’s list dated 26<sup>th</sup> April 2023.

36. The claimant further vide letter dated 12<sup>th</sup> September 2022 wrote to the employer and presented tabulation and payment of salary arrears and final dues. The tabulation was demand for payment of 15% commission as per the employment contract for Kshs. 59,730,111 and claimed underpayment of salary in July and August stating she had received salary increment effective 1<sup>st</sup> July 2022 of Kshs. 350,000 and the same had not been reflected in salary payments. (page 30 of claimant’s bundle). The respondent vide email dated 16<sup>th</sup> September 2022 informed the claimant following her low sales the deed of variation increased her monthly salary to Kshs. 250,000 and removed issue of commission as she was not making sales. That the claims for commission was on grants and not sales. That the grants were from team effort and further all commission was capped. The respondent informed the claimant that she was offered a new contract in June-July 2022 which increased salary and offered a new commission structure to earn incentive bonus for successful grant application. That she rejected the offer and subsequently resigned from the company. That therefore the increment was not operationalized and her salary remained at Kshs. 250,000. The claimant at that time was serving notice.
37. During cross-examination the claimant confirmed that commission was on close of sales and not grants as per her contract. She confirmed to court the deed of variations was only on the monthly salary. The claimant confirmed there was a conversation with the MD on payment of commission of grants by herself and not completed by another team member but the conversation was never reduced into a deed of variation. On claim under ITU the claimant told the court she could not confirm when the grant was signed and whether payment had been done. On claim under MSD she could not confirm when the contract was signed. She told the court she was not the only one who worked on MSD grant. That was the same position on claim under Sandler. On re-examination the claimant told the court that invoice was sent under ITU and that was evidence of signing of the contract.



38. Section 97 of the *Evidence Act*, Cap 80 Laws of Kenya provides that:

“When the terms of a contract, or of a grant, or of any other disposition of property, have been reduced to the form of a document, and in all cases in which any matter is required by law to be reduced to the form of a document, no evidence shall be given in proof of the terms of such contract, grant or other disposition of property, or of such matter, except the document itself” (Emphasis added). The relevance of section 97 of the *Evidence Act* in the present case is that the Claimant cannot adduce evidence not contained in the Employment Contract in a bid to prove or disprove the terms set out in her Employment Contract. It is submitted that the relationship between the Claimant and the Respondent was governed by the terms which were set out in the Contract, which incorporated the terms of the Respondent’s Employee Handbook as revised from time to time. The Claimant executed the Contract and the deed of variation of the contract and by so doing agreed to be bound by the terms of the Contract. In *National Bank of Kenya Limited v Pipeplastic Samkolit (K) Ltd* and another [2002] 2 EA 503 (CAK) at page 507 the Court of Appeal held as follows: “A court of law cannot rewrite a contract between the parties. The terms of their contract bind the parties, unless coercion, fraud or undue influence are pleaded and proved. There was not the remotest suggestion of coercion, fraud or undue influence in regard to the terms of the charge.” (Emphasis added). The court holds that the commission payable to the claimant was only on sales. The claim for unpaid bonuses was for grants (Itu, Hundson Sandler and MSD). The claimant confirmed to the court that she relied on her contract of employment as the basis of claim for bonus. The court finds that the contract of 10<sup>th</sup> June 2021 provided for bonus for sales as follows- ‘Bonus: quarterly paid out with minimum sales target as 3x monthly gross salary (600,000 KES) per month or 1,800,000 KES per quarter with the structure as: 60,000 KES per month or 120,000 KES per quarter for hitting 3x, 90,000 KES per month or 270,000 KES per quarter for hitting 5x, and 15% thereafter with a max payout of 200,000 KES in bonus per month or 600,000 KES per quarter.’ It was not in dispute that the respondent had a product for sale and relied on grants to provide service to marginalized communities like maternity care for mothers. Sales was on product. The claimant produced deed of variation of contract which increased her monthly salary and did away with the commission on sales. The employer led evidence that the claimant had not been making sales to meet target for bonus hence the salary increment to cushion her. I reiterate decision in *National Bank of Kenya Limited v Pipeplastic Samkolit (K) Ltd* and another [2002] 2 EA 503 (CAK) at page 507 the Court of Appeal held as follows: “A court of law cannot rewrite a contract between the parties. The parties are bound by the terms of their contract, unless coercion, fraud or undue influence are pleaded and proved. ’ The claimant had a contract which defined her terms of service. The deed of variation of contract provided for her job to include grants and she was paid monthly salary of Kshs. 250000 for that work. The claimant had no contract to back her claim for payment of bonus on grants raised. The claimant confirmed to the court that she was paid her salary as per the contract and deed of variation and indeed had no claim for salary. The Court of Appeal held in *Nicholas Mbuya & 4 others v Alice Gesare Moninda* [2015] eKLR, that “It would then appear that where a bonus dispute arises, such dispute is left exclusively to the province of the agreement between the parties. As such, bonus liability (if any) must be construed within the meaning and intent accorded by the parties under their contract...” I uphold the decision to apply in the instant case as there was no contract before the court on payment



of bonus under grants. The court holds there was no evidence of breach of the employment contract by the respondent.

**Whether the claimant was entitled to relief sought**

39. The claim was for general damages for breach of contract and for withheld bonus is held to lack merit. In the upshot the entire claim is held to be without merit and dismissed with costs to the respondent.

40. It is so Ordered.

**DATED, SIGNED, AND DELIVERED IN OPEN COURT AT NAIROBI 30<sup>TH</sup> DAY OF JULY, 2025.**

**J.W. KELI,**

**JUDGE.**

In the presence of:

Court Assistant: Otieno

Claimant: -absent

Respondent: Nkonge

