



**BGSB Conrete Africa Limited v Kumar (Cause E602 of 2024)
[2025] KEELRC 2251 (KLR) (25 July 2025) (Judgment)**

Neutral citation: [2025] KEELRC 2251 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E602 OF 2024**

**SC RUTTO, J
JULY 25, 2025**

BETWEEN

BGSB CONCRETE AFRICA LIMITED CLAIMANT

AND

RAJIV KUMAR RESPONDENT

JUDGMENT

1. Through a Statement of Claim dated 21st July 2024, the Claimant avers that it is engaged in the construction industry with specialty in concrete flooring. According to the Claimant, the Respondent was at all material times its employee, serving in the position of Senior Foreman.
2. The Claimant further avers that the contract of employment, provided inter alia that the Respondent shall during his employment devote his whole time and attention to the Claimant's business and shall not engage himself directly or indirectly in other business; the Respondent shall keep information relating to the company's operations secret and shall not be involved in employee poaching.
3. It is the Claimant's case that the Respondent breached the terms of the contract of employment in that; he gave information relating to the Claimant's operations and pricing to a competitor for personal benefit; engaged in employee poaching; assisted a competitor with technical information on flooring; and visited the sites of other competitors and gave them technical assistance.
4. The Claimant avers that by the Respondent's breach, it lost business to a competitor in the sum of Kshs 14,674,660/=. According to the Claimant, the Respondent admitted breach and liability for loss of business in the sum of Kshs 14,674,660/=.
5. The Claimant has further averred that the Respondent voluntarily left employment in April 2024 after being requested to explain himself.
6. In light of the foregoing, the Claimant has sought the following reliefs against the Respondent;



- a. An order of injunction to restrain the Respondent from taking up employment with any company or business engaged in concrete flooring or setting up a similar business or in other way assisting a competing business for a period of 2 years from 18th April 2022;
 - b. Damages for loss of business;
 - c. Costs of the suit.
7. The Respondent neither entered appearance nor filed a Defence despite being served with the Notice of Summons and Statement of Claim. In this regard, the Claimant filed an Affidavit of Service sworn by John Ochwo Oloo on 4th December 2024, confirming service upon the Respondent through electronic means.
 8. Being satisfied with the return of service, the Court directed that the matter proceeds as an undefended cause. Subsequently, the matter was set down for formal proof hearing on 23rd April 2025, during which Preetjyot Singh Rekhi, the Claimant's General Manager, tendered oral evidence on behalf of the Claimant.
 9. Mr. Preetjyot adopted his witness statement to constitute his evidence in chief. He further produced the list and bundle of documents filed alongside the Statement of Claim as the Claimant's exhibits before Court.

Submissions

10. Upon close of the hearing, the Claimant filed written submissions which the court has considered. The Claimant has submitted that the Court is entitled to enter judgment on admission pursuant to the Respondent's unequivocal admission of breach and liability for the loss of business as contained in his written statement dated 18th April 2024. In support of its position, the Claimant has placed reliance on the case of *Choitram v Nazari* [1984] eKLR.

Analysis and Determination

11. Flowing from the record, the Court has singled out the following issues for determination;
 - a. Whether the Respondent breached his contract of employment; and
 - b. Whether the Claimant is entitled to the reliefs sought.

Breach of Contract of Employment?

12. The gist of the Claimant's case is that the Respondent breached his contract of employment by giving information relating to the Claimant's operations and pricing to a competitor for personal benefit; engaging in employee poaching; assisting a competitor with technical information on flooring; and visiting the sites of other competitors and giving them technical assistance.
13. According to the Claimant, the Respondent admitted the breach and liability for loss of business in the sum of Kshs 14,674,660/=.
14. In support of its case, the Claimant placed reliance on a handwritten letter dated 18th April 2024, ostensibly written by the Respondent, in which he states as follows:

“I Rajiv Kumar, son of Vijay Singh. I was working in BGSB Concrete Africa Ltd since 2017 as a senior foreman. I am found to be helping and giving confidential information to the other (sic) companies.



I gave information to Sidarth of Mahesh & Tirth Construction. From 2022 I started leaking information and providing manpower to other companies. In 2022, I contacted Sidarth and start (sic) giving him assistance and cheating with BGSB Concrete Africa Ltd.

I started helping them with Technicals (sic) of doing flooring.

I visited the site of other contractors teaching them the way to do flooring and cheating the company which is paying me salary without permission of the company.

I was providing confidential BGSB information with the competitor from personal benefit and without informing BGSB. This continued since 2022 till now 2024.

BGSB lost the work order 14,674,660/= because of me Rajiv Kumar. I helped the competitor with the technical know how and provided manpower to a competitor and cheated BGSB Concrete Africa Ltd.”

15. The most critical question that this Court must now answer is whether, through the letter reproduced above, the Respondent made an admission to breach and liability as alleged by the Claimant.
16. In the case of *Sunrose Nurseries Limited v Gatoka Limited* [2014] eKLR, the Court held that:

“The admission can be in a pleading, correspondence or other document. What is paramount is that the admission has to be unequivocal and clear. It cannot apply where there are serious questions of law or fact to be argued. See *Gilbert v Smith* [1876] 2 Ch D 686 at 688 – 689, *Kiprotich v Gathua and others* [1976] KLR 87 at 90.”
17. In the present case, it is evident that the admission by the Respondent was by way of correspondence and was unequivocal.
18. It is worth pointing out that the circumstances and context under which the Respondent authored the letter dated 18th April 2024 are not clear to the Court. This lack of clarity was further compounded by the fact that the Respondent did not file a defence or participate in the proceedings. Therefore, he did not impeach the contents of the letter dated 18th April 2024. As such, the authenticity of the said letter was not called into question.
19. In light of the foregoing, the Court has no reason to doubt that the Respondent authored the letter in which he admitted that he had disclosed confidential information belonging to the Claimant and provided manpower to other companies, thus resulting in the loss of business by the Claimant to the tune of Kshs. 14,674,660/=.
20. Revisiting the Respondent’s contract of employment, he was required under Clause 3 to devote his time and attention to the Claimant’s business and was prohibited from engaging himself directly or indirectly in any business or service other than the Claimant’s business or service.
21. Further, under Clause 4 of the contract of employment, the Respondent was required to safeguard information pertaining to the Claimant’s operation.
22. In view of the Respondent’s admission as contained in the letter dated 18th April 2024, it becomes apparent that he breached Clauses 3 and 4 of his contract of employment dated 1st January 2022.
23. To this end, the Court finds that the Respondent breached his contract of employment in that, by his own admission, he disclosed confidential information belonging to the Claimant and provided manpower to other companies.



Reliefs

24. In the Statement of Claim, the Claimant has sought an injunction restraining the Respondent from taking up employment with any company or business engaged in concrete flooring or setting up a similar business or in any other way assisting a competing business for a period of 2 years from 18th April 2022. This period having lapsed on 18th April 2024, it follows that the relief is overtaken by events and cannot be granted at this juncture.
25. The Claimant has further sought damages for loss of business. In this regard, the Claimant has pleaded in the Statement of Claim that it lost business in the sum of Kshs 14,674,660/= as a result of breach of the contract of employment by the Respondent.
26. In the letter dated 18th April 2024, the Respondent admitted that his actions caused the Claimant to lose Kshs 14,674,660/=.
27. In the circumstances, the Court finds that the Claimant is entitled to the sum of Kshs 14,674,660/= being the sum admitted by the Respondent as the value of the business lost as a result of his actions.

Orders

28. In the final analysis, the Court makes the following final orders;
 - a. The Claim is allowed and the Claimant is awarded the sum of Kshs 14,674,660.00 being damages for loss of business as a result of breach of the contract of employment by the Respondent.
 - b. The award in (a) shall attract interest at court rates from the date of Judgment until payment in full.
 - c. The Respondent shall bear the costs of the suit.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 25TH DAY OF JULY 2025.

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STELLA RUTTO

JUDGE

In the presence of:

For the Claimant Mr. Adongo instructed by Mr. Ochwo

For the Respondent No appearance

Court Assistant Millicent

Order

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court had been guided by Article 159(2)(d) of *the Constitution* which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of *the Constitution* and the provisions of Section 1B of the *Civil Procedure Act* (Chapter 21 of the Laws of Kenya) which impose on this court the duty



of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

STELLA RUTTO

JUDGE

