



**Mugendi v Amini Uwazi Limited (Cause E896 of 2023)  
[2024] KEELRC 827 (KLR) (4 April 2024) (Ruling)**

Neutral citation: [2024] KEELRC 827 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E896 OF 2023**

**L NDOLO, J  
APRIL 4, 2024**

**BETWEEN**

**JOHN MWENDA MUGENDI ..... CLAIMANT**

**AND**

**AMINI UWAZI LIMITED ..... RESPONDENT**

**RULING**

1. By a Statement of Claim dated 30<sup>th</sup> October 2023, the Claimant lays a claim of unlawful and unfair termination of employment.
2. Subsequent to the filing of the claim, the Respondent moved the Court by a Notice of Motion under Certificate of Urgency dated 20<sup>th</sup> December 2023, seeking an order of injunction restraining the Claimant from:
  - a. Making all forms of disclosure, marketing, sale or publication of any of the Respondent’s confidential information of any product that imitates or mimics its client’s software either personally, through AgRails or any other entity, within the contracted non-compete clause under the contract of employment;
  - b. Further contacting, enticing, engaging, interfering with, canvassing for and/or soliciting the Respondent’s present or past clients, customers or investors directly or indirectly, with a view to offering information about the Respondent or with a view to offering for sale AgRails or any software product imitating or mimicking the Respondent’s client’s software, within the contracted non-compete clause under the contract of employment;
  - c. Further contacting, enticing, engaging, interfering with, canvassing for and/or soliciting the Respondent’s employees;



- d. Further representing himself as being connected or affiliated with the Respondent or its affiliates;
  - e. Further representing himself as having been a founding member of the Respondent;
  - f. Further representing himself as having been the Respondent's founding Chief Technology Officer;
  - g. Further representing and claiming any part in the 6 million venture funding secured by the Respondent.
3. The application is supported by an affidavit sworn by the Respondent's Head of Operations, Muthoni Karubiu and is based on the grounds that:
- a. The Respondent provides technology driven solutions to fix Africa's environmental data gap and drive systemic change for resilience by utilising Artificial Intelligence (AI) and space technologies to collect, process and analyse environmental data;
  - b. In order to safeguard its intellectual property and confidential information, the Respondent requires its employees to agree to be bound by deeds of confidentiality;
  - c. The Claimant was employed by the Respondent as the Head of Technology. The Claimant's role was to manage a hybrid engineering team of data engineers, ICT solutions engineers, blockchain engineers and ML engineers to deliver one of the most impactful and game changing technology solutions for Africa;
  - d. The Claimant's engagement with the Respondent was governed in the first instance, by the Deed of Confidential Information and Invention Assignment signed on 6<sup>th</sup> January 2023 and subsequently, by the contract of employment dated 11<sup>th</sup> September 2022;
  - e. The Claimant's employment contract included a surviving confidentiality clause that expressly prohibits the Claimant from disclosing or using the Respondent's confidential information obtained while in the Respondent's employment;
  - f. The Claimant's employment contract included a surviving non-compete clause that prohibits the Claimant, for 12 months after termination, either acting directly or indirectly on his own behalf or on behalf of or in conjunction with, any firm, company or person from:
    - i. Soliciting or trying to entice away from the Respondent business or customers with a view to providing goods or services in competition with the Respondent in jurisdictions where the Respondent or its Group of Companies or affiliates operate;
    - ii. Offering to employ or engage or otherwise endeavour to entice away the Respondent's employees;
    - iii. Being involved in any capacity with the provision of goods or services to any customer, where goods or services were provided or intended to be provided to the customer in the 12 months prior to termination;
    - iv. Representing himself as being connected with the Company in any capacity at any time after the termination of his employment.
  - g. Following the termination of the Claimant's employment, the Claimant has in conjunction with others, launched a company under the name AgRails, through which he has begun marketing and offering for sale a software product which imitates and mimics the software



designed and developed for use by the Respondent and to which he had access during his employment, in breach of Clause 7(iii) of the Deed;

- h. In breach of Clause 1.1 of the Deed, the Claimant has also lifted the Respondent's product positioning and language and used it to market and advertise AgRails. The Respondent's product by-line is 'we provide access to trustable, verifiable and immutable data in Africa where, for decades, trust has been expensive.' The Claimant describes AgRails' product as 'for areas where trust is expensive, create actionable proprietary data once.';
- i. The Claimant has imitated and mimicked the Respondent's business model, which is to create proprietary environmental data using technology and other data sources once and sell to many verticals, in breach of Clause 1.1 of the Deed;
- j. The Claimant has contacted some of the Respondent's customers and partners with a view to offering confidential information about the Respondent, contrary to Clause 1.1 of the Deed;
- k. The Claimant has misrepresented himself and continues to misrepresent himself as having been a founding member of the Respondent, in breach of Clause 7(iv) of the Deed;
- l. The Claimant has contacted the Respondent's employees purporting to support their work and soliciting information on the Company's processes, in breach of Clause 7(ii) of the Deed;
- m. The Claimant has misrepresented himself as having been the founding Chief Technology Officer and helping the Respondent to raise USD 6 million in venture funding. The Claimant's position was Head of Technology and the funding was raised after the termination of the Claimant's employment. The Claimant's actions amount to breach of Clause 7(iv) of the Deed;
- n. The Claimant's actions are in direct breach of the surviving confidentiality and non-compete clauses in his employment contract, whose terms are binding on him;
- o. The Respondent has suffered and continues to suffer substantial and irreparable damage to its reputation and goodwill with its current and potential customers, partners and investors;
- p. The Claimant's interaction with the Respondent's customers, partners and investors has jeopardised and continues to jeopardise the Respondent's relationship and standing with its existing customers, partners and investors;
- q. The Claimant's use of the Respondent's confidential information in the business model and marketing of his company, AgRails which is in direct competition with the Respondent, risks causing the Respondent significant financial harm owing to the nature of its operations and business model;
- r. The Claimant will not suffer prejudice if the injunctive orders are granted restraining him from engaging with the Respondent's clients or disclosing the Respondent's proprietary or confidential information;
- s. The relief of damages is not and cannot be sufficient as the Respondent is at the risk of losing its customers, suppliers or investors and unless the continued breach is restrained, the Claimant risks losing its investments;
- t. It is in the interest of justice that the Claimant is restrained from further breaching the terms of the employment contract.



4. The Claimant opposes the Respondent's application by his replying affidavit sworn on 16<sup>th</sup> January 2024. He depones that the application is premised on unwarranted malice aimed at unjustly prohibiting his ability to engage in gainful economic activity or secure alternative employment.
5. He adds that no grounds are discernible to suggest or prove any actual or proposed act by him that is aimed at breaching the surviving confidentiality and non-compete clauses in the employment contract.
6. The Claimant states that the orders sought have the effect of subjecting him to an abrupt loss of any means of earning a living on the basis of a restrictive clause without any guarantee that after the expiry of the restrictive period, he will be able to secure suitable employment or any gainful economic activity. He maintains that the non-compete clause should be limited to business interests and not to clog his right to earn a living.
7. The Claimant admits the existence of the Deed of Confidential Information and Invention Assignment contained in his employment contract dated 11<sup>th</sup> September 2023. He however denies the allegations of violation and breach of the non-compete provision set out in Clause 7 of the Deed.
8. The Claimant denies offering to entice, employ or engage any of the employees of the Respondent or contacting any employee with a view to soliciting information about the Respondent. He further denies portraying himself as a founder or ongoing employee or affiliate of the Respondent after the termination of his employment.
9. The Claimant asserts that his role as the Head of Technology is a documented matter of fact. He adds that in this role, he played a part in raising the USD 6 million venture funding.
10. Regarding the allegations of breach of the confidentiality clause set out in Clause 1.1 and 1.2 of the Deed, the Claimant denies lifting the Respondent's product positioning and language to market and advertise AgRails. He points out that the only correlation is that the by-lines of the Respondent and AgRails contain three similar common English words over which the Respondent has no proprietary right.
11. According to the Claimant, the Respondent's business model is not unique to it and is in use by many other companies in the same space. He denies that the business model adopted by AgRails is similar to the Respondent's.
12. The Claimant states that he is currently engaged in the development of a bespoke software platform, which is specifically designed for the purpose of gathering, consolidating and enhancing data pertinent to primary stakeholders within the sectors of Agriculture and Value Chains in underserved markets. He points out that at no time has there been utilisation of any intellectual property or confidential information owned by the Respondent.
13. The Claimant denies making contact with the Respondent's customers, investors and partners with a view to disclosing confidential information. He accuses the Respondent of misusing a private and confidential pitch document sent by AgRails to a specific investor.
14. The Claimant takes the view that the non-compete clause as drawn is unreasonable in scope as it purports to prohibit him from working for any competitor.
15. By its application, the Respondent seeks a broad range of injunctive reliefs against the Claimant, based on the contract of employment dated 11<sup>th</sup> September 2022 and the Deed of Confidential Information and Invention Assignment dated 6<sup>th</sup> January 2023.



16. In their written submissions, both parties cited the famous decision in *Giella v Cassman Brown Co. Ltd* [1973] EA 358 where the following conditions under which injunctive orders may be granted were established:
- a. That the applicant has established a *prima facie* case with a probability of success;
  - b. That if the orders sought are not granted, the applicant stands to suffer irreparable harm, which cannot be compensated by an award of damages; and
  - c. If the court is in doubt, it will determine the application on the balance of convenience.
17. A *prima facie* case was defined by the Court of Appeal in *Mrao v First American Bank Kenya Limited & 2 others* [2003] KLR, 123 in the following terms:
- “A *prima facie* case in a civil application includes but is not confined to a genuine and arguable case. It is a case in which on the material presented to the court, a tribunal properly directing itself will conclude that there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter.”
18. The Respondent argues that if the Claimant is not restrained, his actions will cause irreparable harm to its business. On the other hand, the Claimant argues that the effect of the orders sought will be to completely stop him from earning a living by practicing his craft. In this regard, the Claimant challenges the legality and fairness of the non-compete clause as contained in the Deed of Confidential Information and Invention Assignment.
19. Nevertheless, the Claimant admits making contact with some of the Respondent’s customers notifying them of his departure from the Respondent’s employment. All the Claimant states is that the correspondence between him and these customers has been taken out of context. He makes no effort to explain why it was necessary for him to make the contact in the first place.
20. The Claimant further admits making contact with one of the Respondent’s employees, again with no explanation for his action. He also admits that the by-line of AgRails contains similar words as those in the Respondent’s by-line. To my mind, this cannot be a coincidence.
21. Granted that the Deed of Confidential Information and Invention Assignment presents a complex mix of rights and obligations between the parties, on which the Court will be called upon to adjudicate, the Court has formed the opinion that the Claimant’s actions after the termination of his employment pose a real danger to the continuation of the Respondent’s business. For this reason, I find and hold that the Respondent has made out a *prima facie* case.
22. Regarding the issue of irreparable harm, I agree with the Respondent that the Claimant’s actions, if not curtailed, will irreversibly interfere with the Respondent’s business. In reaching this conclusion, I have taken into account the indisputable fact that the Respondent operates in a niche market with minimum options for diversion.
23. On the question of balance of convenience, the Claimant relies on the decision in *Pius Kipchirchir Kogo v Frank Kimeli Tenai* [2018] eKLR where it was held that:
- “The meaning of balance of convenience in favour of the plaintiff is that if an injunction is not granted and the suit is ultimately decided in favour of the plaintiff, the inconvenience



caused to the plaintiff would be greater than that which would be caused to the defendant if an injunction is granted but the suit is ultimately dismissed.”

24. In the present case, the Respondent has laid before the Court a prima facie case and has demonstrated that it would suffer irreparable harm if injunctive relief is not granted in its favour. Conversely, the Claimant has failed to explain his actions after the termination of his employment, which caused the Respondent understandable anxiety. I therefore have no difficulty in reaching the conclusion that the balance of convenience tilts in favour of the Respondent.
25. On the whole, I find and hold that the Respondent has made out a proper case for grant of interlocutory injunctive relief and therefore make the following orders:
  - a. The Claimant is hereby restrained from disclosing and/or using any of the Respondent’s confidential or proprietary information acquired in the course of his employment with the Respondent;
  - b. The Claimant is further restrained from making contact with the Respondent’s clients and/or investors for the purpose of enticing or diverting them;
  - c. The Claimant is further restrained from making contact with the Respondent’s employees for the purpose of soliciting information about the Respondent’s business and enticing or diverting the said employees;
  - d. Finally, the Claimant is restrained from misrepresenting his employment relationship with the Respondent.
26. The costs of the application will be in the cause.
27. Orders accordingly.

**DELIVERED VIRTUALLY AT NAIROBI THIS 4<sup>TH</sup> DAY OF APRIL 2024**

**LINNET NDOLO**

**JUDGE**

Appearance:

Mr. Nyaosi for the Claimant

Mr. Makori for the Respondent

