



**Nyaoro v Cold Solutions Kiambu Sez Limited (Cause E224 of 2023)
[2023] KEELRC 2333 (KLR) (5 October 2023) (Ruling)**

Neutral citation: [2023] KEELRC 2333 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E224 OF 2023
L NDOLO, J
OCTOBER 5, 2023**

BETWEEN

ALICE AKINYI OPIYO NYAORO CLAIMANT

AND

COLD SOLUTIONS KIAMBU SEZ LIMITED RESPONDENT

RULING

1. The subject of this ruling is the Respondent’s Notice Motion dated April 24, 2023 seeking consolidation of this cause with ELRC Cause No E225 of 2023: Alice Akinyi Opiyo Nyaoro v Cold Solutions Services East Africa Ltd.
2. The Motion is supported by an affidavit sworn by the Respondent’s Human Resource Consultant, David Kiambi and is based on the following grounds:
 - a. Common questions of law and fact arise in both suits;
 - b. The rights and reliefs claimed in both suits are in respect of and arise out of the same series of transactions;
 - c. Consolidation shall save costs, time and effort and shall make the conduct of both actions more convenient by treating and disposing of them as one action.
3. In his affidavit in support of the application, David Kiambi depones that Cold Solutions Kiambu SEZ Limited and Cold Solutions Services East Africa Ltd are related affiliate organisations.
4. The Claimant opposes the Respondent’s application by her replying affidavit sworn on July 13, 2023
5. The Claimant depones that the two causes of action are distinct with no common questions of law. In this regard, she points out the following differences:



- a. Cause No E224 of 2023 is based on constructive dismissal that violates several constitutional rights, such as the right to a fair hearing, reasonable working conditions, freedom from discrimination and the inherent right to dignity and privacy;
 - b. Cause No E225 of 2023 is based on wrongful and unfair termination and asserts that the Respondent failed to afford the Claimant a fair and public hearing and to pay her full terminal dues.
6. The Claimant further depones that the reliefs sought in both cases do not arise from the same transaction or series of transactions. She states that the reliefs sought in Cause No E224 of 2023 include:
- a. A declaration that the termination of the Claimant's employment by the Respondent was constructive, wrongful, unfair and in breach of the [Employment Act, 2007](#);
 - b. A declaration that the termination was in breach of company policy;
 - c. A declaration that the Respondent's actions violated the Claimant's constitutional rights to a fair hearing, fair labour practices, fair administrative action and dignity;
 - d. An order directing the Respondent to issue the Claimant with a Certificate of Service;
 - e. Compensation totalling Kshs. 8,580,000 equivalent to 12 months' salary on account of unlawful termination;
 - f. General damages totalling Kshs. 20,000,000 for violation of the Claimant's constitutional rights;
 - g. Costs and interest.
7. The Claimant lists the reliefs sought in Cause No E225 of 2023 as follows:
- a. A declaration that the termination of her employment by the Respondent was unfair and in breach of the [Employment Act, 2007](#);
 - b. A declaration that the termination was irregular and in breach of the terms of her employment contract;
 - c. A declaration that the Respondent's actions violated the Claimant's constitutional rights to a fair hearing, fair labour practices, fair administrative action and dignity;
 - d. An order directing the Respondent to issue the Claimant with a Certificate of Service;
 - e. General damages for violation of the Claimant's constitutional right against discrimination;
 - f. General damages for infringement of the Claimant's right to privacy;
 - g. General damages for violation of the Claimant's right to human dignity;
 - h. Kshs. 2,145,000 being 3 months' salary in lieu of notice;
 - i. Kshs. 841,500 being pay for 25.5 accrued and untaken leave days;
 - j. Kshs. 8,580,000 being 12 months' salary for unlawful, unfair and irregular termination of the Claimant's employment contract;
 - k. Costs and interest.



8. The Claimant asserts that the parties in the two claims are not the same as the Respondents are distinct and separate legal entities.
9. She adds that the pleadings in the two claims are based on different sets of facts and evidence which is not related.
10. The Claimant avers that after her contract with Cold Solutions East Africa Limited came to an end, she was issued with a fresh and separate contract by the Respondent, which contract contained a new probation period.
11. Consolidation of suits is intended to expedite determination of disputes and minimise costs. Consolidation will however not be employed if the result would be to introduce unnecessary complexity and convolvement of issues (see *County Council of Nakuru v Simon Ole Kiminta & 3 others* [2007] eKLR and *Young Traders (Tigoni) Limited v Julius Njoroge Kamau & Daniel Kimani Chege* [2016] eKLR)
12. The Respondent bases its plea for consolidation on a stated affiliation between Cold Solutions East Africa Limited and itself and the fact that the Claimant worked for both Respondents in succession.
13. On her part, the Claimant asserts that the two companies are separate and distinct and that her employment with the said companies was not blended or indivisible.
14. From the evidence on record, the two companies are indeed separate legal entities and the Claimant did not work for them at the same time. I therefore agree with the Claimant that consolidation would result in convolvement of the issues in dispute to her detriment.
15. For this reason, the Respondent's application dated April 24, 2023 is declined with costs in the cause.
16. Orders accordingly.

DELIVERED VIRTUALLY AT NAIROBI THIS 5TH DAY OF OCTOBER 2023

LINNET NDOLO

JUDGE

