

## OPINION

## The Standard

## VALENTINE'S DAY

## Office lovebirds should provide signed agreements to employers



LAURETTA OYILE

Familiarity breeds contempt. However, recently the saying increasingly appears to suggest that familiarity also breeds passion. Certain studies indicate that more than 30 per cent of marriages start from relationships that started at the workplace.

With the amount of time spent at workplaces and usually in the confined set-up of an office, it is not uncommon for some work colleagues to notice each other and stretch their interaction to an intimate level.

In Kenya, the employment law is rather silent on consensual workplace relationships, whether they were existing at the time of hire or subsequent to the hire. Citizen TV anchors Lulu Hassan and Rashid Abdalla are notable examples. Another recent one involves the ABC News anchors TJ Holmes and Amy Robach who faced temporary suspension after it was discovered they were having an intimate relationship.

Whilst employers may appreciate chemistry and teamwork amongst their employees, there is equally an awareness that such relationships come with certain risks to the organisation.

One risk is that the workplace relationship, depending on how it commences, continues or ends, may be a catalyst for sexual harassment claims. In other circumstances,

such relationships may also portend conflict of interest (between professional and personal priorities), bias, favouritism and collusion which negatively affects the organisations. Financial institutions, for instance, reckon that an employee could approve a loan to a colleague who may not meet requirements because of their relationship.

Some organisations have dealt with this issue sternly by outrightly forbidding intra-office romantic relationships. Such organisations have curated their Human Resource Manuals to explicitly forbid certain behaviour - for instance public displays of affection within the workplace including out-of-office events such as parties and team building activities.

Other organisations have a 'single dating request' policy where pestering fellow employees, by asking them out more than once, with unrequited responses can easily be construed as sexual harassment. Indeed, section 23 of the Sexual Offences Act and section 6 of the Employment Act have conceptualised these requests as verbal sexual harassment that render the office environment hostile. The other problematic relationships restricted in such manuals include relations between juniors and seniors in an organisation due to the power dynamics.

Nonetheless, even with this traditional 'forbidden fruit' approach on employer and employee relations, the 30 per cent uptake on such relations implies that the forbidden fruit still gets eaten. Some organisations in fact encourage such relationships. Companies such as Southwest Airlines have previously publicly stated that they favour office romance whilst others like IBM have lifted the restrictions.

Others have also come up with creative

ways such as taking out Employment Practices Liability Insurance to mitigate damages where such relationships go sour and they are sued.

Consensual relationship agreements are another creative way organisations have adopted. This is an agreement entered into by two employees who are dating or in other intimate or close relationships and filed with the employer, confirming the relationship to be mutual and voluntary.

In the agreement, the two employees agree to abide with certain guidelines for behaviour including a statement that the parties shall not let the relationship impact their job performance.

Workspaces are not asexual, and employers are not expected to police the private lives of their employees. Curating sex-free policies is also not the cure for office relationships.

Noting that such workplace relationships shall continue to exist, employers may consider to get ahead of this by adopting consensual relationship agreements. While they may seem invasive, such agreements can benefit the employer by restricting their liability in a sexual harassment claim and limiting the forum for dispute resolution to arbitration or mediation. Employees who would otherwise suffer segregation and discrimination for finding love in their partners could also benefit from these agreements which safeguards their dignity.

While such "love contracts" are yet to gain popularity in Kenya, hopefully, their benefits provide the necessary incentive for their adoption within legal and ethical bounds.

Happy Valentine's Day! After all, love is in the air.

*Ms Oyile is a legal practitioner*