



**REPUBLIC OF KENYA**

**IN THE INDUSTRIAL COURT**

**AT NAIROBI**

**CAUSE NUMBER 725 OF 2014**

**BETWEEN**

**SILAS OKOME.....CLAIMANT**

**VERSUS**

**PANESARS KENYA LIMITED.....RESPONDENT**

**RULING**

1. Based on the Claimant's own evidence that: he designed on his own; he determined the time of completion of assignment; he arranged his own work; his job card described him as a contractor; the Labour Officer found that he was a piece rate worker; and that the Respondent assigned him premises, the Court reached the finding that the Claimant was an Independent Contractor and not an Employee of the Respondent.
2. The Claim was consequently rejected.
3. The Claimant has applied for review of Judgment, through an Application dated 28<sup>th</sup> July 2021. The Application is based on the Affidavit of his previous Counsel, Wincate Muthoni Mwangi. It is stated that at the time of the hearing, the Claimant did not avail pay slips, which would show he was an Employee, rather than an Independent Contractor.
4. The Claimant has since withdrawn the services of his Advocates, and prosecuted the Application in person, on 16<sup>th</sup> December 2021.
5. The Application is opposed through the Replying Affidavit of J. Njoroge Mungai, Counsel for the Respondent. The pay slips were part of the documents exhibited by the Parties. There is no discovery of new material. There is no error apparent on the face of the record.

**The Court Finds: -**

6. The finding that the Claimant was an Independent Contractor was based on multiple sources, and not solely on the documents the Claimant relies on, on review.
7. He conceded in his own evidence, that he was an Independent Contractor.
8. The pay slips were exhibited by both Parties, and while one of the payslips of May 2013 alluded to PAYE, a majority of the pay slips availed to the Court referred to Withholding Tax. All did not allude to salary paid to the Claimant, but earnings. These earnings varied, depending on the number of items completed by the Claimant for the specified period. The pay slips he relies on for review are not new, and do not establish an employer-employee relationship.

**IT IS ORDERED: -**

- a. The Application by the Claimant dated 28<sup>th</sup> July 2021 is declined.***
- b. Costs to the Respondent.***

**DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY, AT NAIROBI, UNDER THE MINISTRY OF HEALTH AND JUDICIARY COVID-19 GUIDELINES, THIS 24TH DAY OF FEBRUARY 2022.**

**JAMES RIKA**

**JUDGE**