



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
MILIMANI LAW COURTS
CIVIL SUIT NO. 252 OF 2018

JEREMIAH OKELLO.....PLAINTIFF

-VERSUS-

KENYA METHODIST UNIVERSITY.....DEFENDANT

JUDGEMENT

1. Jeremiah Okello, the plaintiff herein filed an action against the defendant vide the plaint dated 7th October 2015 whereof he sought to be paid ksh.1,669,600/= being the balance of the fees for consultancy services the plaintiff provided by the plaintiff to the defendant between the month of October 2012 and October 2013. The defendant filed a defence denying the existence of such a consultancy agreement with the plaintiff for the quoted period.
2. At the hearing of this suit, the plaintiff testified and summoned two independent witnesses to testify in support of his case. Jeremiah Okello (PW 1) told this court that he was hired by the defendant to provide consultancy services between October 2012 and October 2013, for a sum of ksh.2,069,600/=.
3. He stated that he was paid ksh.400,000/= leaving a balance of 1,669,600/= unpaid. He produced before this court project reports and minutes for the period covering the execution of the project.
4. The plaintiff further produced the consultancy agreement dated 9th June 2015. PW1 stated that on or about April 2012, the Kenya Methodist University desiring to develop a Business Processing Outsourcing (BPO) Training Program engaged the plaintiff through his company to offer his expertise in developing curriculum content, training aids, methodology and assessment framework for their internal Business Processing Outsourcing training program.
5. PW 1 further stated that while in the middle of the project, Kenya ICT Board (KICTB) advertised a public tender for training institutions to help the government to develop a National Business Processing Outsourcing training and certification program and signed the contract dated 9th June 2015.
6. The plaintiff stated that one of the requirements for the tenderers to qualify was that they should have a Business Processing Outsourcing industry expertise or teams.
7. PW 1 stated that since the defendant did not have Business Processing Outsourcing expertise to meet the tender requirements, it requested him to provide personal and professional background so as to meet the aforesaid requirement for the tender.
8. PW 1 stated that he was interviewed by the defendant's vice chancellor and other senior staff and was approved to join the team of KEMU staff for the project as an external consultant as opposed to being a full time university staff since he had existing contracts with other clients. PW 1 produced the minutes as an exhibit in evidence.
9. PW 1 also stated that due to his professional profile the defendant qualified for the tender. The plaintiff stated that he led the defendant's team to develop the project inception report as a requirement to begin the project and then participated in the meeting.
10. PW 1 further averred that he single handedly developed four (4) Business Processing Outsourcing Industry specific curricula, content,

aids and other materials due to his expertise in the industry together with other members of the team they developed eight (8) curricular content, aids and other materials.

11. The plaintiff averred that after two months the defendant paid him an upfront of kshs.200,000/= he requested for when he lost his sister and that he was also paid another kshs.200,000/= a few months thereafter. PW 1 produced the relevant vouchers which were used to make payments. The plaintiff said that he and other partners in the project co-authored several project reports in which his name was included as a co-author.

12. He stated that all this time he was granted full access to the university as a full time staff. He further averred that reports of those activities were handed over to the university management and were accepted as successful.

13. PW 1 stated that he expected the university to settle his dues but the defendant failed to do so. He claimed that the other partners in the project which were large organizations were paid their dues by the university.

14. The plaintiff summoned Professor Robert Gatheru (PW 2) and Mary Kiguru (PW 3) to testify in support of his case. The duo stated that they participated together with the plaintiff in the defendant's project.

15. PW 2 confirmed that PW 1 had a contract with the defendant. PW 2 stated that the plaintiff reported to him since he was the defendant's contact person. PW 2 also stated that the plaintiff worked full time during the project of twelve (12) months.

16. The defence summoned Lilian Mutuma (DW 1) to testify in support of its case. It is the evidence of DW 1 that the defendant engaged **Collins Consulting International** in launching the first class Business Processing Outsourcing and a sum of ksh.200,000/= was paid as agreed. DW 1 stated that the plaintiff was never engaged by the defendant between October 2012 and October 2013. She claimed that PW 2 engaged the plaintiff as an expert without the knowledge of the defendant and in total disregard of Human Resource policy.

17. DW 1 further stated that the contract dated 9th June 2015 was signed by PW 2 purportedly on behalf of the defendant yet he had no authority to execute any contracts on behalf of the defendant.

18. DW 1 also pointed out that the contract was signed after the alleged consultation work had been completed.

19. DW 1 concluded by stating that the partial payment was made because the defendant had not discovered that the engagement of the plaintiff was irregular.

20. Having considered the rival evidence and submissions, the following issues arise for determination.:

i. First, whether there was a valid contract between the plaintiff and the defendant

ii. Whether the plaintiff performed the part of the contract.

iii. Whether the plaintiff is entitled to the claim.

21. On the first issue as to whether there was a valid contract between the parties herein, I have already set out the rival position taken by the parties herein.

22. Having considered and analysed the evidence presented by both sides, I am convinced that there was a valid contract between the plaintiff and the defendant dated 9th June 2015. It is clear that the plaintiff was first contracted on 30th March 2012. It is apparent that the plaintiff's engagement was discussed on 24th April 2014 by the PW 2 and the deputy vice chancellor. In fact in one of the reports, the plaintiff is referred to as the defendant's training manager. He was also one of the presenter of such reports.

23. On the second issue as to whether the plaintiff performed his part of the contract, it goes without saying that the evidence presented to this court shows that the plaintiff indeed performed his part of the contract. PW 2 and PW 3 confirmed that the plaintiff worked with them in performing the contract and was partly paid a sum of ksh.400,000/=.

24. The final issue is whether the plaintiff is entitled to the claim sought in the plaint. The evidence show that the plaintiff had a contract with the defendant and was paid ksh.400,000/=. The contract sum is ksh.2,069,600. The plaintiff is therefore entitled to be paid the balance of kshs.1,669,600/=.

25. In the end, judgment is entered in favour of the plaintiff and against the defendant in the sum of ksh.1,66,000/=.

26. The plaintiff is also awarded costs of the suit.

DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT NAIROBI THIS 21ST DAY OF MAY, 2021

.....

J. K. SERGON

JUDGE

In the presence of:

.....for the Plaintiff

..... for the Defendants