



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT
NAIROBI

(ON Makau J on 26th February, 2026)

CAUSE NO. 1571 OF 2015

ALFRED MUNYOKI
MUTAVA.....CLAIMANT

-VERSUS-

COLLINS M. NTHUNI T/A
LIMCOM
AFRICONULTS.....RESPONDENT

JUDGMENT

Introduction

1. By statement of claim dated 3rd September 2015, the Claimant alleged that the Respondent had failed to pay him Kshs.

2,400,000, being consideration for work done under a contract dated 10th September 2014. Therefore he prayed for:-

a) Kshs. 2,400,000 plus interest at commercial rate of 18% per annum from 9th December, 2014 till payment in full.

b) Costs of the suit plus interest at court rates.

c) Any other reliefs the court may deem fit.

2. The Respondents filed defence dated 15th March 2016 denying any employment relationship with the Claimant and averred that the contract filed by the Claimant was a forgery as he did not sign it. He averred that the Claimant was a cousin to his wife who engaged him to run errands at her business for which he received regular allowances.
3. During the pretrial conference the parties agreed to submit the signature in the dispute contract for expert opinion by a forensic document Examiner and a report was filed by C. A Alex Mwongera Mathiu, an officer in the Criminal Investigations Department. The suit was then heard on 16th October 2025 when both sides gave evidence and thereafter filed written submissions.

Evidence

4. The Claimant testified as CW1, and adopted his written statement dated 26th September 2015 as his evidence in chief.

He also produced 7 documents as exhibits. He then clarified that he started interacting with the Respondent in September 2009 when he engaged him on piece work basis until 2014 when he gave him a contract.

5. On cross examination he admitted that he dropped out of school while in form four due to financial problems. He confirmed that the Claimant secured a tender from Kenya Towers but he did not know it was given in May 2014. All that he knew was that he was given contract of employment on 14th September 2014 for six months and assigned the work of seeking extension of leases and data collection.
6. He contended that the contract of employment entitled him to a one off payment of Kshs. 2,400,000 after completion within six months but the contract was completed within three months. His position was Operations Manager.
7. The Respondent testified as RW1, and adopted his written statement dated 17th July 2018 as his testimony. He also produced two documents as exhibits. He then confirmed that he entered into contract with Kenya Towers on 15th September 2014 by way of an LPO and he completed the same in August 2015. He denied ever engaging the Claimant with respect to the contract by Kenya Towers and described the Claimants claim as untrue.

8. On cross examination he admitted that the contract dated 14th September 2014 appointed Claimant as operations manager and set out his duties under Clause 3 including duties in any of the Respondents site. He further admitted that the contract provided for remuneration of Kshs. 2,400,000 payable in arrears at the end of six months period.

9. He also admitted that he moved the court to have the contract examined by the DCI Document Examiner who confirmed that the signature in the contract belonged to him. He confirmed that the clause 6 of the contract provided for termination by a notice of one month or payment of one month salary in lieu of notice. He denied having terminated the contract and maintained that he never entered into the said contract with the Claimant.

10. He contended that in December 2014, the Claimant requested for an advance pay of Kshs. 10,000 per month for September, October and December and disappeared after receipt. Subsequently he received a letter from Claimant's lawyer threatening to expose alleged forgery. He contended that the Claimant wanted to swindle money from him after realizing that he had a contract that was bringing income. Finally he stated that the work involved in the contract was professional and he Claimant had no qualification.

11. RW2 was Eston Muciiri Mbura who also adopted his statement dated 17th July 2018 as his evidence in chief. He then confirmed that he was the Respondent's Office Administrator responsible for the matters and documents for the Kenya Towers contract. He contended that he did the contract with the Respondent whereby he dealt with movement of document and the Respondent did the professional duties.
12. He came to know the Claimant in October 2014 but he had no role in the office.
13. On cross examination, he admitted that he had no documentary evidence to prove that he was employed by the Respondent and that he did the roles he alluded to. He confirmed that there was another person working in the office, one Anne Gitau. He contended that he was sent to pursue the Claimant when he disappeared after payment of Kshs. 7000 for December from petty cash. However, he did not produce any document to prove that Claimant was paid any advance.
14. RW3 Lilian Mbithi Maundu was the Respondents wife. She adopted her written statement dated 17th July 2018 as her testimony. She contended that the Respondent and herself are partners in Limcom Africonsults, which is a Business name. Each owns 50% share in the business. She denied the contract presented by the Claimant and maintained that he was inly an errand boy in their family business since 2011.

15. On cross examination she admitted that she had not filed registration certificate for Limcom Africonsultants as an exhibit. She confirmed that the Claimant was being sent to deliver a lot of documents to the post office and other office documents. He was also being sent everywhere even to the supermarket but they never signed any contract appointing him as an errand boy. His payment was done on piece- work basis and payment was done via Mpesa. She did not produce copy of the Mpesa Account to support her allegations.
16. She admitted that she did not feature in the contract between the Claimant and the Respondent. Finally she contended that the Claimant alleged that he had impregnated a woman and they then agreed to change the mode of payment from piece work to monthly salary of Kshs. 10000. She maintained that the contract produced by Claimant was a forgery.
17. Having considered the pleadings, evidence and submissions, the following issues fell for determination:-
- a) Whether the Respondent employed the Claimant under the contract dated 10th September 2014.
 - b) Whether the Claimant is entitled to payment of Kshs. 2,400,000 under the said contract.
 - c) What appropriate orders should be made.

Analysis

Contract dated 10th September 2014.

18. The Claimant produced a written contract dated 10th September 2014 between himself and the Respondent and the signature for the Respondent was verified by a forensic Document Examiner C.I. Alex Mwongera Mathiu vide a Report reference number CID/ORG/8/3/1/791, dated 11th August 2016.
19. The RW2, wife of the Respondent confirmed in evidence that the Claimant worked for their family business from 2011 on piece work basis. From October he allegedly impregnated a woman and requested for monthly salary which was agreed at Kshs. 10000. RW1 further confirmed that the Claimant was given advance pay of Kshs. 10000 per month from September 2014. This contradicted with the evidence by RW2 who alleged that the Claimant disappeared after being advanced Kshs. 7000 from petty cash.
20. Considering the Report of Forensic Document Examiner and the evidence by RW1 and RW3, I find that the Claimant has proved on a balance of probability that he was employed by the Respondent as an Operations Manager for a renewable term of six months.

Claim for Kshs. 2,400,000

21. The contract of employment expressly entitled the Claimant to a consolidated salary of Kshs. 2,400,000 payable in arrears

at the end of the six months period. The Claimant alleged that his contract was linked to the contract given to the Respondent by Kenya Towers Limited. However my reading of his contract does not state so. In fact Clause 3 (9) stated that he was to serve the company at whichever site/place assigned to him.

22. Having said that, I find that the Claimant's allegation that his work ended before December 2014 is not factual because his six months contract was not tied to completion of any particular task. He was employed for fixed term of six months terminable by notice or payment of one month salary in lieu of notice. He left before the lapse of the contract term of six months without notice.

23. RW1 and RW3 contended that the Claimant disappeared after receiving salary advance of Kshs. 10000 per month for September to December. However they did not produce any Mpesa statement to substantiate the alleged advances. Therefore I find that the Respondent did not pay the Claimant any salary advances as alleged.

24. Should the Claimant then be paid the salary for six months when he worked for only three months? The answer is no. I have already made a finding of fact that his contract was for a term not for doing of a particular task. Having worked for only three months, from 10th September 2014 - 9th December 2014, he is only entitled to salary for the period worked.

25. His gross pay for six months was Kshs. 2,400,000, as per the contract translating to Kshs. 400000 per month. Consequently he is awarded Kshs. 1,200,000 for the three months he worked. The Respondents laughed off such huge salary claim by the Claimant saying that it is not for the Claimant's caliber. However, it is well settled that the courts duty is to give effect to the parties freedom of contract and not to re-write the contract for them. Whether the Claimant lacked special skills in the Respondent's business, that is immaterial in the face of an express contract signed by the two parties.

Conclusion

26. I have found that the Claimant was employed by the Respondent as an Operations Manager under the contract of employment dated 10th September 2014. I have further found that he served for only three out of the six months he was engaged to serve and therefore he is only entitled to a proportionate pay for the months served. Consequently, I enter judgment for him against the Respondent as follows:-

- a) Salary for 3 months.....Kshs. 1,200,000.
- b) Costs and interest at court rates from the date of filing the suit.

DATED, SIGNED AND DELIVERED VIRTUALLY IN OPEN COURT AT NAIROBI THIS 26TH DAY OF FEBRUARY 2026.

**ONESMUS MAKAU
JUDGE**

Appearance:

Ondego for the Claimant

Muthumba for the Respondent