

**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT & LABOUR RELATIONS COURT AT**  
**NAIROBI**  
**CAUSE NO. 1196 OF 2016**

**JAMES MBUCHA KAMAU.....**  
**CLAIMANT**

**VERSUS**

**BOBMIL INDUSTRIES LIMITED.....**  
**.....RESPONDENT**

**JUDGMENT**

**Introduction**

1. For determination is the Claimant's Memorandum of Claim dated 17<sup>th</sup> June, 2016 and filed on 20<sup>th</sup> June, 2016, wherein the Claimant sued the Respondent alleging unfair and unlawful termination of employment. He seeks a declaration that his termination was unfair and unlawful and an order for payment of Kshs.312,804 comprising accrued benefits, emoluments amounting to Kshs.132,660 together with 12 months' salary as damages for the unfair termination of Kshs.180,144, costs, and interest thereon.
2. The Respondent filed a Memorandum of Response dated 26<sup>th</sup> August, 2019, and filed on even date, denying the Claimant's claim and contending that there has never been

an employer-employee relationship between it and the Claimant.

3. The matter proceeded for hearing on 11<sup>th</sup> March, 2025, with the Claimant testifying in support of his case. The Respondent's case was partly heard on the same date and on the date when the Respondent's second witness was to be heard, their counsel closed the case, indicating inability to avail their final witness.
4. Submissions were received from the Claimant and have been duly considered.

### **The Claimant's Case**

5. The Claimant's case is that he was employed by the Respondent as a machine operator for six years, earning a net monthly salary of Kshs.7,506.15. He avers that in April 2016, his employment was terminated without notice or any valid reason.
6. It is his case that during his employment, the Respondent failed to remit statutory deductions (NSSF and NHIF) and did not pay his terminal dues upon termination.
7. He avers that his claim against the Respondent is for payment of one month's salary in lieu of notice, accrued leave for six years, unremitted statutory deductions for 72 months, and service pay for the six years served all amounting to Kshs.132,660.00.

8. The Claimant further contends that his termination was unfair, unlawful, and irregular, and seeks compensation equivalent to 12 months' salary for the loss and damage suffered.
9. On cross-examination, the Claimant admitted that he worked for Danree Multi-handling Services Limited from 2009 to March 2016 as a general casual worker and was taken to work for the Respondent.
10. The Claimant confirmed that he signed a discharge voucher, as the signature is his, but he does not remember signing.
11. It is his testimony that he had no contract with the Respondent and that his contract was with a company called Danree Multi-handling Services Limited. He avers that he sued the Respondent because he worked at their premises. He avers that the Respondent is the one that paid him and that his bank statements are proof.
12. He avers that he was not given any money at termination, and neither was he issued notice, but was only told verbally not to report to work the next day.
13. The Claimant prays that his claim be allowed.

### **The Respondent's Case**

14. The Respondent's case is that the Claimant was never its employee. The Respondent contends that if the Claimant worked at its premises at all, he did so as a casual labourer engaged by an outsourced company, not the Respondent.

15.The Respondent further denies all allegations relating to unlawful or unfair termination, non-payment of dues, and any resulting loss or damage, on account of there being an employer-employee relationship between it and the Claimant.

16.The Respondent maintains that the Claimant was engaged by Danree Multi-handling Services Limited, an outsourcing company providing manpower to the Respondent. It states that the Claimant worked as a casual labourer and was assigned tasks at various client companies depending on the outsourcing needs.

17.According to the Respondent, in March 2016, the Claimant voluntarily resigned through a letter dated 24<sup>th</sup> March 2016, indicating he intended to participate in the general elections. It avers that he was subsequently paid Kshs.7,506.00 on 2<sup>nd</sup> April 2016, being wages for two weeks worked in March, and he signed a discharge voucher confirming settlement of his dues.

18.The Respondent further states that the Claimant's employment records with the outsourcing company indicate he was first engaged on 21st September 2009.

19.On cross-examination, the Respondent's witness, RW1, told the court that he was aware of the contract between the Respondent and Danree Multi-handling Services Limited, and that under the said contract, the Respondent paid 10%

of the employee's salary to the outsourcing company and paid the balance to the workers.

20. He avers that the Respondent did not terminate the Claimant's services, but instead returned him to the outsourcing company. He states that the outsourcing company chooses who should report to work and who should not.

21. He confirmed that there were no general elections in 2016. He maintains that the Respondent did not terminate the Claimant and had no role in Danree's disciplinary processes.

### **Analysis and Determination**

22. From the pleadings and the evidence adduced, the Court distills the following key issues for determination:

- i. Whether there existed an employer-employee relationship between the Claimant and the Respondent.
- ii. If yes, whether the termination of the Claimant's employment was unfair and unlawful.
- iii. Whether the Claimant is entitled to the remedies sought.

### **Whether there existed an employer-employee relationship between the Claimant and the Respondent**

23. The Claimant's position is that he was employed by the Respondent as a machine operator for six years, earning a net monthly salary of Kshs.7,506.15. He avers that in April 2016, his employment was terminated without notice or any valid reason.

24. The Respondent's primary defence is that the Claimant was not its employee but was engaged by Danree Multi-handling Services Limited, an outsourcing company, and would be assigned duties as a casual labourer at its premises from time to time.

25. The Claimant, on the other hand, admitted on cross-examination that he was employed by Danree Multi-handling Services Limited from 2009 to March 2016. He further confirmed that he had no written contract with the Respondent, and that he was deployed to the Respondent's premises by Danree.

26. The law is settled that the burden of proving an employment relationship rests on the Claimant/employee. In ***Everret Aviation Limited v Kenya Revenue Authority [2013] KEHC 6352 (KLR)***, the Court emphasized that a party alleging a legal relationship must prove its existence.

27. Further, in ***Kenya Hotels & Allied Workers Union v Alfajiri Villas (Magufa Ltd) [2014] KEELRC 860 (KLR)***, the Court held that the mere fact that a worker performs duties at a third party's premises does not, of itself, create an employment relationship with that third party.

28. It is thus clear that employees engaged through an outsourcing arrangement remain employees of the outsourcing entity unless evidence shows otherwise, and the outsourcing entity is therefore liable to issue notice, ensure

due process, and be liable for compensation where such orders are granted.

29. The Claimant, in his oral evidence, admitted contractual engagement with Danree. Further, no contract, payslip, or appointment letter linking him to the Respondent was produced in evidence, and the Respondent's witness explained the outsourcing arrangement, including the payment structure that existed between it and the said outsourcing entity.

30. On this account, there is no sufficient evidence of control, hiring, or disciplinary authority exercised by the Respondent over the Claimant. Further, although the Claimant alleged that the Respondent paid his salary, no bank statements or documentary proof were produced to substantiate this assertion.

31. Accordingly, the Court finds and holds that the Claimant has failed to discharge the burden of proving the existence of an employer-employee relationship with the Respondent.

**Whether the termination was unfair and unlawful**

32. Having found that no employment relationship existed between the Claimant and the Respondent, the claim of unfair termination against the Respondent cannot be sustained.

**Whether the Claimant is entitled to the reliefs sought**

33. In view of the foregoing findings, the Claimant's claim for notice pay, leave, service pay, and statutory deductions cannot lie against the Respondent in the absence of an employment relationship.

34. Any potential claim, if at all, can only lie against Danree Multi-handling Services Limited, which is not a party to these proceedings.

35. In the final analysis, the Claimant's claim against the Respondent is devoid of merit and is hereby dismissed in its entirety.

36. Parties shall bear their own costs of the suit.

37.Orders accordingly.

**SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN  
COURT AT NAIROBI THIS 30<sup>TH</sup> DAY OF APRIL, 2026.**

**C. N. BAARI  
JUDGE**

**Appearance:**

Mr. Mwasia h/b for Mr. Musyoka for the Claimant

Ms. Esami h/b for Mr. Nyamu for the Respondent

Ms. Esther S - C/A

ORIGINAL