



Fast-Track Management Consultants Limited v Bata Shoe Kenya PLC; Kenya Shoe and Leather Workers Union (Interested Party) (Employment and Labour Relations Cause E651 of 2022) [2025] KEELRC 190 (KLR) (30 January 2025) (Judgment)

Neutral citation: [2025] KEELRC 190 (KLR)

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS CAUSE E651 OF 2022
BOM MANANI, J
JANUARY 30, 2025

BETWEEN

FAST-TRACK MANAGEMENT CONSULTANTS LIMITED CLAIMANT

AND

BATA SHOE KENYA PLC RESPONDENT

AND

KENYA SHOE AND LEATHER WORKERS UNION INTERESTED PARTY

JUDGMENT

Background

1. The Claimant is a limited liability company which deals in manpower supply under an arrangement commonly referred to as outsourcing of labour. Under this arrangement, an individual (in this case the Claimant) recruits personnel whom he in turn hires out to third parties referred to as clients.
2. The above arrangement normally yields what is sometimes referred to as a triangular employment relation. This is because it involves three actors namely: the individual hiring the worker; the worker; and the client.
3. Under the arrangement, the person hiring the worker is typically the employer. As such, there is no employment relation between the worker and the client or end user of the labour service (see *Abyssinia Iron & Steel Limited v Kenya Engineering Workers Union* [2016] eKLR).
4. In the instant case, the Claimant and the Respondent entered into a contract dated 1st July 2021. Through it, the Claimant undertook to supply the Respondent with manpower for a period of one year from 1st July 2021.



5. The agreement is clear that the personnel whom the Claimant supplied to the Respondent under the arrangement were employees of the Claimant; not the Respondent. The parties further agreed that the Claimant was to be deemed as an independent contractor under the arrangement. It was further agreed that neither the Claimant nor the personnel it supplied to the Respondent under the arrangement were to be deemed as employees of the Respondent.
6. The agreement ran its full course and lapsed on 30th June 2022 through effluxion of time. The Claimant contends that it expected that the contract would be renewed. As such and despite the contract having lapsed on 30th June 2022, it (the Claimant) continued to supply the Respondent with manpower until sometime in August 2022 when the Respondent terminated the arrangement. It is the Claimant's case that the continued supply of labour to the Respondent beyond 30th June 2022 was as a result of an agreement between the two.
7. On the other hand, the Respondent denies that the parties agreed to continue with the labour supply beyond 30th June 2022. The Respondent contends that the contract between them lapsed on 30th June 2022 and the parties were effectively discharged from it. It contends that the Claimant unilaterally continued to avail workers to its (the Respondent's) site despite the contract between them having lapsed.
8. Because of this disagreement, the Claimant has instituted the instant suit seeking to compel the Respondent to renew the relation. In response, the Respondent, inter alia, contends that there was no employment relation between it and either the Claimant or the individuals the Claimant provided as workers.
9. The Respondent further contends that the contract dated 1st July 2021 which is the basis for the suit was not an employment contract. Rather, it was a contract for services through which the Claimant, an independent contractor, offered to supply manpower to the Respondent, the client. As such, this court has no jurisdiction to entertain the dispute.

Issues for Determination

10. Having considered the pleadings, evidence and submissions by the parties, I consider the following to be the issues for determination in the case:-
 - a. Whether the court has jurisdiction to entertain the dispute between the parties.
 - b. Whether the Claimant is entitled to have the contract dated 1st July 2021 between it and the Respondent renewed.
 - c. Whether the Claimant is entitled to the other reliefs it seeks in the action.

Analysis

11. I will begin by addressing the question of jurisdiction because depending on how I decide on the matter, I will either consider the rest of the issues in the suit or down my tools (Peter Gichuki King'ara v Independent Electoral and Boundaries Commission & 2 others).
12. The relation between the Claimant and the Respondent was premised on the contract between them dated 1st July 2021. The agreement clearly stipulates that it was for the supply of manpower. Through it, the Claimant was contracted to supply the Respondent with manpower.
13. The agreement describes the Claimant as an "independent contractor". It expressly stipulates that the Claimant was not an employee of the Respondent.



14. In the agreement, the Claimant was to employ personnel and in turn hire them out to the Respondent on need basis. The agreement stipulates that the personnel so hired were deemed to be employees of the Claimant; not the Respondent.
15. The Claimant had control of the hired personnel. For instance, it was to: ensure their sufficient supervision whilst at work; and exercise disciplinary control over them.
16. In addition, the Claimant was obligated to discharge other functions that ordinarily inhere in an employer with respect to the hired staff. These include: maintaining a record of the staff; providing medical cover for the staff; and paying the workers' wages.
17. Evidently, the aforesaid contract did not establish an employment relationship between the Claimant and the Respondent. It only provided a platform through which the Respondent was to outsource labour from the Claimant. As such, it was not an employment contract. It was a commercial contract between an independent contractor and a client. Although the commodity which the parties were dealing in was labour, this did not qualify the arrangement as an employment relation (see *Simon Njuguna Kago v Pan Africa Life Assurance Limited* [2018] eKLR, *Manpower Networks Limited v Wrigley Company (East Africa) Limited & 2 others*; *Richard Mutisya Maithya & 28 others (Interested Parties)* [2020] eKLR and *Linic Enterprises Limited v Savannah Cement Limited* [2022] eKLR).
18. The jurisdiction of this court is premised on article 162 (2) of *the Constitution* as read with section 12 of the Employment and *Labour Relations Act* (ELRC Act). The court only deals with employment and labour relations disputes. The term "labour relations" is used to denote collective labour matters as opposed to all manner of relations under which the commodity of labour is supplied.
19. As such, a dispute between an independent contractor and a client arising from an agreement by which the independent contractor was to supply or outsource labour to the client is not an employment dispute. It is not one of the matters which are contemplated under article 162 (2) of *the Constitution* as read with section 12 of the ELRC Act. Consequently, the Employment and Labour Relations Court has no jurisdiction over such disputes (*Christine Adot Lopeyio v Wycliffe Mwathi Pere* [2013] eKLR).
20. It has been emphasized time and again that jurisdiction of a court flows from either *the Constitution* or an Act of Parliament. Courts are not entitled to assume jurisdiction where the law does not grant them such jurisdiction. At the same time, they (the courts) must not enlarge their jurisdiction through judicial craft (see *J.E. Kamau & another (Suing as officers of Tena Residents Associates) v Job* [2016] eKLR).

Determination

21. Having arrived at the conclusion that the instant dispute, being a commercial and not employment dispute, lies outside this court's jurisdiction, this court downs its tools in respect of the case.
22. As such, it (the court) will not delve into the other issues which had been framed for determination.
23. In the premises, the suit fails for want of jurisdiction.
24. The Claimant shall bear the costs of the case.

DATED, SIGNED AND DELIVERED ON THE 30TH DAY OF JANUARY, 2025

B. O. M. MANANI

JUDGE

In the presence of:



.....for the Claimant

.....for the Respondent

Order

In light of the directions issued on 12th July 2022 by her Ladyship, the Chief Justice with respect to online court proceedings, this decision has been delivered to the parties online with their consent, the parties having waived compliance with Rule 28 (3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

B. O. M MANANI

