



REPUBLIC OF KENYA



KENYA LAW
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**Bitok v Steel Structures Limited (Cause E515 of 2024)
[2025] KEELRC 40 (KLR) (21 January 2025) (Ruling)**

Neutral citation: [2025] KEELRC 40 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E515 OF 2024
HS WASILWA, J
JANUARY 21, 2025**

BETWEEN

TIMON KIPCHUMBA BITOK CLAIMANT

AND

STEEL STRUCTURES LIMITED RESPONDENT

RULING

1. The Application before this court is a Preliminary Objection dated 17th October 2024 filed by the Respondent in opposition to the Claimant's Statement of Claim dated 24th February 2022.
2. The Respondent filed a Preliminary Objection dated 17th October 2024, raising the following grounds for consideration by the Court:
 1. That the Claimant's claim is grounded on the tort of contract, which does not fall within the jurisdiction of this Honourable Court as provided under Article 162(2) (b) of *the Constitution* of Kenya, 2010.
 2. That this Court lacks jurisdiction to hear and determine the claim, as there exists no employer-employee relationship between the Claimant and the Respondent.
 3. That the Claimant's claim contravenes Article 162(2) (a) of *the Constitution* and the *Employment and Labour Relations Court Act*, which restricts the jurisdiction of this Court to disputes arising between employers and employees as provided under Section 12(1)(a) of the Act.
 4. That the Claimant's claim is misconceived, incompetent, and an abuse of the Court process, and the Respondent prays that it be struck out in its entirety.



5. The Claimant in his Statement of Claim dated 24th February 2022, avers that he worked as a subcontractor at the Respondent's head office until December 2020, diligently executing his duties without any complaints, adverse reports, or warnings regarding his performance. The Respondent's terms of engagement included sound management practices that promoted effective employee relationships and allowed the Claimant to perform his duties faithfully while adhering to the company's code of conduct. The Respondent provided subcontract agreements that stipulated payment of 80% of the contractual amount during the project and the remaining 20% as retention, payable upon successful completion of work.
6. The Claimant avers that, despite fulfilling his obligations and completing his work, the Respondent failed to honor the agreement by withholding the 20% retention fee, amounting to Kshs. 350,000. Efforts to address this issue, including raising concerns with various offices within the Respondent's organization, yielded no resolution. The Claimant contends that the Respondent's actions created a hostile working environment, making it impossible for him to continue his role, ultimately leading to his resignation.
7. The Claimant further avers that the Respondent's actions were vindictive, unlawful, and motivated by malice and bad faith. He alleges that the withholding of payments caused him mental distress and anguish while also tarnishing his reputation among colleagues and affiliates of the Respondent.
8. As a result, the Claimant seeks the payment of Kshs. 350,000 as the unpaid retention fee, Kshs. 170,000 for mental distress and anguish, Kshs. 50,000 for reputational damage, and compensation equivalent to 12 months' salary and benefits due to the Respondent's unlawful and oppressive actions. Additionally, he seeks special, exemplary, and general damages for the hardships he endured. The Claimant also notes that an out-of-court settlement proposal was rejected by the Respondent, necessitating the institution of these proceedings.
9. I have examined all the averments and submissions of the parties herein. The preliminary objection raised by the applicant is to the extent that there is no employer employee relationship between the claimant and the respondent. Proving an existence of such a relationship would require production of evidence and reliance on factual issues which in my view go beyond the purview of Mukisa Biscuit case.
10. It is my finding that the preliminary objection raised is not in the circumstances merited. I accordingly dismiss the preliminary objection and direct the claim to proceed for hearing to conclusion.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 21ST DAY OF JANUARY, 2025.

HELLEN WASILWA

JUDGE

Order

In view of the declaration of measures restricting Court operations due to the Covid-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open Court. In permitting this course, this Court has been guided by Article 159(2)(d) of *the Constitution* which requires the Court to eschew undue technicalities in delivering justice, the



right of access to justice guaranteed to every person under Article 48 of *the Constitution* and the provisions of Section 1B of the Procedure Act (Chapter 21 of the Laws of Kenya) which impose on this Court the duty of the Court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

A signed copy will be availed to each party upon payment of Court fees.

HELLEN WASILWA

JUDGE

