



**Cellincom Communications Limited v Carlcare Services Limited (Cause  
109 of 2024) [2025] KEELRC 1262 (KLR) (30 April 2025) (Ruling)**

Neutral citation: [2025] KEELRC 1262 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE 109 OF 2024  
BOM MANANI, J  
APRIL 30, 2025**

**BETWEEN  
CELLINCOM COMMUNICATIONS LIMITED ..... CLAIMANT  
AND  
CARLCARE SERVICES LIMITED ..... RESPONDENT**

**RULING**

1. The Claimant avers that it is a limited liability company incorporated in the Republic of Kenya. Although it (the Claimant) describes the Respondent as a limited liability company incorporated in Kenya, it appears that the Respondent is a foreign company registered in Hong Kong but having operations in Kenya.
2. The Claimant and Respondent entered into an undated "After Service Agreement" which was to run from 1<sup>st</sup> January 2023 to 31<sup>st</sup> December 2023. The parties executed the agreement on 21<sup>st</sup> December 2022 and 16<sup>th</sup> January 2023.
3. In the contract, the Claimant is described as a "Service Provider". It (the Claimant) was assigned the role of, inter alia, providing after sales services in respect of the Respondent's authorized products within Kenya. It appears that the services contemplated under the arrangement related to various telecommunication products including telephone handsets such as Infinix, Itel and Tecno.
4. Under the agreement, the Claimant was expected to source spare parts for the aforesaid gadgets from the Respondent. In order to access these parts, the Claimant was to pay a deposit for them. To facilitate the arrangement, the Claimant was required to deposit Ksh. 500,000.00 with the Respondent at the commencement of the contract.
5. The Claimant was entitled to service charge in return for the services it rendered under the contract. It was to claim this amount by invoicing the Respondent within the first five (5) days of every new month. The Respondent was then to settle the invoice raised within sixty (60) days of receiving it.



6. The agreement provides that the governing law for the relationship shall be the laws of Hong Kong. Further, it provides that disputes arising from the contract shall be submitted to the Hong Kong International Arbitration Centre for settlement.
7. As such, it is apparent that the parties chose the law of Hong Kong as the law for resolving any disputes that may arise between them in respect of the contract. They also chose arbitration as the mode of resolving disputes that may arise from the agreement. Further, they agreed on the Hong Kong International Arbitration Centre as the seat for resolution of disputes from the contract.
8. The Claimant contends that the Respondent breached this agreement by terminating it prematurely without notice. It further accuses the Respondent of having terminated the relationship without giving reasons for the decision. As such, it (the Claimant) seeks various reliefs as set out in the Statement of Claim.
9. The Respondent filed a defense to the claim admitting that the parties had an agreement between them. However, it describes the agreement as a commercial agreement. As such, it denies that there was an employment relation between the parties.
10. Accompanying the Statement of Defense is a Notice of Preliminary Objection. In the notice, the Respondent disputes that this court has jurisdiction to entertain the dispute.

#### **Analysis.**

11. Since the question of jurisdiction was taken up, it became necessary that it be addressed in priority to all else. This is because the court may only delve into the substantive dispute if it is seized of the requisite jurisdiction to do so.
12. The court directed the parties to file written submissions on the preliminary objection. In compliance with these directions, both parties have placed their submissions on the court record.
13. The court can only entertain this dispute if it has jurisdiction to do so. If it does not, it must down its tools immediately (*Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd* [1989] eKLR).
14. The jurisdiction of this court is donated by article 162(2) of the *Constitution* of Kenya as read with section 12 of the *Employment and Labour Relations Court Act*. The court's jurisdiction is confined to employment and labour relations matters. It does not extend to general commercial disputes.
15. Section 12 of the *Employment and Labour Relations Court Act* sets out in detail the kind of disputes which the court can entertain. Any matter that falls outside that list is outside the purview of the court.
16. The Claimant alleges that the relation between it and the Respondent was one of employer-employee. On the other hand, the Respondent disputes this assertion. It avers that the parties had a purely commercial contract.
17. The *Employment Act* defines the term "employee" to mean a person employed for wages or a salary and includes an apprentice and indentured learner. As such, for one to qualify as an employee, he must have been hired to provide a service in return for a reward known as a salary or wage. If this ingredient does not form part of the consideration for a labour relation, there is no employment relation.
18. A look at the agreement that forms the basis of the relation between the parties does not suggest that the Claimant was to render services to the Respondent in return for a salary or a wage. As the agreement demonstrates, the Claimant was to receive service charge once it invoiced the Respondent.



19. The law does not require an employee to raise an invoice before he is remunerated for his services. As such, the fact that the Claimant was to receive reward in the form of service charge and not salary and the fact that this was to be paid after invoicing the Respondent implies that there was no employment relation between the two.
20. It is noteworthy that under the arrangement, the Claimant was to source spare parts from the Respondent to enable it execute the contract. Further, the Claimant was to pay a deposit for these parts. These requirements clearly demonstrate that the parties had a commercial as opposed to an employment relationship.
21. From the foregoing, it is apparent that there was no employer-employee relation between the parties. As such, this court lacks the requisite jurisdiction to entertain the dispute between them.
22. Although the parties did not speak to the issue, it is apparent that they chose the law of Hong Kong as the law that was to apply in resolving disputes which may arise from their contract. Further, they agreed to submit their disputes to the Hong Kong Arbitration Centre for arbitration. As such, the Claimant is not entitled to overlook these clauses in the contract between them and purport to present the dispute to this court with a view to invoking the laws of Kenya to resolve the matter.
23. The Claimant suggests that should this court find that it has no jurisdiction to entertain the case, it should transfer the matter to the High Court. I do not think that the law permits that.
24. If the court lacks jurisdiction to entertain the matter, it means that it cannot do anything in respect of it including issuing an order to transfer it to another court. Besides, a case which is filed in the wrong court is a nullity. As such, there is nothing to transfer (*Equity Bank Limited v Bruce Mutie Mutuku ta Diani Tour & Travel* [2016] eKLR and *Private Development Co. Ltd v Rebecca Ngonyo & another* [2006] eKLR).
25. I have looked at the decisions which the Claimant relies on to urge the court to invoke article 159 of the *Constitution* to transfer the cause to the right forum. However, I do not think that this provision can legitimately come to the aid of the Claimant.
26. The article directs courts of law not to give undue regard to procedural technicalities whilst dispensing justice. However, I do not think that it can be relied on to circumvent a jurisdictional objection which is not a mere procedural technicality (*Equity Bank Limited v Bruce Mutie Mutuku ta Diani Tour & Travel* [2016] eKLR).

**Determination.**

27. The upshot is that I find that this court lacks jurisdiction to entertain the suit.
28. As such, the matter is struck out with costs to the Respondent.

**DATED, SIGNED AND DELIVERED ON THE 30<sup>TH</sup> DAY OF APRIL, 2025**

**B. O. M. MANANI**

**JUDGE**

