



**Moranga v Seluk Investments Limited (Cause E705 of 2020)
[2025] KEELRC 1265 (KLR) (30 April 2025) (Judgment)**

Neutral citation: [2025] KEELRC 1265 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E705 OF 2020
BOM MANANI, J
APRIL 30, 2025**

BETWEEN

BENARD OBWOGI MORANGA CLAIMANT

AND

SELUK INVESTMENTS LIMITED RESPONDENT

JUDGMENT

1. This is a claim by the Claimant to recover from the Respondent an amount which he contends that the Respondent did not pay to him as remuneration under an alleged contract of service between them. The claim is resisted by the Respondent which denies that the two had an employment relation. According to the Respondent, the Claimant was engaged as an independent contractor and was paid the agreed contractual fees in full. As such, the instant claim is misconceived and ought to be dismissed.

Claimant's Case

2. The Claimant contends that the Respondent hired him between 1st May 2019 and 15th April 2020 as its site manager for a project called GMC/KUSP/025/2018-2019 at an agreed remuneration of Ksh. 5,000.00 per day. It is his contention that this role required him to undertake overall technical supervision of the project.
3. The Claimant avers that during the currency of the project, the Respondent paid him part of the agreed remuneration and promised to pay the difference later. However, he contends that this promise was not kept.
4. The Claimant avers that he carried out the aforesaid project to its completion and handed it over on 15th April 2020. He contends that despite this, the Respondent did not finalize payment of the outstanding remuneration.



5. The Claimant avers that for the entire contract period, the Respondent was to pay him Ksh. 2,095,000.00. However, it allegedly only paid him Ksh. 452,000.00 leaving Ksh. 1,642,500.00 unpaid. He thus claims this amount together with interest and costs of the case.

Respondent's Case

6. In response, the Respondent denies that there was an employment relationship between them. It asserts that the two had a one off engagement under which it contracted the services of the Claimant as an independent contractor to oversee completion of a specific project. It further contends that once the project came to completion, the independent contractor labour relation between them came to a close.
7. The Respondent contends that the Claimant was paid the agreed contract fees for the work that he undertook. As such, it contends that the instant suit is an attempt to defraud it.
8. The Respondent posits that some of the documents which the Claimant has presented to court in support of the claim are not genuine. It contends that it has evidence of having paid the Claimant the agreed contract sum.

Issues for Determination

9. From the pleadings filed by the parties, the following emerge as the issues for determination:-
 - a. What was the nature of the labour relation between the parties?
 - b. Was the Claimant fully remunerated for the services that he rendered to the Respondent?
 - c. Is the Claimant entitled to the reliefs that he seeks through this action?

Analysis

10. Since the nature of the labour relationship between the parties is contested, the court must discern whether the two had an employment relation before it can delve into any other issue. This is necessary because it is the presence of an employment relationship between the parties that will donate jurisdiction to the court to adjudicate the dispute.
11. The Claimant avers that the Respondent employed him duration the tenure of its Tala drainage project at a daily remuneration of Ksh. 5,000.00. On the other hand, the Respondent denies that the parties had an employment relationship. It avers that it only engaged the Claimant as an independent contractor for the project.
12. To support his claim of employment, the Claimant tendered in evidence an alleged contract dated 2nd April 2019. The document is titled "Employment Agreement between Benard Obwogi Moranga ID 27459129 and Suluk Investment Limited".
13. The instrument says that the employment relation between the parties was to take effect from 1st May 2019 and was in respect of a proposed project to construct a drainage facility in Tala Town, Machakos County. The document further states that the Claimant was engaged as a site engineer or manager for the aforesaid project. He was required to deliver the project as per the required standards and to the satisfaction of the client.
14. The instrument says that the Claimant was to serve as the overall technical supervisor of the project on behalf of the Respondent. As such, he was expected to offer advice on the project and to ensure that the works met the client's expectations.



15. The instrument further states that the Respondent was to remunerate the Claimant at Ksh. 5,000.00 per day. It states that this amount was to represent the Claimant's daily gross salary and was to be paid monthly cumulatively.
16. The document is signed by four individuals: Abdinasir Maalim Yusuf, Ali Mohammed; Abdi Allao; and Benard Obwogi. It also bears a stamp supposedly of the Respondent which was affixed on 3rd April 2019.
17. The validity of the document was contested by the defense. At paragraph 4 of the Statement of Defense, the Respondent disowned the purported contract and averred that it was neither aware of nor privy to it.
18. At paragraph 10 of the witness statement accompanying the Statement of Defense, the Respondent's witness describes the documents filed by the Claimant as forgeries. He contends further that the Respondent had reported the alleged forgery to the police for investigations.
19. During trial, the parties maintained their respective positions in relation to the impugned document. Whilst the Claimant maintained that the purported contract was genuine and that the Respondent's officials had signed it in his presence, the Respondent posited that the instrument was a forgery and that its officers did not sign it.
20. To support its contention that the document that was tendered in evidence by the Claimant was not genuine, the Respondent called two witnesses. The first witness, Abdinasir Maalim Yusuf confirmed that he is a director of the Respondent. However, he denied that he had signed the impugned agreement and contended that the signature on the instrument purporting to be his was forged.
21. The second witness, a forensic document examiner, stated that he was asked by the defense to examine the signatures on the impugned document purporting to be by three officials of the Respondent to ascertain whether they were authentic. He stated that after analyzing the signatures against the known signatures of the three individuals, he came to the conclusion that the signatures on the instrument were not by the three individuals.
22. No other expert opinion was presented to court to controvert the findings by the second defense witness. As such, the court has the evidence of RW2 as the only expert evidence on the disputed signatures. That being the case, the court accepts this evidence with the consequence that the authenticity of the contract of employment which was produced in evidence by the Claimant is found to be questionable.
23. As a result, the court cannot rely on the impugned document to determine whether the parties had an employment relationship. Instead, it will have to rely on alternate evidence to interrogate the issue.
24. Whether a labour relation amounts to an employment or independent contractor relation is both a matter of law and fact. Over time, the law has developed a series of tests which assist courts to distinguish between the two relations. These include: the control test; the degree of integration test; the mixed test; the mutuality of obligations test; and the economic reality test.
25. The control test is the foremost of the several tests. It seeks to determine the amount of control the consumer of the labour product exerts on the provider of the product. The more control the consumer of the labour product exerts, the more likely that the parties are in an employment relation and vice versa. The degree of control is measured by looking at how the consumer of the labour product determines how the work is to be done, whether he determines where and when the work will be done and whether he provides tools and personnel for execution of the works.



26. In the instant case, the Respondent contends that the Claimant was hired to manage a site where he was to be in full charge. The Respondent further contends that the Claimant was to hire and pay his own staff and indeed did so.
27. On the other hand, the Claimant confirms that he was allowed to hire staff for the project. He further confirms that he was the one who used to remunerate the workers he had hired.
28. In effect, the parties are in agreement that the Claimant used to hire and pay staff for the project. This essentially means that the Claimant was in charge of procuring personnel for execution of the works relating to the project at his own cost. This reality renders the relation between the parties one of independent contractor and not employment. As such and based on this evidence, I arrive at the conclusion that the Claimant was engaged by the Respondent as an independent contractor and not as an employee.
29. It has been previously held that the Employment and Labour Relations Court has no jurisdiction to adjudicate on disputes involving independent contractors. As such, it (the court) cannot grant reliefs sought in respect of such contracts (Chrismer Express Limited & another v Killmall International Limited (Cause 385A of 2017) [2023] KEELRC 227 (KLR) (27 January 2023) (Judgment)).

Determination

30. Having regard to the foregoing, I arrive at the conclusion that the parties to the dispute had an independent contractor and not employment relationship. As such, this court is not seized of the requisite jurisdiction to adjudicate on the dispute.
31. The above being the case, the court is not entitled to determine the rest of the issues that had been framed earlier in the judgment. It has no option but to down its tools in respect of the claim.
32. The court makes no order as to costs.

DATED, SIGNED AND DELIVERED ON THE 30TH DAY OF APRIL, 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

