



**Akrim v Mobile Consultations Africa Limited (Employment and Labour Relations Cause E055 of 2022) [2025] KEELRC 1276 (KLR) (6 May 2025) (Judgment)**

Neutral citation: [2025] KEELRC 1276 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
EMPLOYMENT AND LABOUR RELATIONS CAUSE E055 OF 2022**

**HS WASILWA, J**

**MAY 6, 2025**

**BETWEEN**

**HANANE AKRIM ..... CLAIMANT**

**AND**

**MOBILE CONSULTATIONS AFRICA LIMITED ..... RESPONDENT**

**JUDGMENT**

1. The Claimant instituted this claim vide an Amended Memorandum of Claim dated 19<sup>th</sup> February 2022 on grounds that she was unfairly and unlawfully dismissed by the Respondent. She prays for judgment against the Respondent for: -
  - a. A declaration that the Claimant's dismissal from the Respondent's service was unfair and unlawful and totally failed to follow due process.
  - b. An Order that the Respondent pays the Claimant her terminal dues and compensatory damages totalling Kshs.6, 672,541.66, tabulated under paragraph 20 of the Amended Memorandum of Claim
  - c. An Order restraining the Respondent, its agents, servants and or employees from in any other manner interfering with the Claimant's co-founder title and or status in the Respondent.
  - d. An order restraining the Respondent, its agents, servants and or employees from interfering with the Claimant's work permit and or immigration status.
  - e. A mandatory directive to the Respondent to provide recommendation letters and any other documents for any administrative needs by the Claimant in relation to her work permit.
  - f. Cost of this suit and interest thereon at court rates.
  - g. Such other or further relief as this Honourable court may deem just to grant.



### **Claimant's Case**

2. The Claimant states that he was engaged by the Respondent on November 2019 as a consultant in its new business, Tibu Health, offering medical services via a digital platform.
3. She states that subsequently, it became evident that she was invaluable to the business and was invited to become a co-founder then on or about July 2020, she transitioned into a permanent employment as Chief Medical Officer with all benefits and statutory deductions expected of an employee. As of January 2022, she has been receiving a monthly basic salary of Kshs.425, 000 and the Respondent has been paying all statutory deductions on her behalf.
4. The Claimant avers that she worked for long hours at the Respondent company including introducing processes and systems, coming up with relevant ideas to help the business grow and throughout demonstrated efficient management skills all geared towards its development. She built Standard Operating Procedures (SOPs), managed operations and service delivery and customer support and marketing.
5. The Claimant avers that on 30<sup>th</sup> December 2021, the Respondent's Chief Executive Officer (CEO), Jason Louis Carmichael asked her to attend a meeting whose agenda was to discuss the medical department. However, when the Claimant joined him for the meeting, he informed her that her employment was terminated. When she asked reasons, he rudely informed her that he does not owe her any reasons.
6. The Claimant avers that subsequently, the CEO wrote her lengthy email confirming the termination and giving unsubstantiated reasons not backed up by any evidence. Further the reasons were issued after termination and she was not given a chance to respond.
7. It is the Claimant's case that the Respondent's actions were discriminatory, unlawful, unfair and amounts to inhumane treatment.

### **Respondent's Case**

8. In opposition, the Respondent filed a response to the Memorandum of Claim dated 21<sup>st</sup> February 2022.
9. The Respondent avers that it was founded by Jason Carmichael and the Claimant only joined later when it was already up and running. The Claimant was only engaged under a contract of service in which she agreed to render services to the Respondent pursuant to
10. The Respondent avers that the Claimant was engaged under a contract of service as evidenced by two contracts titled 'Consulting Agreement' dated 9<sup>th</sup> December 2019 and 1<sup>st</sup> January 2020; under which it was agreed that the Claimant has exclusive manner and means of performing services including choice of place and time. Further, the Claimant would at her own expense, provide a place of work and equipment necessary to complete the services.
11. It is the Respondent's case that clause 2 of the Consulting Agreement stated that the Claimant would be paid fees in each project assignment and be reimbursed only for expense expressly provided in a project assignment or approved in advanced in writing by the client.
12. Further, clause 7 expressly states that the relationship between the Claimant and the Respondent is of an independent contractor. Therefore, the Claimant knew all along that she knew and understood she was an independent contractor, and on several occasions, she sought to be made an employee, however, this was never actualised.



13. The Respondent avers that the Consulting Agreement dated 1<sup>st</sup> January 2020 provides under clause 11.1 that the agreement was for one month and would automatically renew on its anniversary date for one month unless the Respondent gave a 30-day prior notice that it shall not renew. Clause 11.2 and 11.3 further provides for procedure of termination by either party which entails 30 days prior notice if the termination was without cause or immediate termination in case of material breach.
14. The Respondent avers that the Consulting Agreement was in effect until 30<sup>th</sup> December 2021 when it terminated the contract due to material breach by the Claimant.
15. It is the Respondent's case that in her role as an independent contractor, the Claimant was abrasive, hostile and abusive to its employees, suppliers and senior management. This conduct caused the Respondent's employees to resign occasioning loss of skilled labour and money in addition to exposing the Respondent to bad publicity.
16. The Respondent avers that there existed valid grounds for termination of the Claimant's engagement which include: - neglecting to perform and/or performing her work carelessly and improperly hence unable to meet expected targets; using abusing or insulting language to the Respondent's CEO, suppliers and employees; and refusing to obey lawful and proper commands issued by the CEO.
17. It is the Respondent's case that its CEO issued warning emails and held meetings reprimanding the Claimant over her behaviour and was terminated for failing to cure the instances of breach despite being afforded several opportunities to do so.

#### **Evidence in Court**

18. The Claimant (CW1) adopted her witness statement and bundle of documents dated produced his list of documents dated 31<sup>st</sup> January 2022 and further witness statement dated 29<sup>th</sup> July 2022 and bundle of documents dated 1<sup>st</sup> September 2022 as her evidence in chief.
19. During cross examination, CW1 testified that she was a co-founder of the Respondent company; at some point she was a director and had shares in the company. She has documents to prove the same.
20. CW1 testified that the money she invested in the company was her services as she was not paid any salary. Further, she signed an independent contractor contract and started paying her statutory payments in November 2019 so she transitioned to an employee, however, the contract was terminated on 21<sup>st</sup> November 2019.
21. CW1 testified that she is from Morocco and at that time she had an investor permit.
22. CW1 testified that the documents from NSSF, NHIF and KRA submitted before this Court have not be certified by the respective issuing bodies and they are not full statements.
23. CW1 testified that she had a great relationship with the team and she did not cause any of the employees to resign; further, no evidence was produced to ascertain the same.
24. The Respondent's witness (RW1) Jason Carmichael adopted his witness statement dated 9<sup>th</sup> June 2022 as his evidence in chief and list of documents dated 13<sup>th</sup> February 2024 as his exhibits.
25. During cross examination, RW1 disowned the payslip produced by the Claimant in Court and testified that he authored the email dated 1<sup>st</sup> January 2022 sent by the Claimant.
26. RW1 testified that the salary entitlement of the contract referred in the email did not refer to the Consulting agreement as a termination entitlement or severance pay but it was at the company's discretion.



27. It is RW1's testimony that the Claimant was terminated during a meeting and followed by an email. The Respondent has produced documents to prove the allegations against the Claimant.

### **Claimant's Submissions**

28. The Claimant submitted on three issues:- Whether there existed an employer-employee relationship between the parties; whether the termination of the Claimant's employment was procedurally fair; and whether the Claimant is entitled to the reliefs sought.
29. The Claimant submitted that her consultancy transitioned into a permanent employment as Chief Medical Officer with all benefits and statutory deductions expected of an employee. To support her claim, she produced a copy of her January 2022 payslip, NHIF statement and NSSF statements which was denounced by the Respondent.
30. However, it is the Claimant's submission that RW1 testified that he authored the termination email dated 1<sup>st</sup> January 2022 that alluded to payments associated to employees as follows:-

“2. Salary entitlements

Fifteen (15) days of remuneration are provided for every year engaged. A total of 425,000 KES will be transferred to your account on file alongside January's remuneration. The breakdown is as follows:

15 days x (multiplied) by two (2) years worked= 425,000 KES GROSS

January remuneration+ 425,000 KES GROSS

Total to be paid upon termination = 850,000 KES GROSS”

31. The Claimant submitted that she was an employee of the Respondent and relied on *Maurice Oduor Okech vs Chequered Flag Limited (2013) eKLR*, where the Court found that “in determining the existence of an employment relationship, the Court is expected to go beyond mere terminologies employed by the parties either in their pleadings or in their testimony. The Court is called upon to inquire into the entire spectrum of facts and circumstances to establish whether an employer/employee relationship as defined in the *Employment Act, 2007*.”
32. On the second issue, it was submitted for the Claimant that pursuant to Section 41 of the *Employment Act*, the Respondent was under a duty to issue a notice to the Claimant and accord her a fair hearing prior to terminating her employment. It is not disputed that the Respondent did not give the Claimant the notice and also failed to accord her a fair hearing: this was unlawful, unfair and contrary to the provisions of *the Constitution*, the *Employment Act* and the principles of natural justice.

### **Respondent's Submissions**

33. The Respondent submitted on two issues: - whether the Claimant was proved that she transitioned from an independent contract to an employee; and whether the Claimant is entitled to the orders sought.
34. The Respondent submitted that it engaged the Claimant as an independent contractor and she never transitioned into a permanent employee. It produced the independent contractor's agreements between the parties, however, the Claimant did not produce any contract of employment between her and the Respondent.



35. The Respondent submitted that the Claimant alleged that she transitioned from a consultant to an employee in July 2020 and since then she received a monthly salary and the Respondent paid all statutory deductions on her behalf. However, she produced in Court NHIF and NSSF statement show that the earliest payment was in November, 2021; and PAYE statement showing the first payment was made on 06/08/2021. It is the Respondent's submission that the Claimant's pleadings and witness statement are at variance with the documentary evidence produced, therefore, she has not proved that she transitioned from an independent contractor to an employee in July 2020 as pleaded in her claim.
36. The Respondent further submitted that it could not engage the Claimant who, by her own admission, held a class G permit and therefore did not have the capacity to enter into a contract of service. The Claimant testified that she is a Moroccan national and held an investor (Class G) work permit which according to the Seventh Schedule of the Kenya Citizenship and Immigration Regulations only authorizes the holder to engage, whether alone or in partnership, in a specific trade, business, consultancy or profession (other than a prescribed profession) in Kenya.
37. On the second issue, the Respondent submitted that Section 12 of the *Employment and Labour Relations Court Act* restricts this Court's jurisdiction to occurrences arising out of an employment relationship: this Court lacks jurisdiction to hear and determine this claim and the claimant cannot be granted the orders sought.
38. I have examined all the evidence and submissions of the parties herein. It is true that the claimant was initially employed by the respondent in November 2019 as a consultant in the respondent's new business Tibu Health.
39. The claimant avers that later she was invited to become a co- founder of Tibu Health vide an email of 1/1/2022. The email in question does not in any way show the alleged partnership of the claimant with the respondent. In fact, the email comes after the termination of the claimant. It is however true that the issue had been discussed as per app HA2 but which was never executed and which this court in its ruling of 17<sup>th</sup> February 2023 determined as not being triable before this court for lack of jurisdiction.
40. The claimant however avers that she was later employed by the respondent as a Chief Medical Officer. She avers that in November 2019, she signed an independent contract but in 2020 she transitioned to an employee when the respondents started paying her statutory requirements as per the payslip produced herein as EX1. (January 2022 payslip). When cross examined about this document, the claimant agreed that the said document has no NHIF and NSSF number. She however insisted that it was a genuine document. She also indicated that NSSF was paid from 1/11/21 to 1<sup>st</sup> January 2022. She indicated the NSSF statement is dated 11/8/2021 and the one of NHIF was made on 11/11/21. The dates as indicated seem contradictory in that the claimant has averred that she started paying NHIF and NSSF in November 2021 but the statements are dated 11/8/21 before she even joined NSSF as adduced in her evidence on 1/11/21. In cross examination she denied ending the employment contract herself. She said it was a common decision.
41. The respondents admitted that they terminated the engagement with the claimant as per the termination clause. The parties however failed to produce before court the consultancy agreement they also agreed they had. The respondent in his email of 1/1/2022 however indicated that they were willing to pay the claimant her terminal dues as indicated in the mail.
42. In view of the parties agreeing that the claimant was an independent contractor, the period within which the claimant transited to an employee if at all is not known. The claimant seems to base this on the fact that the respondent paid her NSSF and NHIF statutory deductions. I have looked at the NSSF statement which shows that the claimant was an employee from 21/11/2019 on voluntary



basis contribution during the period indicated that she was an independent consultant and even upon termination of the agreement between her and the respondent in January 2022. There is no evidence of contribution made by the respondent on her behalf. The NHIF statement shows it was an individual's statement and does not indicate the name of any employer. The two documents cannot therefore be relied upon to determine that there existed an employment contract between the claimant and respondent save what is admitted by both that there was an independent consultancy between the claimant and respondent.

43. This court therefore determines that there is no evidence that the claimant was an employee of the respondent. The issue of wrongful termination does not therefore exist. In absence of consultancy agreement, this court is therefore not in a position to determine whether the termination of the same was properly done or not.
44. In the circumstances, I find the claim is not proved and stands dismissed. There will be no order of costs.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 6<sup>TH</sup> OF MAY, 2025.**

**HELLEN WASILWA**

**JUDGE**

