



**King v Meditest Diagnostic Services Limited (Cause E1070 of 2023)
[2025] KEELRC 2305 (KLR) (31 July 2025) (Judgment)**

Neutral citation: [2025] KEELRC 2305 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E1070 OF 2023**

**SC RUTTO, J
JULY 31, 2025**

BETWEEN

MARROSI KING CLAIMANT

AND

MEDITEST DIAGNOSTIC SERVICES LIMITED RESPONDENT

JUDGMENT

1. Through a Memorandum of Claim dated 19th December 2023, the Claimant avers that he was employed by the Respondent to serve as a Director. According to the Claimant, his employment was by Sunil Kumar, the CEO and owner of the Respondent herein. The Claimant further avers that he was to serve as an additional Director of the Respondent at a monthly salary of Kshs 1,000,000/- and a sitting allowance of Kshs 50,000/- per sitting.
2. The Claimant further avers that he was issued with an appointment letter on 1st June 2021, by the Executive Personal Assistant, Ms. Wacera Okoth, as directed by the Respondent's Director and owner, Sunil Kumar, as he had travelled to India at the time.
3. It is the Claimant's case that he served the Respondent meticulously and without fail, in the aforementioned capacity and at no point was his delivery or commitment put in question during his entire period of service.
4. The Claimant further avers that he had nominated his company to receive his monthly salary and allowances and he raised an invoice of Kshs 1,000,000/- as per the employment agreement and the same was paid. That upon raising subsequent invoices, he was not paid and subsequently, the Respondent terminated his services sometime in June 2022.
5. According to the Claimant, his termination from employment was wrongful and unfair and consequently, he seeks the sum of Kshs. 41,000,000/- being notice pay, 17 months' unpaid salary, 18 months' unpaid sitting allowance and maximum compensation for unfair termination. The Claimant



has further sought a declaratory relief that his termination from employment was illegal and unlawful as well as damages for breach of contract and costs of the suit plus interest.

6. The Respondent did not take the Claim lying down. Putting the Claimant to strict proof, the Respondent contends that the Claimant never worked for it.
7. The Respondent has further contended that it is fraudulent and ridiculous for the Claimant to conspire to defraud it while misleading the Court, as it has never appointed any co-Director. According to the Respondent, it made a report to the Directorate of Criminal Investigations (DCI) on fraudulent activities involving the Claimant herein and one Anne Wacera and the investigations are ongoing.
8. It is the Respondent's further contention that the Claimant conspired to defraud it by making an unauthorized and unsanctioned sham appointment with Anne Wacera, who was its employee.
9. The Respondent has further denied paying salary to the Claimant during the alleged employment period.
10. It is on the basis of the foregoing that the Respondent has asked the Court to dismiss the Claimant's claim with costs.
11. In answer to the Response, the Claimant filed a Reply dated 5th July 2024 in which he refutes the allegations contained in the Respondent's Response and reiterates the contents of the Statement of Claim. The Claimant maintains that he was employed by the Respondent's sole Director, Sunil Kumar.
12. During the hearing on 30th April 2025, both parties called oral evidence.

Claimant's Case

13. The Claimant testified in support of his case as CW1 and called an additional witness, Anne Wacera, who testified as CW2. The Claimant, who was the first to go, started by adopting his witness statement, the list and bundle of documents filed alongside the Memorandum of Claim, his further list and bundle of documents and the supplementary list and bundle of documents filed on his behalf to constitute his evidence in chief.
14. It was the Claimant's evidence that he was employed in December 2020 by the Respondent through its CEO and owner, Sunil Kumar, as an additional Director to offer support services to the Board and the Company, and a Resolution was passed to that effect.
15. That although the Respondent utilised his services from December 2020, he was formally handed a letter of appointment on 1st June 2021 through the Executive Personal Assistant, Ms. Anne Wacera as Mr. Kumar had travelled out of the country at the time.
16. The Claimant further averred that at the time, the Respondent was facing several challenges and he was to formally engage various stakeholders to protect the Respondent's interests.
17. The Claimant further averred that in early 2022, the Respondent requested him to invoice for his services for the months he had not been paid from 1st June 2021 and he nominated his Company and raised invoices through Attain Enterprises Limited to receive his payments. According to the Claimant, he was paid only for one (1) month and the Respondent promised to pay the rest in due course.
18. It was the Claimant's testimony that sometime on 1st June 2022, he tried to engage the Respondent to pay him for the other months, but he declined to pick up his calls or engage him over the matter.



19. Thereafter, the Respondent informed him orally that he had been terminated. It was the Claimant's case that the Respondent never explained the reason for terminating his services.
20. That at the time when the Respondent terminated his employment, he was earning a net monthly salary of Kshs 1,000,000/- and Kshs. 50,000/- sitting allowance per sitting. He added that they used to have at least ten (10) sittings each month to monitor the progress of the company.
21. The Claimant further stated that he has made several demands to the Respondent to pay the accumulated amounts in his claim, but they have refused and/or ignored to pay the amount.
22. Ms. Anne Wacera who testified as CW2, identified herself as a former employee of the Respondent company. Equally, she adopted her witness statement to constitute her evidence in chief.
23. It was Ms. Wacera's evidence that she was employed by the Respondent, on 18th August 2021, as an Executive Assistant to the Chief Executive Officer, Sunil Kumar. At the time of joining the Company, she was not issued with a Letter of Offer or a Contract.
24. Ms. Wacera averred that she worked for the Respondent until 21st March 2022, when the Respondent terminated her services unfairly.
25. According to Ms. Wacera, she reported to work on 21st March 2022, and as she went on her daily duties, she was summoned by the Respondent and issued with a termination letter and effectively, her employment was terminated. When Sunil Kumar asked her to leave, she told him that she could not leave without a Contract and to her surprise, he printed the contract hurriedly and backdated it to 18th August 2021, but she signed it on 21st March 2022.
26. Ms. Wacera further stated that she sued the Respondent in NRB ELRCC/E410/2022; Anne Wacera Okoth vs Meditest Diagnostic Services Limited for unlawful termination, and her claim was allowed.
27. Ms. Wacera further testified that as explained verbally by Sunil Kumar, her duties included but not limited to representing the Director during the Ministry of Health & KMLTTB meetings and Audit in December, January and February 2022; representing the Director in all matters pertaining to the company in his absence; overall management, set up and operations of Meditest Hospital, including its satellite clinics in Mombasa, PMC in Parklands, JKIA Covid collection Centre Mediforte Hospital in Kisii which is a branch of Meditest Hospital; and staff recruitment and dismissal.
28. According to Ms. Wacera, she used to communicate and take instructions from Sunil Kumar via phone whenever he was in the country and/or abroad. That while he was in India, she received a WhatsApp call with instructions from Sunil on the early morning of 23rd December 2021 that the Claimant, his colleague in the Meditest Board, was coming to the office and she should accord him all the help he required.
29. It was Ms. Wacera's testimony that she simply forwarded and or complied with his instructions, as she used to sign for him documents as instructed.
30. She is not aware of any fraudulent activities that she aided within the company, as she has never been summoned by the DCI over signing any fraudulent documents.
31. According to Ms. Wacera, on 21st March 2022, Suni Kumar arrived from India and called her to his office and told her that he could not work with her anymore because she had failed to agree with the information he had given to the DCI. He proceeded to terminate her services.
32. Ms. Wacera added that she has never been issued with any verbal warnings or any written notices on her performance and only received compliments from Sunil Kumar during her employment.



Respondent's Case

33. The Respondent called oral evidence through Sunil Kumar, who testified as RW1. Mr. Kumar identified himself as the Respondent's Director. Equally, he adopted his witness statement, the initial list and bundle of documents, as well as the further list and bundle of documents filed on behalf of the Respondent, to constitute his evidence in chief.
34. It was Mr. Kumar's evidence that the Claimant conspired to defraud it by making an unauthorized and unsanctioned sham appointment with Anne Wacera (CW2), who was its employee.
35. According to Mr. Kumar, it is ludicrous for the Claimant to allege that he was appointed a Director without producing the requisite CR12 and/or the evidence of lodging the appointment with the Registrar of Companies.
36. Mr. Kumar added that the exercise of appointment of a Director is not a light one and the Respondent has to spend more time and resources making this decision. In his view, it was ridiculous that the alleged Board Resolution was signed for the Director when he was allegedly present at the said meeting.
37. Mr. Kumar contends that in any event, he did not authorise Anne Wacera to appoint and/or sign resolutions and/or appointment letter on his behalf.
38. He further stated that the Respondent has never paid any salary to the Claimant for the alleged "employment period" and that the Claimant is fraudulently misleading the Court as he has not provided any letter received by the Respondent showing the appointment of any company to receive his salary on his behalf.
39. According to Mr. Kumar, the invoice produced herein is a sham and a calculated move to hoodwink this court in granting orders sought by the Claimant. It was his assertion that an assignment of salary is not a light exercise, as the Claimant portrays in the statement of Claim, as it is guided by the [*Employment Act*](#).
40. Mr. Kumar further denied that the Respondent was issued with a demand and notice of intention to sue as alleged by the Claimant.

Submissions

41. It was submitted on behalf of the Claimant that from the evidence before Court, the employee-employer relationship between him and the Respondent started in December 2020 and continued until CW2 issued him with an appointment letter and the Resolution reaffirming the employment relationship. In support of the Claimant's position, the case of *Michael Otieno Ouma v Bonito Hotles Ltd t/a Tourist Hotel Bungoma (2022) eKLR* was cited.
42. Further placing reliance on the case of *Mandela v Workinsights Limited [2023] KEELRC 2023 (KLR)*, the Claimant posited that there was a contract of service and that he was an employee of the Respondent.
43. It was further submitted by the Claimant that the Respondent did not follow any procedure in terminating his employment and the substantive reason for the termination has not been provided.
44. The Respondent, on the other hand, submitted that the evidence of the Claimant and his star witness, CW2, is full of inconsistencies and contradictions for this court to be convinced that indeed, the Claimant was an employee of the Respondent.



45. It was further submitted that the Claimant has not proved his case as against the Respondent, nor established an employer-employee relationship with the Respondent. To buttress this argument, reliance was placed on the case of Wachira v Mbote & Another (Cause 821 of 2018(20220 KEELRC 12992(KLR)).

Analysis and Determination

46. Having considered the issues arising from the pleadings by the parties herein, the evidence on record as well as the rival submissions, it is evident that this Court is being called to resolve the following questions: -

- a. Whether the Claimant was employed by the Respondent;
- b. Depending on (a), whether the Claimant was unfairly and unlawfully terminated from employment.
- c. Is the Claimant entitled to the reliefs sought?

Employment relationship?

47. The crux of the Claimant's case is that he was employed by the Respondent with effect from December 2020 until the time he was unfairly terminated from employment.

48. On its part, the Respondent has denied from the outset that the Claimant was its employee. Indeed, the Respondent has consistently maintained that it did not have an employment relationship with the Claimant.

49. In support of his case, the Claimant exhibited a copy of an appointment letter signed on 25th December 2021, ostensibly appointing him as an additional Director of Meditest Hospital Limited. In addition, the Claimant exhibited a copy of a Shareholders' Resolution of the Respondent company indicating that he had been appointed as an additional Director of the Respondent company.

50. The Respondent has denied the Claimant's assertion that he was appointed as an additional Director to the company. In this regard, the Respondent has contended that the Claimant, together with CW2, who was its former employee, conspired to defraud it by making an unauthorized and unsanctioned appointment.

51. The authenticity of the Claimant's appointment as an additional Director of the Respondent aside, it is notable that the said appointment was ostensibly made under the Companies Act and pursuant to the Respondent's Articles of Association.

52. Indeed, it is evident that the said appointment has not been made pursuant to the Employment Act and conspicuously missing are clauses ordinarily contained in an employment contract, for instance, remuneration, place of work, hours of work, leave, disciplinary and performance management.

53. Coupled with the foregoing, the Claimant stated in his testimony that he had nominated his company to receive his monthly salary and that he raised invoices as appropriate.

54. To this end, the Claimant exhibited copies of invoices issued by a company by the name Attain Enterprises Ltd to the Respondent with respect to services rendered. Further exhibited was a copy of a Funds Transfer Form confirming payment of Kshs 1,160,000/- for services rendered. As can be discerned from the copy of CR12 exhibited by the Claimant, he is named as one of the Directors/ Shareholders of Attain Enterprises Ltd.



55. What manifests from the foregoing is that the manner in which the Claimant alleges his salary was paid by the Respondent is not contemplated under the *Employment Act* and is not ordinary in an employment context. Why do I say so? In an employment context, it is not standard practice for an employee to invoice their employer for their regular salary or wages. Ordinarily, an employer pays an employee's wages through a payroll system with statutory deductions.
56. In circumstances where an "employee" has to raise an invoice in order to be paid, all indications point to an arrangement where such a person is engaged on a contract for service as opposed to a contract of service.
57. In addition to the foregoing, the Claimant testified during cross-examination that he raised the invoices for purposes of VAT (Value Added Tax). Again, this points to an arrangement under a contract for service as opposed to a contract of service, where income tax in the form of PAYE (Pay As You Earn) is deducted directly from an employee's salary by the employer and remitted to the Kenya Revenue Authority (KRA).
58. I must also add that, besides the appointment letter ostensibly appointing the Claimant as an additional Director to the Respondent company, the Claimant did not adduce any evidence to confirm that indeed, he was an employee of the Respondent.
59. It is trite law that he who alleges the existence of a fact must prove. This is discernible from Sections 107 and 108 of the *Evidence Act*. Therefore, the party who alleges must prove. The said burden remains with the alleging party until it is shifted by sufficient evidence that supports the existence of the alleged fact or set of facts.
60. In this case, the Claimant, having alleged that he was an employee of the Respondent, was required to prove this fact. This was very fundamental to his case, bearing in mind that the Respondent disowned him from the word go.
61. In stating as above, I am cognizant of the obligations laid on an employer under Sections 10 (6) and (7) and 74 of the *Employment Act* with regards to the maintenance of certain records and the burden of proof. Be that as it may, it should be appreciated that this obligation only arises where there is no dispute with respect to an employment relationship or where an employment relationship has already been established. On this score, I concur with the finding of the Court in the case of *Casmir Nyankuru Nyaberi v Mwakikar Agencies Limited* [2016] eKLR, where it was held as follows: -
- “This Court is fully aware that it is the responsibility of an employer to document the employment relationship and in certain respects, the burden of proving or disproving a term of employment shifts to the employer. This does not however release the Claimant from the burden of proving their case. Even where an employment contract is oral in nature, the Claimant must still adduce some evidence whether documentary or viva voce to corroborate their word. More importantly, where an employee believes that the employer has in its possession some documents that would support the case of the employee, that employee is obligated to serve a production notice.”
62. In sum, I am not persuaded that the Claimant has established to the requisite threshold the existence of an employment relationship with the Respondent. This is bearing in mind that the existence of an employment relationship was fundamental in laying a foundation for a case of unfair termination.
63. Having found as such, the other issues identified for determination fall by the wayside and cannot be logically determined.



64. In the final analysis, the Court finds that the Claim herein has no merit and is hereby dismissed with an order that each party shall bear its own costs.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 31ST DAY OF JULY 2025.

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STELLA RUTTO

JUDGE

In the presence of

For the Claimant Mr. Nyangena

For the Respondent No appearance

Court Assistant Millicent

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 had 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 *Civil 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.

STELLA RUTTO

JUDGE

