



**Itambo v Nala Inc & another (Cause E910 of 2023)  
[2024] KEELRC 1529 (KLR) (14 June 2024) (Ruling)**

Neutral citation: [2024] KEELRC 1529 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E910 OF 2023**

**J RIKA, J  
JUNE 14, 2024**

**BETWEEN**

**CYNTHIA ITAMBO ..... CLAIMANT**

**AND**

**NALA INC ..... 1<sup>ST</sup> RESPONDENT**

**NALA MONEY REMITTANCE LIMITED ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. The Claimant states at paragraph 4 of her Statement of Claim, that at all material times, she was in a contractual Consulting Agreement with the Respondents.
2. Among her documents is a Consulting Agreement, executed between her and the 1<sup>st</sup> Respondent. The 2<sup>nd</sup> Respondent is a subsidiary of the 1<sup>st</sup>.
3. She goes on to plead that she was an Employee of the Respondents, and that she resigned from the Respondents, due to a hostile work environment.
4. She prays for compensation for unfair termination, among other prayers, under the [Employment Act](#).
5. The Respondents filed a Notice of Preliminary Objection dated 28<sup>th</sup> November 2023, on jurisdiction of the Court. It is the position of the Respondents that the Parties were in consultancy, rather than employment. The dispute falls outside the jurisdiction of the Court.
6. Parties consented to have the Preliminary Objection considered and determined on the strength of Written Submissions. These were confirmed to have been filed and exchanged at the last appearance before the Court, on 3<sup>rd</sup> April 2024.



**The Court Finds: -**

7. The Agreement executed between the Parties is titled ‘Consultancy Agreement.’
8. Other than the title, the contents of the Agreement would suggest that the Parties were in consultancy, as opposed to employment.
9. There is a clause on fee payable to the Claimant, rather than salary. The Claimant is described as a Consultant, whose consultancy would end upon completion of her services. She was solely responsible for determining the method, details and means of performing the services. Clause 14 specifically states, that the Consultant’s relationship with the Respondents will be that of an Independent Contractor, not an Employee.
10. There are other documents however, which create doubt, as to whether the Claimant was indeed a Consultant, or an Employee.
11. There are e-mails exchanged between the Claimant and the Respondents’ Harsimran Cheema, which allude to employment, rather than consultancy.
12. The e-mails refer to a specific job vacancy, designated Talent and Culture Manager, based in Nairobi. The job offer refers to payable monthly salary of Kshs 300,000, rather than a consultancy fee. The Claimant was offered other benefits associated with employment, including 35 days of annual leave [referred to as holidays], 5000 share option worth USD 20,000, training allowance of USD 1,000, company laptop, and medical insurance. Harsimran Cheema informed the Claimant that the Respondents would send to the Claimant, an employment contract.
13. In *Kenneth Kimani Mburu & Saidi Emmerich v Kibe Muigai Holdings Limited* [2014] eKLR, it was held that, to determine if the Parties are in a consultancy or employment relationship, the trier of facts must look at, and beyond the written agreements. The Consultancy Agreement executed by the Parties, is not conclusive. In *Mukisa Biscuit Manufacturing Co. Limited v West End Distributors Limited* [1969] EA 696 and *Oraro v Mbaja* [2005] 1 KLR 141, it was explained that a preliminary objection is a pure point of law, which must not be blurred with factual details which are liable to be contested, and in any event, to be proved through the processes of evidence.
14. The nature of the relationship between the Claimant and the Respondents cannot be conclusively dealt with preliminarily. There are documents exhibited by the Parties, which allude to both consultancy and employment. The facts need to be tested through a full trial.

It is ordered:-

- a. The Preliminary Objection is declined.
- b. No order on the costs.

**DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY AT NAIROBI, UNDER PRACTICE DIRECTION [6] [2] OF THE ELECTRONIC CASE MANAGEMENT PRACTICE DIRECTIONS, 2020, THIS 14<sup>TH</sup> DAY OF JUNE 2024.**

**JAMES RIKA  
JUDGE**

