



Munyoki v Collins M. Nthuni t/a Limcom Africonsultants (Cause 1571 of 2015) [2024] KEELRC 2220 (KLR) (19 September 2024) (Judgment)

Neutral citation: [2024] KEELRC 2220 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 1571 OF 2015
L NDOLO, J
SEPTEMBER 19, 2024**

BETWEEN

ALFRED MUNYOKI CLAIMANT

AND

COLLINS M. NTHUNI T/A LIMCOM AFRICONSULTANTS RESPONDENT

JUDGMENT

1. In his Statement of Claim dated September 3, 2015 and filed in court on 8th September 2015, the Claimant claims the sum of Kshs.2,400,000 being payment under a contract of employment between him and the Respondent.
2. The Respondent filed a Defence dated 15th March 2016 but did not attend the trial, in spite of due notification. The Claimant testified on his own behalf and thereafter filed written submissions.

The Claimant's Case

3. The Claimant states that he was engaged by the Respondent sometime in 2014, to work as Operations Manager in a project arising from a tender awarded to the Respondent by a company known as Kenya Towers Limited.
4. The Claimant adds that it was a term of the contract that the Respondent would pay him a one off sum of Kshs. 2,400,000 upon completion of the project.
5. According to the Claimant, he was to be the face of the contract between the Respondent and Kenya Towers Limited. It is further pleaded that the Claimant, who describes himself as an in law of the Respondent, would be available to carry out other tasks for the Respondent and other business entities where the Respondent's family had interests.
6. The Claimant avers that he was issued with a contract of service dated 10th September 2014. He adds that the Respondent received full payment on account of the contract with Kenya Towers Limited



but he failed to honour the agreement with the Claimant and instead asked him to keep away from his businesses.

7. The Claimant therefore claims the sum of Kshs.2,400,000 together with interest and costs of the case.

The Respondent's Case

8. In his Defence dated 15th March 2016, the Respondent denies having engaged the Claimant as Operations Manager, as alleged in the Statement of Claim. The Respondent states that no such position existed in his business.
9. The Respondent accuses the Claimant of illegally obtaining documents from the Respondent's office. He adds that the Claimant has misconstrued the terms of engagement between the Respondent and Kenya Towers Limited.
10. In addition, the Respondent claims that the contract of service provided by the Claimant is a forgery, pointing out that it is not signed by him.
11. The Respondent, who admits that he is married to the Claimant's cousin, avers that the Claimant visited him seeking assistance to secure any job. According to the Respondent, the Claimant was engaged in running errands at the Respondent's wife's business, for which he received regular allowances.

Findings and Determination

12. There are two (2) issues for determination in this case:
 - a. Whether there was an employment relationship between the Claimant and the Respondent;
 - b. Whether the Claimant is entitled to the remedies sought.

Employment Relationship?

13. In support of his case, the Claimant presented an employment contract dated September 14, 2014. According to this contract, the Claimant was employed by the Respondent for a fixed term of six (6) months commencing on September 15, 2014, pursuant to which he was to be paid a total sum of Kshs. 2,400,000.
14. At the pre-trial stage, the Respondent denied having signed the contract produced by the Claimant. By consent of the parties, the signature appearing on the said contract for the Respondent was subjected to examination by a forensic document examiner.
15. On August 4, 2014, the Deputy Registrar of the Court forwarded the contract and the Respondent's specimen signature to the Directorate of Criminal Investigations. Subsequent to this, C.I Alex Mwongera Mathiu submitted a report under reference number CID/ORG/8/3/1/791 with an opinion that the signature on the impugned contract and the specimen signature submitted by the Respondent were from the same hand.
16. In light of this unequivocal opinion and in the absence of any contradictory evidence, the Court has no reason to doubt the authenticity of the employment contract dated September 14, 2014. As per this contract, the Respondent was to pay the Claimant a one off sum of Kshs. 2,400,000 which is what he now claims.
17. The Respondent did not present any evidence to show payment of this sum and I therefore have no hesitation in finding that the said sum is outstanding and due.



Remedies

18. I therefore enter judgment in favour of the Claimant, as against the Respondent in the sum of Kshs. 2,400,000 being unpaid salary as per employment contract dated September 14, 2014.
19. This amount will attract interest at court rates from the date of judgment until payment in full.
20. The claimant will have the costs of the case.
21. Orders accordingly.

DELIVERED VIRTUALLY AT NAIROBI THIS 19TH DAY SEPTEMBER 2024

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JUDGE

Appearance:

Mr. Kimathi for the Claimant

No appearance for the Respondent

