



**Kenya Shipping, Clearing, Freight Logistics and Warehouse Workers
Union v Volt Management Services Limited & another (Cause
E921 of 2023) [2024] KEELRC 13258 (KLR) (28 November 2024) (Ruling)**

Neutral citation: [2024] KEELRC 13258 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E921 OF 2023
BOM MANANI, J
NOVEMBER 28, 2024**

BETWEEN

**KENYA SHIPPING, CLEARING, FREIGHT LOGISTICS AND WAREHOUSE
WORKERS UNION CLAIMANT**

AND

VOLT MANAGEMENT SERVICES LIMITED 1ST RESPONDENT

KEITT FRESH LIMITED 2ND RESPONDENT

RULING

Introduction

1. The Claimant is a trade union registered under the relevant legislation in Kenya. It has instituted the instant proceedings to challenge the decision by the 1st Respondent not to renew the contracts of service for its (the Claimant’s) members namely, Vione Mwangi Nyamboga, Grace Barongo Nyakundi and Christine Ngina Reuben (the Grievants). The Claimant suggests that the two Respondents were joint employers of the Grievants. As such, they are jointly liable for the non-renewal of their contracts.
2. The 2nd Respondent has filed the application dated 8th April 2024 in which, it seeks the following orders:-
 - a. That the claim against it be declared as scandalous, frivolous, vexatious and an abuse of the court process as there was no employment relation between it and the Grievants at the time their contracts were not renewed.
 - b. That the claim by Christine Ngina Reuben against it be declared time barred.
 - c. That the instant suit against it be struck out with costs to it.



3. The basis for the application is that the documents placed on the court file demonstrate that the Grievants were in the employment of the 1st Respondent. The 2nd Respondent contends that the 1st Respondent entered into a labour outsourcing arrangement with it (the 2nd Respondent) pursuant to which the Grievants were engaged to offer labour services at its (the 2nd Respondent's) establishment. As such, the Grievants were employees of the 1st Respondent.
4. The 2nd Respondent admits that Christine Ngina Reuben was initially its direct employee before her contract of service came to an end in 2016. Thereafter, she was employed by the 1st Respondent and outsourced to it (the 2nd Respondent). As such, her claim relating to the year 2016 when she ceased being its direct employee is time barred.
5. The 1st Respondent has sworn an affidavit dated 3rd June 2024 in which it confirms the averments by the 2nd Respondent. The 1st Respondent confirms that it entered into an outsourcing agreement with the 2nd Respondent under which it supplies the 2nd Respondent its labour needs. It further confirms that the three Grievants were its employees seconded to the 2nd Respondent under the aforesaid arrangement. As such, the three were not in the employment of the 2nd Respondent.
6. The Claimant does not deny that the three Grievants had employment contracts with the 1st Respondent. As a matter of fact, it acknowledges in its Statement of Claim that the three were attached to the 2nd Respondent under an outsourcing arrangement between the two Respondents. However, for some reason, the Claimant believes that the 2nd Respondent became the Grievants' principal employer under the arrangement.

Analysis

7. The law on outsourcing of labour services is fairly well settled. Although Kenya is yet to legislate on this form of labour arrangement, courts have pronounced themselves on the matter through various judicial precedent.
8. Black's Law Dictionary defines the term outsourcing as follows:-

“The procuring of products or services from an outside manufacturer or supplier usually on grounds of economizing, especially, the recourse to foreign labour for cost cutting purposes.the use of workers outside the business or organization to do a job.”
9. Therefore, outsourcing of labour arises when two entities enter into an arrangement through which one supplies the other with human capital for purposes of provision of labour. Under this arrangement, the entity which stands in the position of the employer of the outsourced labour force is the one which supplies the labour force and not the one which utilizes the labour. This position was confirmed by the Court of Appeal in the case of Abyssinia Iron & Steel Limited v Kenya Engineering Workers Union [2016] eKLR.
10. In the instant case, there is evidence that the Respondents entered into an agreement for provision of labour and management of labour services dated 5th December 2019. A copy of the agreement has been introduced in evidence through the affidavit in support of the instant application and the replying affidavit dated 3rd June 2024.
11. In the agreement, the 1st Respondent agreed to provide and manage the 2nd Respondent's labour requirements in return for a fee. Specifically, the 1st Respondent was to undertake the following:-
 - a. Provide contracted labour to the 2nd Respondent as per agreed specifications.



- b. Recruit labourers for the 2nd Respondent as and when required.
 - c. Complete payroll management and administration for the contracted labour force.
 - d. Manage statutory payments for the contracted labour force.
 - e. Manage work related injuries.
 - f. Undertake staff appraisals and staff development trainings.
12. The Claimant has provided contracts of service which were subsequently signed between the 1st Respondent and each of the Grievants. In the contracts, the 1st Respondent is described as the employer and the Grievants described as employees.
 13. The contracts specifically provided that the Grievants were to render their services to the 2nd Respondent who was described as the 1st Respondent's client. However, their employment was to remain with the 1st Respondent at all times.
 14. Under the contracts, the 1st Respondent retained disciplinary control over the Grievants. Further, it retained the power to dismiss them from employment. The Claimant has also produced pay slips for two of the Grievants showing that their salary was paid by the 1st Respondent.
 15. Quite clearly, the Grievants were employees of the 1st Respondent in the period immediately preceding their separation with this Respondent. They were not employees of the 2nd Respondent. As such, the Claimant's action against the 2nd Respondent is misplaced.
 16. The record shows that the Christine Ngina Reuben was an employee of the 2nd Respondent as from 1st August 2016. The record further shows that the 2nd Respondent issued this Grievant with notice of termination of the contract between them with effect from 31st December 2016.
 17. The record also shows that this Grievant entered into a new employment contract with the 1st Respondent on 29th December 2016. This contract, which was for a fixed term of three months, took effect on 1st January 2017. The record shows that the 1st Respondent and Christine Ngina Reuben subsequently renewed the contract severally until February 2021 when the 1st Respondent communicated its intention not to renew it (the contract).
 18. In effect, the Christine Ngina Reuben ceased to be an employee of the 2nd Respondent in December 2016. As such, any claim arising from the employment relation between her and the 2nd Respondent ought to have been pursued within three years of closure of their employment relation.
 19. Through paragraph 12 of the Statement of Claim, the Claimant lodged a claim for compensation of Christine Ngina Reuben by the 2nd Respondent based on their contract of service which terminated in December 2016. Clearly, this claim offends the provisions of section 89 (formerly section 90) of the [Employment Act](#) on limitation of actions.

Determination

20. Having regard to the foregoing, I make the following orders:-
 - a. That the Grievants were in the employment of the 1st Respondent when their contracts of service were not renewed in February 2021. As such, their claim (through the Claimant) against the 2nd Respondent is frivolous and an abuse of the court process. Consequently, it is struck out.



- b. The Claimant's claim against the 2nd Respondent on behalf of Christine Ngina Reuben in relation to their contract which terminated in December 2016 is time barred. As such, it is struck out.
- c. The 2nd Respondent is awarded costs of the application and the suit which has been struck out.

DATED, SIGNED AND DELIVERED ON THE 28TH DAY OF NOVEMBER, 2024

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

