



**Wanyoike v Transcentury PLC (Employment and Labour Relations Cause E961 of 2022) [2023] KEELRC 2221 (KLR) (28 September 2023) (Ruling)**

Neutral citation: [2023] KEELRC 2221 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
EMPLOYMENT AND LABOUR RELATIONS CAUSE E961 OF 2022  
BOM MANANI, J  
SEPTEMBER 28, 2023**

**BETWEEN**

**STEPHEN NJUGUNA WANYOIKE ..... CLAIMANT**

**AND**

**TRANSCENTURY PLC ..... RESPONDENT**

**RULING**

**Introduction**

1. Before me are two applications by the two protagonists. The first one is dated January 27, 2023. Through it, the claimant prays for an order to compel the respondent to pay him the amount that is the subject of the main claim. The claimant seeks for this order without the benefit of a full trial.
2. The second application is dated February 13, 2023. Through it, the respondent seeks to have the claimant's suit struck out. The respondent contends that, at the material time, there was no employment relation between the parties. Further, the respondent argues that the claimant's suit ought to have been filed in the Republic of South Africa where the claimant rendered his services and where the cause of action allegedly arose. Like the claimant, the respondent seeks to obtain these orders before and without the benefit of a full trial. Critically, the respondent has raised all these factual contestations without first filing a defense to the cause.
3. Both applications are highly contested. The parties have filed detailed responses to them. In addition, they have filed detailed submissions in support of their respective positions.

**Background**

4. The record shows that the claimant was employed by the respondent in the position of General Manager. Despite the apparent denials through the application to strike out the suit, the respondent appears to have confirmed this fact through its own correspondence.



5. On July 20, 2018, the respondent wrote to the Department of Home Affairs, Republic of South Africa requesting for an intra company transfer work permit on behalf of the claimant. The permit was to enable the claimant take up a managerial position at Kewberg Cables and Braids (Pty) Limited, a South African company. This fact is not denied by the respondent.
6. In the aforesaid letter, the respondent spoke to the following matters: -
  - a. That Kewberg Cables and Braids (Pty) Limited is wholly owned by Trans-Century Holdings (Pty) Limited. In turn, the latter company is wholly owned by the respondent.
  - b. That the claimant was a permanent employee of the respondent.
  - c. That the respondent was assigning the claimant to Kewberg Cables and Braids (Pty) Limited to enable the claimant inject his expertise in the latter organization.
  - d. That the assignment was projected to be for a period of twenty-four (24) months.
7. There is no indication in the aforesaid letter that the claimant's assignment to Kewberg Cables and Braids (Pty) Limited was to terminate his contract of service with the respondent. The respondent has not adduced evidence to demonstrate that the letter of June 20, 2018 was intended to have this legal effect.
8. On May 28, 2021, the claimant and Kewberg Cables and Braids (Pty) Limited signed a contract of service. The contract was expressed to be for a fixed term of two (2) years starting June 1, 2019. The claimant says that this contract was for convenience to enable the parties overcome the bottlenecks presented by the South African law in respect of their secondment contract.
9. Although the agreement between the claimant and Kewberg Cables and Braids (Pty) Limited was to be performed in South Africa, it was apparently entered into and executed in Nairobi. Further, the parties did not, prima facie, choose the forum for dispute resolution in the event of such need.
10. Importantly, the dispute before court is not between the claimant and Kewberg Cables and Braids (Pty) Limited. It is between the claimant and the respondent. It is about whether the respondent is bound to settle the claimant's dues arising from the latter's services to Kewberg Cables and Braids (Pty) Limited. Therefore, the argument by the respondent that the suit ought to have been filed in South Africa is open to contestation.
11. Notwithstanding that Kewberg Cables and Braids (Pty) Limited and the claimant had executed the fixed term contract dated May 28, 2021, the record shows that the respondent continued to interact with the claimant on what appear to be work related matters. The record for example, suggests that the respondent continued to remit monies to the claimant, sometimes on behalf of an entity described as KEWBG. Besides, there is correspondence between the claimant and persons who were using email addresses bearing the respondent's name in which it appears that there were negotiations relating to the claimant's terminal dues.
12. The respondent appears to argue that its involvement in processing the claimant's salary was for the claimant's convenience as the latter had expressed the desire to be paid in Kenya. In contrast, the claimant maintains that his relation with Kewberg Cables and Braids (Pty) Limited was one of secondment by the respondent and was limited to a fixed duration. The claimant maintains that he remained an employee of the respondent and that it is the respondent who continued to pay his emoluments whilst he served on the aforesaid secondment.



13. Although the claimant states that the parties agreed on his terminal dues after the lapse of the secondment contract, the preliminary record does not support this assertion. What is on record are email correspondence between the claimant and individuals who were using email addresses that appear to bear the respondent's name in which there appears to have been negotiations relating to the claimant's exit payments. However, there is no evidence that the parties arrived at a concrete agreement on the matter.
14. In effect, it is the court's view that the issues that the parties raise in the two applications are highly contested factual matters that require full trial. They are not suitable for resolution through interlocutory applications such as the ones before me.

#### **Determination**

15. The upshot is that the court finds that the two applications are devoid of merit.
16. Consequently, both applications are dismissed.
17. Costs of the two applications shall abide the outcome of the case.

**DATED, SIGNED AND DELIVERED ON THE 28<sup>TH</sup> DAY OF SEPTEMBER, 2023**

**B. O. M. MANANI**

**JUDGE**

**ORDER**

In light of the directions issued on July 12, 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**

