



**Adis v Style Industries Ltd & another (Employment and Labour Relations  
Petition E036 of 2022) [2023] KEELRC 2510 (KLR) (13 October 2023) (Ruling)**

Neutral citation: [2023] KEELRC 2510 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
EMPLOYMENT AND LABOUR RELATIONS PETITION E036 OF 2022  
AN MWAURE, J  
OCTOBER 13, 2023**

**BETWEEN**

**GRADUS OLUOCH ADIS ..... PETITIONER**

**AND**

**STYLE INDUSTRIES LTD ..... 1<sup>ST</sup> RESPONDENT**

**GODREJ CONSUMER PRODUCTS ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. The main suit was determined and judgment was delivered on December 7, 2022 in favour of the petitioner.
2. Subsequently, parties entered into a consent dated March 30, 2023 in respect to the petitioner's salary for March 2022, two months' salary in lieu of notice and earned unutilized leave days amounting to a total of Kshs 2,204,934/-.
3. The parties were the directed by this court to file submissions on the years worked by the petitioner to determine the amount payable under paragraph 65(1) of the judgment.

**Petitioner's Submissions**

4. The petitioner submitted that it is not disputed that the petitioner worked for the respondent and its predecessor, Strategic Industries Ltd for an uninterrupted period of 22 years from the year 2000 until the unlawful redundancy on January 27, 2022.
5. The petitioner submitted that when the respondent purchased the business operations and assets of Strategic Industries Ltd vide the asset purchase agreement dated July 6, 2012 and retained the petitioner as the Legal Advisor/Officer and subsequently as Legal Manager East Africa of the newly incorporated Style Industries Ltd and all subsidiaries and associated companies in 8 east African



countries, this signified a continuation of his employment with the respondent with new and expanded assignment.

6. The petitioner submitted that he is entitled to 22 years worked with the respondent and its predecessor Strategic Industries Ltd as in 2012 when the respondent took over the business and terminated the petitioner on redundancy he had worked from 2000 to 2012 and thereafter worked for the respondent until his unfair termination by redundancy in 2022.
7. It is the petitioner's submission that the purchased business operations and assets included staff, employees and goodwill which the respondent cannot purport to seek benefit without meeting the accrued liabilities of staff and employees.

### **Respondents' Submissions**

8. The respondents submitted that any claims predating November 1, 2012 cannot be the responsibility of the Respondents.
9. The respondents submitted that the 1<sup>st</sup> respondent was incorporated as limited liability company in Kenya in 2012 and the petitioner was employed by itself on November 1, 2012 and issued an employment contract. It was further submitted that the 1<sup>st</sup> respondent is not privy to the relationship between the petitioner and the predecessor companies.
10. The respondents further submitted that pursuant to the asset purchase agreement dated July 6, 2012, the 1<sup>st</sup> respondent bought the seller's assets which were defined in the agreement as business assets, intellectual property, the transferred property and goodwill and this did not include employees.
11. The respondents submitted that clause 7 of the agreement provided that:
  - (a) The seller shall procure prior to closure all contracts of employment- with the employees are terminated with effect from the closing date. (b) any statutory rights of any employee prior to closing, whether in respect of termination or otherwise shall be for the account of the seller that is Strategic Industries Limited(emphasis).
12. The respondents submitted that the petitioner produced the agreement in court proving it is in his possession and him being the legal manager then understood the legal implication of the agreement and therefore the petitioner ought to have pursued his benefits with Strategic Industries Limited.
13. The respondents submitted that he was not privy to the agreement between the petitioner and the seller and urged the court to review the employment contract between the petitioner and the 1<sup>st</sup> respondent to understand the intention of the parties at the time of commencement of their employer/employee relationship. It relied on *Elizabeth Washeke and 62 Others v Airtel Networks (K) Ltd & another* [2013] eKLR and *Pius Kimaiyo Langat v Co-operative Bank of Kenya Limited* [2017] eKLR.

### **Analysis and Determination**

14. The Court of Appeal in Kisumu in *Abyssinia Iron & Steel Limited v Kenya Engineering Workers Union* [2016] eKLR held:

“According to Section 2 of the Employment Act an “employee” means “a person employed for wages or a salary and includes an apprentice and indentured learner.”

The same provision specifies that an “employer” means, any person, public body, firm corporation or company who or which has entered into a contract of service to employ any



individual and includes the agent, foreman, manager, or factor of such person, public body, firm corporation or company.”

Section 9 of the Act sets out the prerequisites for an employment relationship. Section 9 (1) stipulates,

A contract of service—

for a period or a number of working days which amount in the aggregate to the equivalent, of three months or more; or

which provides for the performance of any specified work which could not reasonably be expected to be completed within a period or a number of working days amounting in the aggregate to the equivalent of three months, shall be in writing.

From the evidence, we can discern that Abyssinia had a total workforce of 760 employees, all of whom it declared were transferred to Jokali. Our analysis of the signed Discharge Vouchers establishes that indeed, certain employees confirmed that upon payment of their terminal dues, they were no longer employees of Abyssinia.

Simultaneously with the discharge of Abyssinia, these employees entered into employment contracts with Jokali. The contracts provided, *inter alia*, that Jokali would be responsible for their remuneration, insurance, the provision of protective clothing and equipment, payment of NSSF, NHIF, contributions, amongst other obligations. The evidence of Neresh Sutar was that Abyssinia would pay Jokali who in turn would pay the employees. It was further stated that Jokali that was responsible for supervising the employees assigned to Abyssinia. This evidence was not in any way controverted.

The discharges and contractual agreements make it evident that some of Abyssinia’s employees were outsourced to Jokali from Abyssinia. The new employment contracts bear all the hallmarks of valid contractual arrangements, thereby creating a different employer/employee relationship between Jokali and those employees. We can find nothing to show that these employees were irregularly or improperly outsourced to Jokali. Given the validity of the discharges and the existing employment contracts, we are satisfied that the concerned employees were effectively and legally outsourced to Jokali.”

15. In *Joseph Kabuko Mwangi & 183 others v Kenya Shell Ltd* [2011] eKLR the court stated below in respect to the fate of employees when an employer intends to sell its assets:

“The claimant signed contracts of employment with the respondent. The respondent now wishes to exit from the scene and transfer the performance obligations in the claimants said contracts to another person who is not known to the claimants. In the circumstances the claimant’s rights as employees are squarely in the heart of the proposed transaction. The claimants are entitled to be involved in the matter with a view to safeguarding their rights during the proposed transition and thereafter. They are entitled to know the identity of the new employer and to decide whether they should continue serving under the new employer. They are also entitled to know who will be responsible for the settlement of their accrued rights under the respondent’s employment and at what point the accrued rights will be settled. It is these fears that the claimants have tried to address in this matter. The dispute is therefore a labour dispute since it flows from the claimants’ employment contracts with the respondent.”



16. In view of the foregoing, this court holds the employment contracts between the petitioner and Strategic Industries Limited and that between the petitioner and the 1<sup>st</sup> respondent are completely different and the latter did not in any way aver that the new employment contract is a continuation of the petitioner's employment with Strategic Industries Limited.
17. Further, as submitted by the respondents the asset purchase agreement between the respondents and Strategic Industries Limited clearly provided under clause 7 the fate of the employees as follows:

The seller shall prior to closing procure that all the contracts of employment of the employees are terminated with effect from closing date and the seller shall use reasonable endeavours to procure each employee executes the agreed form acknowledgment that the relevant employee has no claim against the seller for breach of contract, wrongful or unfair dismissal, redundancy, compensation for loss of office and any other claims or demands arising from such termination or otherwise howsoever and that no agreement or arrangement is outstanding under which the seller has or could have any obligation to the relevant employee ("Employee Letter").

The purchaser shall, prior to closing, make to each employee an offer of employment in writing to engage the employee on the terms and conditions set out in the employment contract subject to and effective from closing ("Employment Contract")

Any statutory rights and other rights of any employee prior to closing whether in respect of termination or otherwise shall be for the account of the seller.
18. In view of the foregoing it is very clear when the respondents were purchasing the assets from Strategic Industries, the employees were not among the assets as they are excluded from the schedule of assets and further schedule 2 of the asset purchase agreement excludes all contracts entered into by the seller as assets.
19. The 1<sup>st</sup> respondent was only obliged to offer the seller's employees an offer of employment and it was at the employee's discretion to accept or reject the same. Therefore, the petitioner's argument is not merited.
20. This court holds that the petitioner's employment with the respondents commenced on November 1, 2012 vide the executed employment contract dated even date and the comments in the body of the judgment were generalised to establish the period the claimant worked for the entire group of companies.
21. Having said so there is a clear contract between the style industries ltd and strategic industries ltd which excludes the employees. The claimant should have followed his dues from his former employer. The contract clearly provides any dues to the employees would be on the seller.
22. The claimant is awarded 15 days for every year worked from 2012 to 2022 which translates to kshs  $544,550 \times 10/2 = 2,722,750/-$ .
23. The other dues were already settled between the parties. Interest will accrue from the date of this award till full payment.
24. Costs had also been awarded to the petitioner.

Orders accordingly.

**DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 13TH DAY OF OCTOBER, 2023.**

**ANNA NGIBUINI MWAURE**



**JUDGE**

**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 15<sup>th</sup> March 2020 and subsequent directions of 21<sup>st</sup> 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 has 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 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.**

**A signed copy will be availed to each party upon payment of Court fees.**

**ANNA NGIBUINI MWAURE**

**JUDGE**

