



**Steyn v Frontier Services Group Limited; Frontier Services Group East Africa Limited (Interested Party) (Cause 1194 of 2018) [2023] KEELRC 3100 (KLR) (27 November 2023) (Judgment)**

Neutral citation: [2023] KEELRC 3100 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE 1194 OF 2018  
B ONGAYA, J  
NOVEMBER 27, 2023**

**BETWEEN**

**MALCOM STEYN ..... CLAIMANT**

**AND**

**FRONTIER SERVICES GROUP LIMITED ..... RESPONDENT**

**AND**

**FRONTIER SERVICES GROUP EAST AFRICA LIMITED .... INTERESTED PARTY**

**JUDGMENT**

1. The claimant filed the amended statement of claim on 17.09.2019 through Mboku & Co Advocates. The claimant prayed for judgment against the respondent as follows:
  - a. That a declaration be and is hereby issued that the dismissal of the claimant from employment with the respondent was unlawful, unprocedural and unfair in circumstances.
  - b. That the respondent be ordered to pay the claimant his salary dues for the unlawful and unfair termination amounting to USD 168,000.
  - c. That the respondent be ordered to pay the claimant his salary and benefits from the age of 43 years when he was employed up to anticipate age of retirement at 60 years amounting to USD 2,856,000.
  - d. The respondent be ordered to compensate the claimant for unlawful discrimination.
  - e. The respondent be ordered to pay the claimant compensation for inducing breach of contract between the interested party and the claimant.



- f. A declaration that the Kenya Revenue Authority audits the manner and mode of payment made by the respondent to the claimant for purposes of establishing the amount of taxes payable to Kenya Revenue Authority and collectable from the respondent by dint of payments made to the claimant.
  - g. Costs of this claim and interest thereon at court rates.
  - h. Any other relief that this court may deem just and fit to grant.
2. The response to the amended memorandum of claim was dated 24.03.2020 and filed through Obura Mbeche & Company Advocates. The respondent prayed that the suit be dismissed with costs.
  3. The claimant's case was that he was employed by the interested party in the capacity of Director of Logistics East Africa due to an employment agreement dated 27.03.2017.
  4. The claimant states that he entered into an 'Independent Contractor Agreement' with the respondent, the parent company of the interested party also dated 27.03.2017.
  5. That the employment between itself and the interested party provided that his employment would be subjected to a ninety-day probationary period. At the expiry of the probation period, the claimant states he attained the highest accolade possible for his work performance with the interested party as indicated in a probative review report dated 13.07.2017 and he was accordingly confirmed as an employee of the interested party.
  6. That it was a term of the employment agreement between the claimant and the interested party that he would earn a monthly gross salary of USD 6000 subject to increase from time to time and that on confirmation, after completion of the probationary period, the employment would continue for an indefinite period until terminated by either the company or the employee.
  7. The claimant states that he was summarily dismissed from employment by way of a letter dated 02.03.2018 issued by the interested party terminating the Employment contract. The letter did not proffer reasons for dismissal. That in a letter dated 07.03.2018 the interested party admitted to him that he was entitled to terminal dues on account of his dismissal as calculated in the letter.
  8. That a further letter dated 07.03.2018 emanated from the respondent and communicated to the claimant the fact of the end of service entitlements as outlined in said letter.
  9. The claimant states that the employment agreement between himself and the interested party nor the independent contractor agreement between himself and the respondent offered reward to him on a performance - related basis as is the norm within the respondent's general framework policy on salary and bonus systems.
  10. On the part of the respondent it is stated that the respondent had no employment contract with the claimant and hence a stranger to these proceedings.
  11. The respondent states that employment obligations between the claimant and the interested party were to be met by the interested party and there has been a dispute over that relationship and the same was arbitrated upon by an arbitrator appointed by the Institute of Arbitrators.
  12. The parties filed their respective submissions. By consent, it was ordered that the suit be determined on the basis of the pleadings and documents filed for the parties. The court has considered the parties' respective cases and makes finding as follows.



13. To answer the 1<sup>st</sup> issue for determination, the Court returns that parties were not in a contract of service. In particular the claimant has pleaded that he entered a contract of service with the interested party and as well entered an independent contractor agreement with the respondent. As submitted for the respondent, clause 3.1 of the independent contractor agreement stated that the relationship of the contractor to the company is that of an independent contractor and nothing in that agreement shall render the claimant an employee, worker or partner of the company and the contractor shall not hold out himself as such. Again clause 10.4 of the agreement stated that nothing in the agreement shall be deemed to constitute a partnership, agency, employment or joint venture. Having pleaded that the agreement between the claimant and the respondent was as an independent contractor, as submitted for the respondent, the claimant is bound accordingly.
14. The Court considers that it will not rewrite the parties' contract or redraw the pleadings. By that finding the suit must collapse.
15. To answer the 2<sup>nd</sup> issue, the claimant is not entitled to any of the remedies as prayed for. He could not have been terminated from employment if parties were not in a contract of employment. An order will not be directed to Kenya Revenue Authority which is not a party to the suit. It is also noted that the dispute between the claimant and the interested party proceeded to arbitration proceedings concluded on 25.02.2020 and is pending an award on notice. The claimant's assertion that the respondents were the co-employers together with the interested party is untenable, the employment dispute between the claimant and the interested party having proceeded accordingly. The Court has considered the relationship between the respondent and the interested party and returns that each party to bear own costs.

In conclusion the suit is hereby dismissed with orders each party to bear own costs.

**SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS MONDAY 27<sup>TH</sup> NOVEMBER, 2023.**

**BYRAM ONGAYA**

**PRINCIPAL JUDGE**

