



Mwaniki v AM Trailer Manufacturer Kenya Limited (Employment and Labour Relations Cause 3 of 2020) [2023] KEELRC 3308 (KLR) (20 December 2023) (Judgment)

Neutral citation: [2023] KEELRC 3308 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MACHAKOS
EMPLOYMENT AND LABOUR RELATIONS CAUSE 3 OF 2020**

**B ONGAYA, J
DECEMBER 20, 2023**

BETWEEN

JOHN NJIRU MWANIKI CLAIMANT

AND

AM TRAILER MANUFACTURER KENYA LIMITED RESPONDENT

JUDGMENT

1. The claimant filed the statement of claim on 03.12.2020 through Njoki Ngari & Company Advocates. The claimant surrendered reliefs relating to compensation for alleged injuries while in employment and the residual prayers are for judgment against the respondent for:
 - a. Compensation for unfair termination.
 - b. Costs of this claim together with interest at court rates.
 - c. Any other relief that the court may deem fit to grant.
2. The respondent's memorandum of reply was filed on 19.01.2021 through Aamir Zahid & Co Advocates. The respondent prayed that the suit be dismissed with costs.
3. The claimant's case was that he was employed by the respondent from January 2012 as a workshop supervisor. That on 09.01.2018 while he was working in the respondent's workshop at Mlolongo, Kenbro Industrial Park Go-Down, he was injured in an explosion that occurred which he later came to learn was a gas cylinder explosion.
4. When he regained consciousness, he found that he had been admitted at Athi-river Shalom Hospital where he stayed until 31.01.2018.
5. He was later transferred to Consolata Hospital in Kyeni where he stayed until February, 2018.
6. The claimant states that he still attends outpatient clinics to date.



7. The claimant states that for the period of his hospitalization, the respondent did not pay his salary or clear all his hospital bills. Additionally, he was not compensated for the injuries sustained in the course of work and the disability resulting therefrom.
8. The claimant states that he was thereafter unfairly, unlawfully and unceremoniously terminated without being paid terminal benefits.
9. On the part of the respondent, it is pleaded that the claimant was engaged by the respondent as an independent contractor on a case by case basis for welding works and was not an employee of the respondent. The claimant's dues were settled upon completion of each independent task he was contracted to complete.
10. The respondent company was incorporated in 2015 and during that time the respondent had not engaged the claimant in its employment as a workshop supervisor or otherwise as alleged and it would therefore be impossible for the respondent to enter into or negotiate any contracts with the claimant before the respondent's incorporation and existence.
11. The claimant was not on the respondent's payroll in 2015 when the company took in its first employees or in January 2018 when the alleged accident occurred.
12. That if the claimant were an employee of the respondent, his claim regarding an alleged work injury would be referred to the director of work injury benefits and not the Honourable court which is an appellate court pursuant to section 53 and 52(2) of the *Work Injury Benefits Act*.
13. The respondent maintains that the Honourable Court does not have jurisdiction to entertain the claim pursuant to section 3(1) of the *Employment Act* 2007 as the claimant was engaged as an independent contractor by respondent, and there exists no employer-employee relationship between the respondent and claimant.
14. The parties filed their respective submissions. The court has considered the parties' respective cases and makes finding as follows.
15. The 1st issue is whether the parties were in a contract of service. The claimant alleges that the respondent employed him effective January 2012. The respondent has shown that as at that date it was not in existence. The claimant stated that he worked from Dar es Salaam as was deployed and he signed a contract but a copy was not given to him. He further testified that he was deployed to Kenya in 2015 or 2016 on a date he could not tell. Further he was not clear whether the respondent was a sister company. His testimony was that per M-pesa statements the earliest payment was in 2017 and that he did design engineering works as a quality controller. He confirmed he had not filed evidence of the respondent paying him from 2017 when he started to work in Kenya. He confirmed no NSSF was contributed for him and he had own medical cover. In re-examination he stated that in Tanzania he had worked for AM Trailer Tanzania and respondent was started as a Kenyan company in about 2015. By that evidence the Court returns that the claimant's testimony was inconsistent with his pleaded case. He has failed to show that the respondent employed him from 2012 as pleaded or on any other date. He failed to show the terms of service, if any, and applicable wages. That he had own medical cover confirms RW's testimony that his relationship with the respondent from about 2017 was in the nature of consultancy and not employment and the relationship was oral.
16. The Court returns that there being no employment relationship, the alleged unfair termination and compensation can not be justified at all. The Court has considered the relationship in which the respondent admits the claimant suffered an injury and respondent paid bills. Each party to bear own costs of the suit.



In conclusion judgment is hereby entered for the respondent against the claimant for:

- a. dismissal of the suit;
- b. each party to bear own costs; and,
- c. the Deputy Registrar to forthwith return the case file to the Machakos Court's sub-registry.

SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS WEDNESDAY 20TH DECEMBER, 2023.

BYRAM ONGAYA

PRINCIPAL JUDGE

