



REPUBLIC OF KENYA



KENYA LAW
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**Taylor v Bedi Investment Limited & another (Cause E107 of 2021)
[2022] KEELRC 46 (KLR) (27 April 2022) (Judgment)**

Neutral citation: [2022] KEELRC 46 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E107 OF 2021
NZIOKI WA MAKAU, J
APRIL 27, 2022**

BETWEEN

JOHN HENRY TAYLOR CLAIMANT

AND

BEDI INVESTMENT LIMITED 1ST RESPONDENT

JAS BEDI 2ND RESPONDENT

JUDGMENT

1. The Claimant instituted this claim against the Respondents by a Statement of Claim and witness statement both filed on 1 February 1, 2021. He avers that the 1st Respondent employed him from Monday February 19, 2018 for one week; Monday March 12, 2018 for two weeks; and from Monday July 2, 2018 for three months ending on 28th September 2018. The Claimant avers that his employment was for a cumulative period of three months and three weeks until he decided to go to go back to his home country due to the Respondents' continuous non-payment of salaries. It is the Claimant's averment that on June 6, 2018 he received an email from the 2nd Respondent informing him that the World Bank had approved his employment as a Management Consultant of the Respondent and the Respondents subsequently employed him from July 1, 2018. The Claimant avers that the Respondent then made arrangements for his travel from the United Kingdom (UK) to Nakuru, Kenya and that after working for the Respondent until mid-August 2018, he contacted one Ms. Sarah Ochieng of the World Bank informing her that he had not been paid for work done in July 2018. The Claimant avers that Ms. Sarah Ochieng' informed him that he would not be paid as he had no contract of employment and that when the said contract was available, it would not be backdated to July 1, 2018. The Claimant avers that he unsuccessfully tried resolving the contract issues with the Respondent and he returned to his home country on 30th September 2018 for a 2 weeks' vacation as earlier planned at the beginning of his employment. The Claimant avers that he chose not to return to Kenya when his contract remained unconfirmed during the said vacation period and that it is in February 2019 when



- Ms. Sarah Ochieng' informed him that the Australian Branch of the World Bank had finally agreed to his employment. However, in May 2019, he received an email that the World Bank was reducing their support to industry in Kenya and his position was therefore no longer needed and this made him contact the World Bank. The Claimant avers that one Mr. Manual Moses from the World Bank then confirmed to him that a third party could not confirm employment meaning Ms. Sarah Ochieng' could not have confirmed his employment and had thus been fraudulently misleading him the entire time.
2. The Claimant further avers that he has severally tried reaching out to the Respondent for compensation in vain and thus this Claim wherein he seeks: one month's payment in lieu of notice; unpaid salaries for three months and three weeks; lost salary for the years he would have actively been employed by the Respondent; damages for emotional trauma, shame, fraud and pain due to unpaid salaries and fraudulent misrepresentation by the Respondent; and for costs of this suit to be provided by the Respondent. He further prays that judgment be entered against the Respondents for orders declaring that the Respondent procured and benefited from his services and labour through fraud and misrepresentation and that his employment by the 1st Respondent was unprocedural and unlawful. Further, that the Respondent be compelled to pay him 3 ¾ months' gross salary as compensation and issue him with a Certificate of Service.
 3. In reply, the Respondents filed a Memorandum of Response dated 25th August 2021 averring that they engaged the Claimant subject to a 'contract of service with World Bank' which was not done. They aver that the 1st Respondent through its director the 2nd Respondent, had on February 1, 2018 sought from the World Bank an IFC firm level support as a 'pilot project' for the apparel sub-sector under the Kenya Association of Manufacturers whereby the company was to bear 50% of the costs of the consultant while IFC would bear the remaining 50% costs. That the World Bank indeed confirmed the Claimant as the World Bank contractor and he was to commence work on June 1, 2018 and that the World Bank was at that time preparing a contract for the Claimant's acceptance. They reiterate that the Claimant's involvement in the 1st Respondent's project was to be purely based upon IFC funding whereby the World Bank would pay his salary while the 1st Respondent was to cover for his accommodation and logistics. The Respondents aver that the 1st Respondent honoured its part of the commitment as it covered the Claimant's costs of accommodation and logistics despite the IFC funding not being forthcoming. They further aver that the joinder of the 2nd Respondent is bad in law since he was acting as a director of the 1st Respondent and not in his personal capacity and that they are wrongly sued as no contract of service ever existed between them and the Claimant. They contend that the suit herein is frivolous, misconceived and an abuse of the court process and that it should be dismissed with costs.

Claimants' Submissions

4. The Claimant submits that a contract can be oral or in writing, expressed or implied as similarly defined in Section 2 of the *Employment Act*, 2007 that a "Contract of Service" further includes a contract of apprenticeship and indentured learnership but does not include a foreign contract of service to which Part XI of the Act applies. He submits that there exists a contract between him and the Respondents through the email correspondence of June 8, 2018 from the Respondents to him confirming his engagement and details of the work. On this submission he relies on the case of *Mamta Peeush Mahajan [Suing on behalf of the estate of the late Peeush Premlal Mahanjan] v Yashwant Kumari Mahajan [Sued personally and as Executrix of the estate and beneficiary of the estate of the late Krishan Lal Mahajan]* [2017] eKLR wherein the Court affirmed that it is trite law that not all agreements need to be in writing and that an agreement will be deemed duly formed and binding where there is consideration and acceptance having been offered. The Claimant further refers to the case of *Kenneth Kimani Mburu & another v Kibe Muigai Holdings Limited* [2014] eKLR wherein the Court



discussed the difference between employment contracts and consultancies / independent contractors and stated that:

“Consultancies/ independent contracts are based on the periphery of the employer’s business. They are not integral to the business. The roles played by the Claimants were integral to the business... They were not in the periphery as to fit the nature of consultancy.”

5. The Claimant submits that the scope of duties assigned to him included but were not limited to, assessment of the 1st Respondent company and helping to upscale the existing workforce for efficient productivity and helping to train the workforce for the export markets to ensure global competitiveness. The Claimant submits that this is clearly peripheral to the Respondent’s business and he was also answerable to the Respondents and that he was therefore not entirely a consultant as his work was quite essential to the company. He relies on the case of *Everret Limited v Kenya Revenue Authority (Through the Commissioner of Domestic Taxes)* [2013] eKLR wherein the Court held that one of the tests to employ when in doubt whether a person is an employee is to find out whether the person’s duties are an integral part of the employer’s business.
6. The Claimant further submits that he was assigned work and there was email correspondence between him and the 2nd Respondent on the affairs of the company and that he abided by the terms and conditions in which the Respondents had engaged him and to their benefit. The Claimant submits that the Respondents have failed to honour their part of the bargain and ought to be compelled to submit the salary withheld and that they cannot disassociate the engagement with the Claimant on grounds that there is no written contract. He prays for this Court to grant the reliefs he has sought in the Statement of Claim together with costs and interest. The Respondents did not file any submissions and as such the decision rendered is without their input in regard to legal positions taken.
7. The Claimant asserts he was engaged by the Respondents. He indicated in his testimony that he was engaged in various aspects of the 1st Respondent’s apparel business and consequently having worked for a period left Kenya since the 2nd Respondent was not forthright in its engagement with him. The Claimant was therefore entitled to receive pay for the month he worked as well as notice prior to his termination. The Respondents by declining to engage the services of the Claimant after the month of September 2018 constructively dismissed the Claimant. The Claimant would not be entitled to recover damages on the contract of employment or for the abrupt termination. While appreciating the difficulties the Respondents placed the Claimant who was forced to relocate for a few months to Kenya, there is no relief he would get for not having the benefit of a long contract with the Respondents. It is for the 2nd Respondent to introspect and consider the evils committed against an innocent soul who he lured from the UK to come render service only for him to turn his back against the Claimant. The Claimant in the final analysis would therefore only be entitled to the following:-
 - i. Kshs. 440,219/- being salary for July 2018
 - ii. Kshs. 440,219/- being one month’s notice
 - iii. Costs of the suit.
 - iv. Interest on the sums in i) and ii) above at Court rates from the date of filing suit till payment in full.

It is so ordered.

DATED AND DELIVERED AT NAIROBI THIS 27TH DAY OF APRIL 2022

NZIOKI WA MAKAU



JUDGE

