



**Ekisa v Highland Primary School; Wachira & 2 others (Interested Parties)
(Cause 14B of 2020) [2022] KEELRC 3831 (KLR) (9 June 2022) (Judgment)**

Neutral citation: [2022] KEELRC 3831 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KERICHO
CAUSE 14B OF 2020
ON MAKAU, J
JUNE 9, 2022**

BETWEEN

PATRICK AURAH EKISA CLAIMANT

AND

HIGHLAND PRIMARY SCHOOL RESPONDENT

AND

KAMAU WACHIRA INTERESTED PARTY

MINISTRY OF EDUCATION INTERESTED PARTY

ATTORNEY GENERAL INTERESTED PARTY

JUDGMENT

1. The claimant brought this suit on September 16, 2020 seeking the following reliefs: -
 - a. A declaration that the termination of the claimant's contract was unlawful therefore null or void.
 - b. An order reinstating the claimant's contract as a rent collector for the respondent.
 - c. An order for compensation for loss of income from the date of unlawful termination of contract to date.
 - d. In the alternative an order for compensation for loss of income for a period of 34 months being the period since date of unlawful termination of contract to expiry of said contract in June 2021.
 - e. General damages
 - f. Costs for the suit together with interest thereon.



2. The facts of the case are that the respondent appointed the claimant to collect rent from commercial premises within Kericho Town for a period of three years. The claimant was appointed *vide* the letter dated June 1, 2019 and it indicated his commission as 8% of the total collection per month. The appointment was renewable subject to satisfactory service.
3. The claimant did his duties from June 2019 till March 11, 2020, when he received a letter terminating his appointment with immediate effect. No reasons were cited for the termination and he was not accorded any hearing. As such the claimant alleged that constitutional rights and all tenets of labour law were violated. He further termed the termination letter dated March 11, 2020 as draconian and unlawful for lack of advice from the Ministry of Education.
4. The respondent filed defence on April 8, 2022 denying all the allegations by the claimant and demanded strict proof. The respondent further took out a third party notice against the three interested parties but they never filed any response.
5. The suit was heard on May 12, 2022 when only the claimant gave evidence and thereafter filed written submissions. The claimant testified as CW1 by basically adopting his written statement dated August 10, 2020 as his evidence in chief. He also produced six documents in the list dated August 12, 2020 as exhibits. He then prayed for the reliefs set out in his claim plus costs. The respondent never participated in the hearing.

Issue for Determination

6. Having considered the material placed before the court, the following issues fall for determination: -
 - a. Whether the claimant was an employee or an independent contractor.
 - b. If he was an employee, whether his contract of employment was unfairly terminated.
 - c. Whether the claimant is entitled to the relief sought

Employee or Independent Contractor

7. The claimant has produced letter dated June 1, 2019 to prove that he was employee of the respondent. The letter stated that: -

“Re: Appointment Letter for Rent Collection

You have been appointed and assigned the duty of collecting rent on our behalf. This is from the date of signing for a period of three years. Note that you will be entitled 8% of the total collection on every succeeding month.

Also that the renewal of the contract/agreement will be based on satisfactory service offered to us.

Also in case of any litigation will in charge of advising and even soliciting a lawyer if need arises.”
8. The claimant has also produced cheques and various “monthly collection fee notes” indicating different figures as “commission for rent collection”. The commission was calculated based on 8% of the total collection. It follows that the relationship between the claimant and the respondent was one where the remuneration was in the form of commission based on the work done and not regular salary.



9. Section 2 of the Employment Act defines an employee as follows: -

“employee means a person employed for wages or a salary....”

10. In view of the foregoing statutory definition, I find and hold that the claimant was not an employee under a contract of service but rather an independent contractor engaged under a contract for services. The Act does not define an independent contractor.

11. However, from common law and case law, an independent contractor is a person hired to perform work for another person (client) without control from the client. The contractor does not get the benefits of an employee and his pay is not in the form of wages or salary. In this case the contract was for services and the pay was a commission based on the amount of rent collected. The amount differed from month to month.

12. Having found that the claimant was not employed by the respondent under a contract of service, I am of the view that this court has no jurisdiction to determine the suit. Consequently, the suit is struck out with no order as to costs.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 9TH DAY OF JUNE, 2022.

ONESMUS N MAKAU

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 15th April 2020, this ruling 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.

ONESMUS N. MAKAU

JUDGE

