



**Rafique v Autoteile Limited (Cause E025 of 2021)
[2022] KEELRC 13011 (KLR) (28 October 2022) (Judgment)**

Neutral citation: [2022] KEELRC 13011 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
CAUSE E025 OF 2021
B ONGAYA, J
OCTOBER 28, 2022**

BETWEEN

EFRAN ABDUL RAFIQUE CLAIMANT

AND

AUTOTEILE LIMITED RESPONDENT

JUDGMENT

1. The claimant filed the memorandum of claim on March 4, 2021 through Nchoe, Jaoko & Company Advocates. The claimant prayed for judgment against the respondent for:
 1. The outstanding sum claimed of Kshs 1,890,000
 2. A good recommendation letter
 3. Certificate of service
 4. Costs of this suit
 5. Interests on (i) & (iv) above at the court rates
 6. Any other or further relief that this Honourable court may deem just and fit to award to the in the circumstances
2. The claimant's case is that the respondent employed him as a branch manager effective February 1, 2020. The claimant's further case is as follows:
 - a. His duties were to collect purchase orders and introduce new clients who wanted to trade with the respondent.



- b. He worked for the respondent from February 1, 2020 until February 5, 2021 but was never paid salary save for the sum of Kshs 470,000 which was paid to the claimant spread over some months. That the remaining salary arrears unpaid to the claimant to date is Kshs 970,000.
 - c. He claims that the said payments were made to him by the respondent as Kshs 120,000 paid on March 16, 2020, Kshs 120,000 paid on May 11, 2020, through the claimant diamond trust bank account, Kshs 60,000 paid on July 17, 2020 through the claimant diamond trust bank account, Kshs 70,000 paid to the claimant on August 18, 2020 through Mpesa service sent by one director Mr Akulov Alexander.
 - d. He claims that at the beginning of the month of July 2020 his employment was automatically converted into a term contract pursuant to section 42 of the [Employment Act](#), 2007.
 - e. That the respondent through one director, purported to terminate the claimant's contract of employment unilaterally without any proper reasons whatsoever and without giving him any reasons or hearing whatsoever.
 - f. He states that there was no misconduct on his part or breach of any terms and conditions of the employment and no any warning about misconduct or anything related to breach of contract of employment terms and conditions, poor performance, physical incapacity in the course of employment or, any reasonable cause given to him at any time or at all.
 - g. He states that the managers of the company told him that there will be no salary for the claimant even if the claimant worked.
3. The respondent filed a memorandum of reply through Asinuli & Associates Advocates. The respondent prayed that the claim be dismissed with costs. The respondent pleaded that it never employed the claimant and that the alleged employment was not authorized by any of the respondent's directors. Further, that the claimant was never employed by any of the respondent's directors. The respondent states that it has never held a bank account at I&M Bank and denied that the mobile number used to send money is the respondent's work line registered under the name of one of its director Mr Alexander Akulov It was denied that the phone with that number was at all times in the possession of Mr Salaudin up and till the claimant's termination on August 11, 2021. The respondent stated that it was a stranger to the said averments as the director only came to realize that Mr Slaudin was defrauding the company when the claimant called Mr Alexander Akulov to inform him that he had not been paid.
 4. The respondent states that the claimant was never terminated as he was never an employee of the respondent. Further, the respondent stated that they had never had a branch office in Mombasa and at no time was the claimant employed and instructed to relocate to Mombasa. The respondent states that its director had filed a complaint with the police on the ground that Mr Salaudin signed a document purporting to be a director in employing the claimant herein. The respondent stated that through its advocate and on numerous occasions it had requested the claimant to record a statement with the police and provide a sample signature but the same had been with resistance and as a result, investigation into the matter had been delayed. The respondent stated that if the claimant had complied with assisting in the investigations, the matter herein would have been concluded - seeing that even on the date the alleged employment contract was signed the respondent's director was out of the country.
 5. The claimant testified to support his case. The respondent failed to attend at the hearing and no respondent's witness testified.



6. The 1st major issue for determination is whether the respondent employed the claimant as claimed. The claimant relies on the letter dated January 8, 2020 to show that the respondent employed him as a branch manager at the Mombasa office. The respondent has denied that it employed the claimant because its directors did not authorize the employment. The court has examined the letter of employment as exhibited. It refers to a letter of application for employment but which the claimant has offered no evidence about. The letter does not state the name of the respondent's director who may have employed the claimant. The respondent denies running a Mombasa branch and the claimant offered no evidence about his place of work within Mombasa County. The probationary period per the letter is said to be 3 to 6 months but the claimant offers no pleading or evidence about that probationary period coming to an end and his enjoyment of the extra benefits of medical cover, house allowance and car for transport as envisaged in clause 3 on probation. The letter does not state the job description but while the claimant has pleaded that his duties were to collect purchase orders and introduce new clients who wanted to trade with the respondent, the claimant has offered no evidence of the work actually done for the respondent for the period February 1, 2020 to February 5, 2021.
7. The claimant has failed to show, who, of the respondent's directors or authorized officers, signed the alleged letter of employment on behalf of the respondent. The claimant has also failed to show the work actually performed to justify the claims made. The court finds that a contract of employment between the parties has not been established in the circumstances of the case. All remedies being predicated on existence of a contract of service but which the court has found not to have been established, the suit will collapse as unjustified and unfounded. The respondent failed to participate at the hearing and each party to bear own costs of the suit.
8. In conclusion the suit is hereby dismissed with orders each party to bear own costs of the suit.

SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT MOMBASA THIS FRIDAY 28TH OCTOBER, 2022.

BYRAM ONGAYA

JUDGE

