



**Muthondio v Falcon Press Ltd (Formerly Printing System Ltd) (Cause 2434 of 2016) [2022] KEELRC 12875 (KLR) (14 October 2022) (Judgment)**

Neutral citation: [2022] KEELRC 12875 (KLR)

**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI**  
**CAUSE 2434 OF 2016**  
**SC RUTTO, J**  
**OCTOBER 14, 2022**

**BETWEEN**

**ELIAS GICHOHI MUTHONDIO ..... CLAIMANT**

**AND**

**FALCON PRESS LTD (FORMERLY PRINTING SYSTEM LTD) .. RESPONDENT**

**JUDGMENT**

1. The claimant has averred that he was employed by the respondent since 1972 and that his contract of employment expired in 2009. That thereafter, the respondent lured him to enter into a contract for the payment of a lesser amount than that which had been agreed upon of Kshs 775,800/=. He thus claims that the respondent is withholding his dues and pension totalling the sum of Kshs 625,000/=.
2. In its response to the statement of claim, the respondent has denied employing the claimant since 1972. The respondent avers that the former printing company is a different entity and was owned by different individuals. The respondent further avers that it only engaged the claimant in 2010 as a machine operator upon being lawfully dismissed by his former employer. The respondent further denied consenting to pay the claimant the sum of Kshs 775,800/= and exerting undue influence on him. It contends that it only agreed to pay him the sum of Kshs 350,000/= in good faith. Consequently, the respondent has asked the court to dismiss the suit with costs.
3. The matter proceeded for hearing on October 4, 2021 when the court took the claimant's case and part of the respondent's case. The matter was then adjourned for further defence hearing which was slated for May 31, 2022, to allow the respondent call a second witness. When the matter came up for hearing on May 31, 2022, the respondent's advocate informed the court that they wished to close their case as they did not intend to call a second witness. Subsequently the hearing was marked as closed.



### Claimant's Case

4. The claimant testified in support of his case and at the outset, sought to adopt his witness statement and bundle of documents to constitute his evidence in chief. He testified that he was employed by the respondent, which subsequently changed its name. That upon the death of the respondent's director, his son took over the company and promised to pay him his dues once the company stabilised. That despite the death of the said director, he continued working for the company.
5. It was the claimant's further testimony that the respondent agreed to pay him the sum of Kshs 50,000/= on a monthly basis until payment in full of the sum of Kshs 775,800/=, which was in arrears. That he was only paid the sum of Kshs 150,000/= for a period of three months and the balance remains outstanding, hence his claim.

### Respondent's Case

6. The respondent's evidence was presented through the testimony of Zain Azhar Abdulhamid, who testified as RW1. He identified himself as one of the directors of the respondent and proceeded to adopt his witness statement and the bundle of documents filed on behalf of the respondent, to constitute his evidence in chief. He produced the said documents as the respondent's exhibits before court.
7. RW1 testified that the claimant was employed in 2010 after he was dismissed from his former employment (Printing System Ltd) in 2009. That this was the same year the respondent was incorporated. That as such, the respondent was not in existence in 1972 when the claimant alleges to have been employed. RW1 further testified that the respondent has two shareholders, himself and another person by the name Murtadha Abdulla. It was his testimony that the respondent and Printing System Limited are two different companies and that he is not a shareholder of the said Printing System Limited.
8. It was RW1's further testimony that upon employing the claimant, the respondent volunteered to pay him the sum of Kshs 350,000/= being gratuity (sic) and service pay. That the payment was made on behalf of Printing System Ltd since all its directors had by then, passed on.
9. That sometimes in December, 2014, the claimant abandoned the machine he was operating thus leaving important and urgent matters to be printed. That the claimant was the only person in the company who had knowledge of how to operate the machine hence the respondent had to look for another employee to undertake his work. That thereafter, the claimant started black mailing RW1 to pay him outrageous amounts of money. RW1 further told court that there was no consent between the respondent and the claimant for the payment of Kshs 665,800/=. That the claimant was only paid Kshs 150,000/= in good faith.

### Submissions

10. The claimant submitted that the respondent's argument that it paid him the sum of Kshs 150,000/=, out of generosity lacks logic. He further submitted that he had made a *prima facie* case against the respondent.
11. On the other hand, the respondent submitted that the claimant's assertion that he was employed since 1972 was unfounded as it was not in existence by then. That the claimant is claiming employment dues from the wrong party to wit, Falcon Press Ltd. To support its position, the respondent placed reliance on the case of [Stephen Maina Githaga v ACK Diocese of Mount Kenya West Registered Trustees & another](#) (2010) eKLR. The respondent in further submission urged that the claimant had not discharged his burden of proving that Flacon Press Ltd was formerly Printing System Limited. The



claimant buttressed its submissions on the case of *Simon Kiprop Mulwo v Valley Confectionary Limited* (2020) eKLR.

12. It was the respondent's further argument that the claimant has not specifically pleaded and proven any elements of the alleged undue influence. To this end, the case of *Abmed Mohamed Noor v Abdi Aziz Osman* (2019) eKLR, was cited in further support of the respondent's submissions. The respondent further argued that the claimant had not adduced any evidence to prove that there was an agreement to pay him the sum of Kshs 775,800/=.

### **Analysis And Determination**

13. Flowing from the pleadings on record, the evidence exhibited and the rival submissions, the following issues stand out for determination: -
  - i. Whether the claimant was employed by the respondent since 1972 and whether Falcon Press Ltd is the same entity as Printing System Ltd
  - ii. Whether the claimant is entitled to the sum of Kshs 625,000/=

### **Whether the claimant was employed by the respondent since 1972 and whether Falcon Press Ltd is the same entity as Printing System Ltd**

14. I have consolidated these issues as they are conjoined. It is the claimant's case that he was employed by the respondent with effect from 1972. The claimant is therefore asserting that his employment with the respondent was continuous from 1972 until 2009 when his contract expired.
15. In its defence, the respondent disputed the claimant's assertions that he was their employee since 1972. It was its defence that it employed the claimant in 2010 after he was discharged from his former employer. In support of its defence, the respondent exhibited a certificate of incorporation dated May 28, 2010. Essentially, this is the date the respondent was incorporated.
16. It thus follows that logically, the claimant could not have been employed by the respondent before the incorporation, which evidently, took place 38 years later.
17. Notably, the claimant did not challenge the respondent's certificate of incorporation, save maintaining that the said company changed its name from Printing System Ltd.
18. This takes me to consider whether Falcon Press Ltd, is the same entity as Printing System Ltd.
19. The claimant has averred that his employment with the respondent was with effect from 1972 and that it subsequently, changed its name from Printing System Ltd to Falcon Press Ltd.
20. The respondent has disputed the claimant's assertions and avers that the two companies are distinct. In support of its case, the respondent exhibited copies of documents held at the companies registry, indicating the particulars of Falcon Press Ltd and Printing System Ltd. The said particulars are, the date of registration, share capital, registered office, postal address, names of directors and shareholder information.
21. It is evident from the respondent's exhibit 2, that the directors/shareholders of Falcon Press Ltd are Zain Azhar Abdulhamid and Murtadha Abdulla Jaffer, and that the same was incorporated on May 28, 2010. On the other hand, the respondent's exhibit 3 indicate that Printing System Ltd was incorporated on October 10, 1972 and the directors are named as Antony Martin Maina, Shoaib Vayani, Zainab Abdalla Jaffer and Mohamed Abdull Jaffer, while the shareholders are Rajinder



Kumar Dadubhai Patel, Vishnuprasad Maganbhai Patel, Abdul Hamid Abdul Rehman and Jayantilal Arjanbhai Patel.

22. It is further apparent from the respondent's exhibit 2, that Falcon Press Ltd is located along Road C, off Enterprise Road with its postal address being P.O Box 32729, Ngara Road. On the other hand, the respondent's exhibit 3, reveal that Printing System Ltd is located along Kijabe street with its postal address being P.O Box 41315, GPO Nairobi.
23. What manifests from the foregoing is that the two companies are separate legal entities with different registered offices, directors, shareholders, and even postal addresses. Indeed, there is no nexus between the two companies, let alone, a common shareholder.
24. Contrary to the claimant's assertions, there is no evidence that there was change of name from Printing System Ltd to Falcon Press Ltd. Under the Companies Act, 2015, there is a process through which change of a company's name is effected and a certificate to that effect subsequently issues. In this case, no such evidence was exhibited to prove that there was a change of name from Printing System Ltd to Falcon Press Limited. If anything, the evidence on record prove that the two companies are distinct separate legal entities and cannot be construed to be one and the same.
25. The upshot of my findings is that the claimant has failed to prove that he was employed by Falcon Press Ltd with effect from 1972 and that the said Falcon Press Ltd is one and the same entity as Printing System Ltd.

Entitlement to terminal dues and pension in the sum of Kshs 625,000/=

26. The claimant's claim is for the sum of Kshs 625,000/= being the balance of what he terms as "the agreed employment dues". The claimant has averred that by consent of both parties, it was greed that he be paid the sum of Kshs 775,800/=. The respondent has disputed owing this amount.
27. In view of the credibility contest, section 107 of the Evidence Act is significant and is worth considering. It provides as follows: -

“ [107. Whoever desires any court to give judgment as to any legal right or liability  
(1)] dependent on the existence of facts which he asserts must prove that those facts  
exist.

28. Drawing from the above statutory provision and given that it is the claimant who alleged the existence of the consent and his entitlement to the sum of Kshs 625,000/=: it was incumbent upon him to prove that assertion. It was his burden to prove that indeed, there is a consent and that he is entitled to the said sum of money.
29. As it is, the claimant did not exhibit any consent or agreement for the payment of Kshs 625,000/= or any other amount for that fact. Therefore, his claim to that extent was not supported and remained unsubstantiated. Indeed, the claimant failed to justify the manner in which the said amount was arrived at and lay basis for payment of the same.
30. The fact that the respondent had paid him the sum of Kshs 150,000/= did not form sufficient basis for the claim of Kshs 625,000/=. As the claimant admitted during cross examination, the money was to be paid on behalf of Printing System Ltd.
31. As I have found, the two companies are separate legal entities and there is no proof by the claimant that Falcon Press Ltd agreed to take over the liabilities of Printing System Ltd. The claimant's claim therefore lacks basis.



32. What this boils down to is that the claimant has failed to prove that the respondent owes him the sum of Kshs 625,000/= and the claim to that extent collapses.

**Orders**

33. In the final analysis, I dismiss the claim in its entirety with no orders as to costs.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 14<sup>TH</sup> DAY OF OCTOBER, 2022.**

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**STELLA RUTTO**

**JUDGE**

**Appearance:**

For the Claimant Mr. Kimani

For the Respondent Ms. Namuhala

Court Assistant Abdimalik Hussein

**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 15<sup>th</sup> March 2020 and subsequent directions of 21<sup>st</sup> April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court had been guided by Article 159(2)(d) of the Constitution which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of the Constitution and the provisions of Section 1B of the Civil Procedure Act (Chapter 21 of the Laws of Kenya) which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

**STELLA RUTTO**

**JUDGE**

