



REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS

COURT OF KENYA AT NAIROBI

CAUSE NO. E107 OF 2021

JOHN HENRY TAYLOR.....CLAIMANT

VERSUS

BEDI INVESTMENT LIMITED.....1ST RESPONDENT

JAS BEDI.....2ND RESPONDENT

RULING

1. The Claimant/Applicant filed a Notice of Motion Application dated 10th February 2021 seeking to be heard for Orders that:

- a) *Spent.*
- b) A declaration that there is in existence between the parties a valid contract of employment through correspondence
- c) A declaration that the Respondents are in breach of the Claimant's contract of employment
- d) A declaration that and that the Claimant's salary has been unlawfully withheld
- e) A declaration that the Respondents pay damages for the Claimant's loss of income caused by their combined actions.
- f) The Respondents be directed to submit salaries withheld from the Claimant together with any interest accrued therefrom.
- g) The Honourable court allows the Claimant's suit and costs be borne by the Respondents.
- h) The Honourable court do make any other order that it deems just and fit in the circumstances of this case.

2. The Application is premised on the grounds that the Claimant entered into a contract of employment through correspondence with the Respondents in the month of January, 2018 whereby he accepted the terms and conditions therein by providing his services to the Respondents herein. That the 2nd Respondent further informed the Claimant that he would seek World Bank support and approval to employ the Claimant as a management consultant and which approval was thereafter communicated to him by the 2nd Respondent via email on 6th July 2018. That the Claimant's employment on contract started on 1st July 2018 and he worked until mid-August when he contacted the program officer at World Bank, one Ms. Sarah Ochieng, over his unpaid salary. That Ms. Ochieng informed the Claimant he would not be paid a salary by the World Bank as he had not entered a contract of employment with them and that he continued working until 30th September then returned to his home country. Further, that the Claimant later discovered that the World Bank never approved his employment with the 1st Respondent contrary to the official communication he had received from the 2nd Respondent. That the Respondents fraudulently procured and benefitted from the services of the Claimant and further withheld the salary due to him for the period of employment of 3 months 3 weeks, amounting Kshs. 1,320,657/- and that the Respondents remain liable for the said wages and salary. That the Respondents have also caused him great mental and financial distress and further exposed him to severe economic hardship during the ongoing pandemic. The Application is supported by an affidavit sworn by the Claimant/Applicant who asserts the grounds of the application and further avers that he is likely to suffer irreparable damage if this matter is not determined urgently.

3. The Respondents filed a Replying Affidavit sworn on 26th April 2021 by the 2nd Respondent who avers that the Claimant's application as drawn and presented is grossly incompetent, misconceived, bad in law and therefore liable to striking out with costs for the following reasons:

- a) The Jurisdiction of the Court has not been properly invoked at all as the application has been made under non-existent provisions of the law governing employment cases.
- b) Prayers 2, 3, 4, 5, 6, 7, 8 which are substantive prayers directed at the Respondents are not anchored on the reliefs sought in the Statement of Claim and therefore the same cannot be sought in an interlocutory application.
- c) In so far as prayers 2, 3, 4, 5, 6, 7, 8 are concerned, the same cannot be granted unless the entire claim is heard on its merits.
- d) The Claimant is seeking final prayers which have not been raised as reliefs in the statement of claim at the interim stage.

4. The 2nd Respondent further avers that sometimes in February 2018, he sought from the World Bank an IFC firm level support for a 'pilot project' for the apparel sub-sector under the Kenya Association of Manufacturers, for a matching grant i.e. dollar for dollar, whereby the company was to bear 50 percent of the costs of the consultant and IFC was to bear a balance of the 50 percent costs. That it is within his knowledge that World Bank confirmed the Claimant as the World Bank contractor to commence work on 1st July 2018 and further informed them that they were sorting out the necessary paperwork targeting this commencement date, including preparing a contract for the Claimant's acceptance. He avers that while the Claimant was to be paid by the World Bank, the Respondents were to cover for the Claimant's accommodation and logistics and admits that the IFC funding did not consummate. That the Respondents honoured their part by covering the Claimant's costs of accommodation and logistics and believe that they have wrongly been sued because no contract of service existed between the Claimant and the Respondents at any point in time.

5. The motion was to be disposed of by way of written submissions and the Claimant/Applicant did not file any submissions. The Respondents' submissions were to the effect that the jurisdiction of the Court has not been properly invoked at all as the application has been made under rules that are not applicable in this court. That the Claimant's application is expressly brought under provisions of the Civil Procedure Act and the Civil Procedure Rules 2010 but the procedural law obtaining before the Employment and Labour Relations Court is not the same as that obtaining in the civil courts. That as a specialist Court, the Employment and Labour Relations Court does not handle civil matters to which the Civil Procedure Act and the Rules apply and that Rule 32 of the Employment and Labour Relations Court (Procedure) Rules, 2016 limits the application of Civil Procedure Rules to execution proceedings. The Respondents' submit that the Claimant's application seeks to determine the dispute between the parties with finality without giving the Respondents an opportunity to adduce evidence in a full hearing. That the issue of whether or not there was a contract of service between them and the Claimant is one which cannot be determined in a summary manner but only after the cause has been heard and determined on its merit. They cite the cases of **Vivo Energy Kenya Limited v Maloba Petrol Station Limited & 3 Others [2015] eKLR** and **Olive Mwhiki Mugenda & Another v Okiya Omtata Okoiti & 4 Others [2016] eKLR** where the Court of Appeal observed that an order which results in granting of a major relief claimed in the suit ought not to be granted at an interlocutory stage when the main suit had not been heard. The Respondents also rely on the cases of **Benwick Warehouse Limited v DCI, Regional Coordinator Coast & 4 Others [2020] eKLR** and **Barclays Bank of Kenya Ltd v Banking, Insurance & Finance Union (Kenya) [2019] eKLR**. They submit that the application is misconceived, bad in law and that the Court ought to consider the foregoing submission and authorities and dismiss the application with costs to the Respondents since costs generally follow the event.

6. The motion before the Court seeks various reliefs against the Respondents. Chief among the reliefs sought are in the nature of summary judgment as the Court is beseeched to issue a declaration that there is in existence between the parties a valid contract of employment through correspondence, a declaration that the Respondents are in breach of the Claimant's contract of employment, a declaration that the Claimant's salary has been unlawfully withheld, a declaration that the Respondents pay damages for the Claimant's loss of income caused by their combined actions and that the Respondents be directed to submit salaries withheld from the Claimant together with any interest accrued therefrom as well as allow the Claimant's suit and costs to be borne by the Respondents. These orders are only available to a party after a hearing and not at interlocutory stage. I am inclined to accede that the jurisdiction of this Court has not been properly invoked to issue the orders sought. The motion before me is accordingly devoid of merit and is hereby dismissed. Each party to bear their own costs for the motion.

It is so ordered.

Dated and delivered at Nairobi this 16th day of June 2021

Nzioki wa Makau

JUDGE