



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI**

**CAUSE NO. 1761 OF 2014**

**PAULO CHACHA ISACK.....CLAIMANT**

**VERSUS**

**MANPOWER GUARD SERVICE.....1<sup>st</sup> RESPONDENT**

**MANPOWER & LOGISTICS LIMITED.....2<sup>nd</sup> RESPONDENT**

**JUDGMENT**

1. Paulo Chacha Isack (Claimant) acting in person instituted legal proceedings against Manpower Guard Service (1<sup>st</sup> Respondent) on 8 October 2014 and he stated the Issues in Dispute as

Unfair termination and refusal by the Respondent to pay terminal benefits.

2. The 1<sup>st</sup> Respondent filed its *Statement of Response* on 18 November 2014.

3. The Claimant later engaged the services of an advocate and pursuant to leave of Court filed an *Amended Statement of Claim* on 12 March 2018.

4. The Respondent filed an *Amended Response* on 18 April 2018 and on 10 April 2019, the Claimant filed a *Further Amended Statement of Claim* after securing leave (the *Further Amended Statement* introduced Manpower & Logistics Ltd as the 2<sup>nd</sup> Respondent).

5. The Cause was heard on 6 November 2019. The Claimant and the 2<sup>nd</sup> Respondent's Control Officer testified.

6. The Claimant filed his submissions on 20 November 2019 while the Respondents filed their submissions on 13 December 2019.

7. The parties did not agree on issues for determination and therefore the Court has isolated the Issues for determination as examined hereunder.

**Employment relationship**

8. The Claimant asserted that he was employed by the Respondents on 9 August 2003 as a security guard through an oral contract.

9. In both the *Statement of Response* and the *Amended Response*, the 1<sup>st</sup> Respondent denied that it had any contractual relationship with the Claimant, and it produced a certificate of incorporation during the hearing indicating that it was registered on 23 July 2012, and several Clearance Certificates and Discharges issued to the Claimant by an entity known as *Target Guards Ltd*.

10. The Clearance Certificates and Discharges suggest that the Claimant was on fixed-term contracts and that at the end of each year he would be paid cleared, and paid all dues under the contracts.

11. The Certificate of Incorporation and the Clearance Certificates and Discharges were served upon the Claimant but he did not bother to join Issue nor produce evidence from the Registrar of Companies or otherwise to establish a nexus between *Target Guards Ltd*, and the Respondents.

12. If indeed there was a change of name as asserted by the Claimant during oral testimony, nothing would have been simpler than to conduct a search at the Companies Registry and produce a Certificate of Change of Name.

13. In consideration of the evidence and records produced by the Respondents, the Court finds that the Respondents were not in any employment relationship with the Claimant.

14. The Court must admit however that there were tell-tale signs that the persons behind the Respondents had some relationship with the persons behind *Target Guards Ltd* but due to the juristic personality of registered persons, it cannot find the Respondents liable to the Claimant.

15. Regrettably having come to the conclusion that there was no employment relationship between the Claimant and the Respondents, the Court has no option but to dismiss the Cause in its entirety.

16. No order as to costs.

**Delivered, dated and signed in Nairobi on this 31<sup>st</sup> day of January 2020.**

**Radido Stephen**

**Judge**

**Appearances**

For Claimant Ms. Muumbo instructed by Carolyn K. Muumbo & Co. Advocates

For Respondents Ms. Kimani instructed by Mwaura & Wachira Advocates

Court Assistant Lindsey