



**REPUBLIC OF KENYA**

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

**CAUSE NO. 631 OF 2015**

**FRANCIS GICHUHI MANYEKI.....CLAIMANT**

**v**

**O.M. MILLERS LIMITED.....RESPONDENT**

**JUDGMENT**

1. The Cause was heard on 21 February 2019 and 27 January 2020 and Judgment was reserved to 20 March 2020 but due to the effects of COVID19, it could not be delivered. The Deputy Registrar gave notice of delivery of judgment for today (in absence of parties) but in Court.
2. Francis Gichuhi Manyeki (Claimant) and Piyush Savla, Managing Director of O.M. Millers Ltd (Respondent) testified.
3. The Respondent filed its submissions on 29 January 2020. The Claimant filed his submissions on 21 February 2020.
4. The Court has considered the pleadings, evidence and the submissions and identified the Issues for determination as examined hereunder.

**Employment relationship**

5. The Claimant's case was that he was employed by the Respondent on 2 February 2010 as a Supervisor until the contract was terminated on 3 January 2014 and that he was not issued with a formal contract.
6. The Respondent's witness denied that the Claimant was an employee. He produced copies of official returns of remittances to the National Social Security Fund. The returns did not have the Claimant's details.
7. To demonstrate that he was an employee of the Respondent, the Claimant testified that the Respondent caused him to be arrested by the Police and that he was detained for 3 days and that he could obtain a copy of the Occurrence Book abstract from Kitengela Police Station.
8. At the close of the Claimant's examination-in-chief on 21 February 2019, the Court ordered the Claimant to obtain and file in Court a copy of the extract from the Kitengela Police Station to shed light on the nature of the relationship he had with the Respondent.
9. The Claimant did not obtain or produce the extract of the Occurrence Book.
10. The Court gave the Claimant more than adequate time to introduce a copy of the extract from the Police Occurrence Book to demonstrate that he was arrested at the behest of the Respondent.
11. The particulars of the Occurrence Book would have shone light on the nature of relationship between the parties but unfortunately, the Claimant gave no convincing or sufficient reasons for failing to obtain the abstract from the Police.
12. The Claimant did not suggest that the National Social Security Fund returns filed by the Respondent were not genuine. He knew in advance that the Respondent had denied any form of an employment relationship with him, but still did not bother to call any former colleague he served with to corroborate that he was an employee of the Respondent.
13. On the material placed before it, the Court has no option but to find that there was no employment relationship or contract of service between the Claimant and the Respondent.
14. With the conclusion on the employment relationship, it is not necessary for the Court to discuss the other Issues which arose for determination.

15. The Cause is dismissed with costs to the Respondent.

**Delivered, signed and dated in Nairobi on this 17<sup>th</sup> day of April 2020.**

**Radido Stephen**

**Judge**

**Appearances**

For Claimant

Mr. Mulaku instructed by Namada & Co. Advocates

For Respondent

Mr. Kimani instructed by Macharia-Mwangi & Njeru Advocates

Court Assistant

Lindsey/Judy Maina