



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO 1659 OF 2012

WILLIAM MIGWI KANYUACLAIMANT

VERSUS

RISK SOLUTIONS INSURANCE BROKERS LTD.....RESPONDENT

JUDGEMENT

1. The claimant alleged that he was in June 2004 employed by the respondent as an accountant and that his salary was dependent on fee notes he prepared. He served the respondent with loyalty and diligence until September, 2010 when he resigned due to the respondent's failure to pay dues owed to him. The claimant's claim against the respondent was therefore Kshs 1,245,000/=.

2. The respondent on its part pleaded that it did not employ the claimant as an accountant as alleged or at all. The respondent admitted only having engaged the services of the claimant to undertake specific tasks on diverse dates since 2004 for which the respondent paid for the work done but not as salaried employee. The respondent further stated that the fee notes referred to in paragraph 5 of the memorandum of claim were misconceived and that the claimant was not entitled to Kshs 1,245,000/= claimed.

3. The respondent further averred that if the claimant was to enforce payment of professional fees for services allegedly rendered, then the court had no jurisdiction to hear and determine the matter as there was no employer-employee relationship but that of professional/client relationship.

4. In his oral evidence before court the claimant stated among others that he initially worked on consultancy basis for another company called Kiwa Company Limited and that the Managing Director was the same as the respondent's. The MD requested him to come and assist with accounting system. This was in March, 2004. He worked on occasional basis. He established the accounting system, kept books of accounts for nine months and was to be paid on the basis of the work done. He would issue the respondent with fee notes. From March, 2005 his relationship with the respondent changed. He started working full time. He closed down his grains business and concentrated on the respondent. It was his evidence that he was not offered fresh terms but they agreed he would be paid Kshs 360,000/= per year.

5. From 2007 there were arrears of payment and by 2008 there was arrears of Kshs 700,000/=. According to him they agreed with the respondent that he would be paid Kshs 500,000/= lumpsum and installments thereafter. By 2009, the amount had accumulated to Kshs 800,000/=. He sent reminders and no payment came forth. By 2010 the amount was Kshs 1,245,000/= so he decided to resign.

6. In cross-examination he stated that he holds a Bachelor's Degree in accounts and that he was married to the respondent's MDs sister. It was his evidence that he had salaried positions before he registered his firm and in all these places he was paid monthly. He stated that he prepared a fee note at the end of the 1st nine months he worked for the respondent. They had agreed he would charge after he had worked. There was no agreement in 2004 on what he would be paid per month. The fee note for Kshs 108,000/= for 2004 was paid. In 2005 there was system failure and he was called to rectify the same. The agreed with the respondent that he would be paid Kshs 360,000/=. He did a fee-note. It was from January to December 2005. The fee-notes were in his firm's name. He further stated that the demand letter from Kituo cha Sheria did not state salary was specific. It did not say his salary would be Kshs 360,000/= p.a. He conceded that he was not a salaried employee.

7. The respondent's witness Mr George Ndegwa informed the court that he was the respondent's managing Director and that he filed a witness statement on 15th November, 2012 which he sought to adopt as his evidence in chief. He denied the claimant was ever his employee. He confirmed the claimant was his brother in-law and was to help in setting up the company. He had other employees who were issued with letters of appointment. It was his evidence that he asked the claimant to assist in the setting up of accounting system and that there was no remuneration agreed. The claimant would send invoices and he would pay what he could afford.

8. According to him the claimant would only come if there was something to do. He worked for the respondent until 2010. According to him he paid the claimant about 1.2 million for the period he assisted. The payments were done informally, some by cheque, others by cash. From the invoices the claimant would detail the work done but he did not agree with most of them. He paid what he felt was fair.

9. In cross-examination he stated that the claimant assisted his late wife in a different company. He denied calling the claimant for computer work. He further stated that he complained about the invoices and paid what he felt was fair. The respondent further stated that the claimant used to work two to three days in a month and would only do what he was asked to do.

10. The court has jurisdiction over Employment and Labour Relation and connected matters. For its jurisdiction to accrue the main issue must arise in the context of an employment relationship or labour relations. Of course where consequential or other accrued issues arise the court would for costs and effective use of judicial time and resources decide the consequential or the accrued issue under the principle of accrued or consequential jurisdiction. The main issue in dispute must however fall within the jurisdiction of the court.

11. The claimant whereas claiming he was employed by the respondent stated that he was paid for work done and raising of fee notes. He conceded that he did not have any specific salary and would be paid once he completed the work assigned and upon raising his fee-note. The fee-notes raised by the claimants were in the name of MK Associates which the claimant stated was his firm. The claimant further in his evidence conceded that he never worked for the respondent on a regular basis and would be called as at when required.

12. Employment which is the same as contract of service is defined in the Employment Act as “an agreement whether oral or in writing and whether expressed or implied to employ or to serve as an employee for a period of time...” An employee is further defined as “a person employed for wages or a salary...” An employee is under the control and direction of the employer and must dedicate all his time to the service of the employer during working hours. The court taking into account the above definitions does not think that there existed an employer-employee relationship between the claimant and the respondent. That being the case, the court does not have jurisdiction to entertain the claim herein. Since jurisdiction is everything to a court and once it is established that the court lack jurisdiction, the matter ends there.

13. The court will therefore not delve into the issue whether the claimant was a qualified accountant so as to raise the fee-notes concerned. This will be a matter for the court with competent jurisdiction to decide subject to the law of limitation. The claim is therefore dismissed for want of jurisdiction.

14. It is so ordered.

Dated at Nairobi this 6th day of May, 2020

Abuodha Jorum Nelson

Judge

Delivered this 6th day of May, 2020

Abuodha Jorum Nelson

Judge

In the presence of:-

.....for the Claimant and

.....for the Respondent.

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