



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA

AT NAIROBI

CAUSE NO 1574 OF 2013

ABRAHAM ISIAHO.....1ST CLAIMANT

WILBERFORCE OLUOCH ONYANGO.....2ND CLAIMANT

LEAH ADEBI ALITSI.....3RD CLAIMANT

HAMZA AHMED.....4TH CLAIMANT

ELISHA OTIENO OMENDA.....5TH CLAIMANT

JOSEPHAT MWENDO MUKOSI.....6TH CLAIMANT

SILVESTER KITHINJI MGOROI.....7TH CLAIMANT

DENNIS OOKO OPIYO.....8TH CLAIMANT

EZEKIEL REMA OERI.....9TH CLAIMANT

TABITHA WAMBUI MWIGANI.....10TH CLAIMANT

OBADIAH KAMAU.....11TH CLAIMANT

VERSUS

JAMII BORA KENYA LIMITED.....1ST RESPONDENT

JAMII BORA BANK LIMITED.....2ND RESPONDENT

JUDGEMENT

1. The claimants pleaded that 2nd respondent was formed as a commercial enterprise in March, 2010 after the 1st respondent Jamii Bora Kenya was constituted. Initially the 1st respondent started as a trust namely Jamii Bora Trust in 1999. In January 2007 the trust was registered as Jamii Bora Kenya Ltd and continued to operate as such until when the reconstitution was done and hence the birth of 2nd respondent.

2. On 1st September, 2008 the 1st respondent employed the services of the claimants as promoters at a monthly salary of Kshs 10,000/=. In March, 2010 when Jamii Bora Kenya was reconstituted to form Jamii Bora Bank the 2nd respondent under mutual arrangement between 1st and 2nd respondent, 2nd respondent retained the services of claimants as promoters at the same monthly basic salary of Kshs 10,000/=.

3. The said contracts were to expire on 31st August, 2010 but the same were renewed when the respondent through communication given by one of the 2nd respondents directors Mrs Ingrid Munro who told the claimants to continue with their duties and assured them of their employment. The claimants continued with their various roles as initially agreed but more specifically they were required to do promotion for and on behalf of the 2nd respondent.

4. The 1st to 10th claimants served the respondents at their Kibera Office until June 2011 when they resigned because of frustrations by the respondents. The 11th claimant served the respondent at their Kibera Office for one year then he was transferred to Kenyatta Market where he worked until June 2011 and also resigned out of frustration. By the time of resignation the respondent had not paid the claimants their salary for five months.

5. The 1st respondent did not file response to the claim. The 2nd respondent in its memorandum of response stated that it was not only a separate district entity from Jamii Bora Charitable Trust and that the same still exists as a registered trust. The 2nd respondent further pleaded that to the extent that is the resultant institution after the takeover of the 1st respondents business, assets and liabilities by City Finance Bank Limited in March 2010, the 1st respondent ceased to exist.

6. According to the 2nd respondent the claimants were employees of the 1st respondent on fixed term contracts which lapsed on 31st August, 2010 whereupon employer-employee relationship automatically terminated. The renewal of the fixed term contract were at the sole discretion of the 1st respondent and could only be effected in writing. To the extent that there was no such written communication of renewal, there was no renewal of the fixed term contracts. Further any employee on such fixed contract whose services the 2nd respondent desired to retain were engaged on separate and district employment contracts and only after being interviewed afresh.

7. The 2nd respondent further pleaded that Ingrid Munro was a non-executive director of the 2nd respondent and was not involved in the day to day operations of the 2nd respondent and as such could not unilaterally renew the claimant's fixed term contracts.

8. The respondent stated that after the lapse of the claimants fixed term contract on 31st August, 2010 it never assigned any duties to the claimants and or paid them any salary. In his oral testimony on behalf of the claimants. Mr Ezekiel Berna Oeri stated that they were assigned the role of organizing people in groups and urging them to take loans. They were paid Kshs 10,000/= per month but after a while their salaries were not paid. When they went to enquire from the head office they were told to continue mobilizing people to take loans but whenever they asked about their salaries they were told to wait.

9. In cross-examination he stated that they were never employed by the Jamii Trust but their NSSF statements showed they were employed by Jamii Bora Trust. He further stated that their contracts were annual and renewable. He further stated that they never got another contract with the 2nd respondent but were asked to continue mobilizing people to take loans and open accounts with the 2nd respondent. The respondents witness Mr John Wamati stated that the 2nd respondent took over Citi finance which had earlier taken over Jamii Bora Kenya. According to him the 1st respondent was no longer in existence.

10. Previous employees who had contracts were either renewed or they ended. Those whose contracts were renewed were issued with contracts by the 2nd respondent. He denied knowledge of any resignation by the claimants. The last payments to the claimants was in October 2010. It is common ground that the claimants were employed on annual fixed term contract the last one which expired on 31st August, 2010. The claimants however averred that they continued in employment upon expiry of their contracts when one of the Directors Mrs Ingrid Munroe verbally told them to continue working. The claimants however alleged that they later or resigned out of frustration when the respondent failed to pay their salaries. The claimants however did not produce any of the resignation letter to show when it was done and to whom it was addressed.

11. The claimants contracts having been in writing, in the absence of another written contact or communication over the same it would be unsafe for the court to make a finding that the contracts were renewed through a verbal communication from Ingrid Munroe as alleged by the claimants. Further, there was the issue of whether the 2nd respondent was the claimant's employer or not.

12. According to the respondent, the operations of 1st respondent were taken over by Citi finance who was later on taken over by the 2nd respondent operating a different business model. According to the 2nd respondent, the 1st respondent was a separate and distinct personality hence could on its own be sued. Further that upon taking over by Citi finance, the 1st respondent ceased to exist.

13. In the absence of evidence of renewal of the claimants fixed term contracts and further in the face of lack of clarity in the connection between the 1st and 2nd respondent, the court is of the view that it was more probable than not that the claimants contracts expired in August, 2010 and were not renewed as alleged by the claimants.

14. In the circumstances the court finds the claim without merit and the same is hereby dismissed with costs.

15. It is so ordered.

Dated at Nairobi this 20th day of September, 2019

Abuodha J. N.

Judge

Delivered this 20th day of September, 2019

Abuodha J. N.

Judge

In the presence of:-

.....for the Claimant and

.....for the Respondent.

Abuodha J. N.

Judge