



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR
RELATIONS COURT AT MALINDI
CAUSE NUMBER 23 OF 2017
BETWEEN
CHRISPAS C. MASHA.....CLAIMANT
VERSUS
BEI INTERNATIONAL LIMITED.....RESPONDENT

Rika J

Court Assistant: Benjamin Kombe

Kilonzo & Aziz Co. Advocates for the Claimant

Respondent in Person

JUDGMENT

1. The Parties herein signed a Contract Order for Guarding Services, on 20th August 2014.
2. The Claimant was to supply the Respondent with 10 Security Guards, at a cost of Kshs. 162,400 per month.
3. The Claimant states, the Respondent later asked for additional Guards, raising the total number to 13 Guards.
4. The Respondent is alleged to have failed to pay to the Claimant the cost of the Guards for the months of May, June and July 2016, added up at Kshs. 709,363.
5. The Respondent alleged Guards supplied to the Respondent by the Claimant were thieves. The Respondent terminated the contact on this ground, vide a letter dated 31st August 2016.
6. This prompted the Claimant to file the Claim on 10th July 2017 seeking:-
 - a) Kshs. 709,363.
 - b) Damages for breach of contract.

- c) Compensation for wrongful termination of the contract.
- d) Costs.

7. The Respondent filed its Statement of Response on 26th February 2018. The Respondent makes a general denial, stating repeatedly, that the “*Claimant is put to strict proof thereof.*”

8. The Claimant gave evidence in the absence of the Respondent on 25th June 2019. The hearing date was scheduled in open Court, in the presence of all the Parties, on 25th February 2019.

The Court Finds:-

9. The dispute herein does not fall within the jurisdiction of the E&LRC.

10. Section 12(1) of the E&LRC Act states:-

“The Court shall have exclusive, original and appellate jurisdiction to hear and determine all disputes, referred to it in accordance with Article 162(2) of the Constitution, and the provisions of this Act, or any written law which extends jurisdiction to the Court relating to employment and labour relations including –

- a) disputes relating to, or arising out of employment between an Employer and Employee;
- b) disputes between an Employer and a Trade Union;
- c) disputes between an Employer Organisation and a Trade Union Organisation;
- d) disputes between Trade Unions;
- e) disputes between Employer Organisations;
- f) disputes between an Employer’s Organisation and a Trade Union;
- g) disputes between a Trade Union and Member thereof;
- h) disputes between an Employer’s Organisation or a Federation, and a Member thereof;
- i) disputes concerning the registration and election of Trade Union Officials; and
- j) disputes relating to the registration and enforcement of Collective Agreements.

11. The Parties to this Claim were not in any of the 10 relationships contemplated under paragraph (a) to (j) of section 12(1) of the E&LRC Act.

12. The Claimant has not shown which provision of the E&LRC Act, or provision in any other written law, extends jurisdiction to the E&LRC to hear and determine his Claim.

13. He was not an Employee of the Respondent, and the Respondent was not his Employer. The contract of 20th August 2014, does not fall within Section 87(1) and (2) of the Employment Act.

14. The Parties were in a commercial relationship. They executed a contract for provision of guarding services.

15. The Claimant received payment from the Respondent as cost of providing guarding services. He was not paid a salary for rendering his own labour to the Respondent.

16. The amount of Kshs. 709,362 claimed does not arise from breach of an employment contract, but from breach of a commercial transaction.

17. The prayer for compensation for wrongful termination of the contract, is wholly misconceived. Compensation under the E&LRC Act, and the Employment Act is granted to an Employee whose contract of employment is unfairly terminated. It must be contemplated under the E&LRC Act, or any other written law. The Claimant has not placed his prayer for compensation within these laws.

18. In the view of the Court, the Claimant ought to have approached the Magistrate's Court in pursuit of general damages for breach of contract, and for the unpaid cost of guarding services for the months of May, June and July 2016.

19. His Claim has nothing to do with the Employment Act 2007, the E&LRC Act, or any other written law extending jurisdiction to the E&LRC. It does not relate to employment and labour relations. It is a purely commercial transaction.

IT IS ORDRED:-

a) The Claim is dismissed.

b) No order of the costs.

Dated and signed at **Mombasa this 1st day of November 2019.**

James Rika

Judge