



**REPUBLIC OF KENYA**

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

**CAUSE NO 555 OF 2017**

**JUNE DEZINA VEL.....CLAIMANT**

**VERSUS**

**THE NATION MEDIA GROUP LTD.....RESPONDENT**

**RULING**

1. The respondent raised a preliminary objection that the court lacked jurisdiction to hear and determine the issue raised in the claim as there was no employment relationship between the claimant and the respondent.
2. According to counsel for the respondent the agreement between the claimant and respondent stipulated that the claimant was engaged as an independent contractor. Counsel submitted that clause 8 of the agreement provided that it was understood by the parties that the consultant was an independent contractor with respect to the company and not an employee and that the respondent was not to provide fringe benefits including health insurance, paid vacation or any other employee benefits.
3. The respondent further submitted that the claimant did not annex any evidence of her employment with the respondent and that the payslips and certificate of service attached by the claimant related to her previous employment at Royal Media Services Limited and were of no relevance to the claim before the court.
4. According to the claimant she was offered employment by the respondent pending approval of the budget and that the parties agreed on an oral contract pending a written one once the budget was approved. The terms of the oral contract were that the claimant was to start her engagement on the month of July 2015 at a proposed salary of Kshs 100,000 per month which according to the claimant the respondent orally consented to.
5. The claimant has averred that her employment relationship with the respondent started earlier than December, 2015 when the respondent offered her a written contract to offer services to the respondent as a consultant.
6. The claimant contends that the initial employment contract was oral. A contract of employment can be verbal or written. The court would require to receive evidence to decide the existence or otherwise of the alleged oral contract. This can only happen at the full trial after hearing the parties.
7. The court is therefore of the view that in the circumstances of the allegations by the claimant that there was an oral contract of employment prior to December, 2015 when the written contract was issued, this would not be a proper stage to decide whether there existed employer-employee relationship between the claimant and the respondent.
8. The court therefore overrules the preliminary objection and directs that the matter proceed to full trial on merits.
9. It is so ordered.

**Dated at Nairobi this 28<sup>th</sup> day of September, 2018**

**Abuodha Jorum Nelson**

**Judge**

**Delivered this 28<sup>th</sup> day of September, 2018**

**Abuodha Jorum Nelson**

**Judge**

**In the presence of:-**

.....for the Claimant and

.....for the Respondent