

REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS COURT OF KENYA

AT NAIROBI

CAUSE NO. 2229 OF 2017

ERASTUS MUSYOKA MUKANGI.....CLAIMANT

VERSUS

KINGS DEVELOPERS LTD.....RESPONDENT

RULING

1. The application before me is the Chamber Summons dated 5.3.2018. It is brought by the respondent and it seeks:

(a) That her name be struck off from the suit herein.

(b) Alternatively leave be granted to enjoin Valmiki Constructions as a party to the suit.

(c) Costs.

2. The application is supported by the affidavit of Ms. Sunita Patel on behalf of the respondent and the gist of the application is that the Claimant was never employed by the respondent but by her subcontractor, Valmiki Constructions. He produced copy of the subcontracting agreement between the respondent and Valmiki Constructors dated 20.3.2015. That the respondent was never privy to the contract between the Claimant and his employer and as such she was not liable under the said contract of employment between the Claimant and his said employer. She therefore prayed for the suit to be struck out against her.

3. The Claimant opposed the application by filing the Replying Affidavit sworn by himself or 14.3.2018. The gist of the affidavit is that he was employed by the respondent and denied knowledge of the said Valmiki Construction. In the alternative, the Claimant contended that the said Valmiki Construction was an agent of the respondent by virtue of being hired as a sub-contractor to perform a task for the benefit of the respondent and for that reason he was employed by the respondent .

4. I have carefully considered the application, affidavits, pleadings and the oral submissions filed. By the suit herein, the Claimant alleges that he was employed by the respondent in 2015 as a Mason until November 2015. That his monthly salary was **Kshs.21,600** which was paid through vouchers. The respondent has denied any employment relations between him and the Claimant and averred that she never employs masons directly but instead engages subcontractors who in turn hires their own employees. She therefore denied any privity of contract between the subcontractor's contracts of employment with their employees.

5. On a balance of probability, I find the application and the submissions by the respondent to have merits. She has produced copy of the subcontracting agreement dated 20.3.2015 to prove that Valmiki Construction was an independent contractor subcontracted by her. The Claimant has not produced any documentary evidence or if at all to contradict the alleged subcontracting agreement. I also find that the Claimant has not demonstrated any employment relationship between him and the respondent. All what he alleged, but without evidence, is that the subcontractor was an agent of the respondent and therefore the employment contract between him and the subcontractor was enforceable against the respondent. That contention is dismissed for lack of merits.

6. For the reason that there was never any employment relationship between the parties herein, I find that no reasonable cause or suit has been established against the respondent and strike out the claim against her with no order as to costs.

Dated, Signed and Delivered in

Open Court at Nairobi this 2nd day of November, 2018

ONESMUS N. MAKAU

JUDGE