



**REPUBLIC KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT MOMBASA**

**CAUSE NO 136 OF 2016**

**STEPHEN NDOLO AND 21 OTHERS .....CLAIMANTS**

**VERSUS**

**TOYO CONSTRUCTION COMPANY LIMITED ..... 1<sup>ST</sup> RESPONDENTS**

**GIEFCON LTD..... 2<sup>ND</sup> RESPONDENTS**

**RULING**

**Introduction**

1. The claimants brought this suit on 18.2.2016 claiming terminal dues plus compensation unfair termination from the respondents. According to the claimants, they were employed by the 1<sup>st</sup> respondent through the 2<sup>nd</sup> respondent acting as her agent.

2. The first respondent has denied the existence of any employment relationship between the claimants and herself and has brought the Notice of Motion dated 18.8.2016 seeking for striking out of the suit against her. According to her, the claimants were employees of the 2<sup>nd</sup> respondent who was an independent contractor engaged by her under a Manpower Supply Contract dated 27.7.2012.

3. The 2<sup>nd</sup> respondent has admitted that the claimants were her employees and not employees of the 1<sup>st</sup> respondent and as such she did not oppose the notice of motion by the 1<sup>st</sup> respondent. The claimants have however opposed the motion vide their replying affidavit of Stephen Ndolo sworn on 4.10.2016. According to the claimants, the 1<sup>st</sup> respondent is liable to compensate and pay the dues sought by the claimants at common law.

**Analysis and determination**

4. After careful consideration of the pleadings, motion, rival affidavits and submissions filed, it is clear that the claimants were employed by the 2<sup>nd</sup> respondent and not the 1<sup>st</sup> respondent; that their payslips and termination letters were from the 2<sup>nd</sup> Respondent who also used to pay their NSSF contributions as employer code NO. 506427. The issue for determination is whether the pleadings brought by the claimants establishes any reasonable cause against the 1<sup>st</sup> Respondent.

**Reasonable cause**

5. There is no doubt that the claimants were employed by the 2<sup>nd</sup> Respondent to provide labour to the 1<sup>st</sup> Respondent. The claimants case is that the 2<sup>nd</sup> Respondent acted as the 1<sup>st</sup> Respondent's agents when she recruited them to work at the 1<sup>st</sup> Respondent's premises. No evidence has, however, been adduced to prove that agency relationship. Consequently, I agree with the respondents' contention that the claimants were employees of the 2<sup>nd</sup> respondent who was engaged to provide labour to the 1<sup>st</sup> Respondent as independent contractor under a manpower supply agreement. There was therefore no privity of contract between the claimants and the 1<sup>st</sup> Respondent nor were they employed pursuant to any agency

relationship between the two Respondents herein. The claimants cannot therefore enforce their contract with their 2<sup>nd</sup> Respondent against the 1<sup>st</sup> Respondent and as such the answer to the question for determination therefore in the negative.

**Disposition**

6. For the reasons stated above the suit herein is stuck out in as far as it relates to the claims against the 1<sup>st</sup> Respondent. No orders as to costs.

**Signed, dated and delivered at Mombasa this 13<sup>th</sup> day of January, 2017.**

**O.N. MAKAU**

**JUDGE**