



**REPUBLIC OF KENYA**

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

**CAUSE NO 1650 OF 2014**

**AMIT DANIEL WASHINGTON.....**

.....**CLAIMANT**

**VERSUS**

**CENTUM LEARNING LIMITED.....**

**RESPONDENT**

**RULING**

1. By a Statement of Claim dated 22<sup>nd</sup> September 2014, the Claimant has sued the Respondent for terminal dues. The Respondent filed a Memorandum of Response on 10<sup>th</sup> October 2014 to which the Claimant responded on 24<sup>th</sup> October 2014.

2. The case opened for hearing on 16<sup>th</sup> March 2016. In the course of the Claimant’s cross examination, it emerged that a clause in the Claimant’s employment contract cites the applicable law as that of India and assigns jurisdiction to Indian Courts. The Court determined that this had a bearing on its own jurisdiction to entertain the claim and therefore suspended the hearing in order to dispense with the issue of jurisdiction. The Court directed the parties to file written submissions on this issue.

3. In its written submissions filed on 1<sup>st</sup> April 2016, the Respondent referred to Clause 10 of the Claimant’s letter of appointment dated 16<sup>th</sup> July 2007 which provides as follows:

***“This appointment letter shall be governed and construed in accordance with the laws of India. It is agreed that any dispute of whatsoever nature between you and the Company will be subjected to the exclusive jurisdiction of courts of [Delhi] whether they be civil, labour courts, industrial tribunals or any other courts or authority of whatsoever nature.”***

4. This letter was however issued by Bharti Airtel Services, an Indian Company based in New Delhi.

5. The question the Court must ask therefore is how the Claimant came into a relationship with Centum Learning Limited. It was submitted on behalf of the Claimant that Bharti Airtel Services Limited changed its name to Bharti Resources Limited and then to Bharti Learning Systems and eventually to Centum Learning Limited.

6. In support of his case, the Claimant referred the Court to the following documents issued by the Respondent:

- a) Electronic mail dated 23<sup>rd</sup> January 2014 accepting the Claimant’s resignation;

b) Claimant's pay slips for September and October 2013 in Kenya Shillings;

c) Communication between the Claimant and the Respondent.

7. Further, in the Memorandum of Response filed by the Respondent on 10<sup>th</sup> October 2014, an employment relationship with the Claimant is admitted.

8. On its part, the Respondent submits that there was no employment contract between itself and the Claimant and maintains that disputes arising from the Claimant's employment with Bharti Airtel Services are beyond the jurisdiction of this Court.

9. In advancing the Claimant's case, his Counsel cited the **Halsbury's Laws of**

**England (4<sup>th</sup> Edition), Volume 16 (1A) page 11, paragraph 15** which states:

*“In general a contract of employment need not be in any particular form. A contract of employment may thus be inferred from conduct which shows that such a contract was intended although never expressed, as where there has been service of the kind usually performed by employees.”*

10. Counsel also relied on the decision by **Radido J** in ***Shashikant Chandubhai Patel v Oriental Commercial Bank Ltd [2014] eKLR*** where the learned Judge held that in appropriate cases, terms of employment may be implied so as to give effect to the mutual intention of the parties.

11. I think that this is such a case. From the pleadings and submissions filed by the parties, it seems to me that by the time the Claimant put in his resignation, his employment had metamorphosed from a written contract with Bharti Airtel Services to an unwritten contract with the Respondent. I say so because the Respondent not only paid the Claimant a monthly salary but also accepted his resignation. One does not pay a salary to a stranger nor can one accept the resignation of a non-employee.

12. This Court has therefore reached the conclusion that by the time the Claimant tendered his resignation, his employment relationship with Bharti Airtel Services, which was evidenced by a written contract, had been replaced by one with the Respondent which though not expressly documented, was evidenced by the conduct of the parties.

13. The Court further concludes that the jurisdiction ouster clause contained in the letter of appointment issued by Bharti Airtel Services was not part of the Claimant's engagement with the Respondent. This Court therefore assumes jurisdiction and directs that the matter shall proceed to full hearing.

14. I make no order for costs.

15. Orders accordingly.

**DATED SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 10<sup>TH</sup> DAY OF FEBRUARY 2017**

**LINNET NDOLO**

**JUDGE**

Appearance:

Ms. Wangoko for the Claimant

Mr. Maondo for the Respondent

