



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO 1571 OF 2015

ALFRED MUNYOKI MUTAVA.....CLAIMANT

VERSUS

COLLINS M. NTHUNI T/A LIMCOM AFRICONSULTS.....RESPONDENT

RULING

1. By Notice of Motion dated 31st March 2016, the Respondent sought orders directing the Director of Public Prosecutions and Director of Criminal Investigations to investigate the offence of forgery, deliver a report in Court and take action against the Claimant on a contract of employment dated 10th September 2014.
2. When the parties appeared before me on 26th July 2016 they agreed that the signature appearing on the said contract be referred for examination by a Forensic Document Examiner.
3. On 4th August 2016 the Deputy Registrar of this Court wrote to the Director, Directorate of Criminal Investigations forwarding the document together with a specimen signature of Collins M. Nthuni.
4. C.I Alex Mwongera Mathiu, a Forensic Document Examiner in the Directorate of Criminal Investigations submitted a report under reference number CID/ORG/8/3/1/791 with an opinion that the signature on the impugned document and the specimen signature were made by the same hand.
5. The Respondent then moved the Court by Notice of Motion dated 23rd September 2016 seeking the following orders:
 - a) An order directing the Director of Criminal Investigations to appoint two (2) other forensic experts to give a second and third opinion on the contract dated 10th September 2014;
 - b) That the Claimant be investigated to confirm if he superimposed the Respondent's signature to justify the contract dated 10th September 2014.
6. The application which is supported by the Respondent's affidavit sworn on 23rd September 2016 is based on the following grounds:
 - a) That on 13th September 2016 the Court received a report from a Forensic Document Examiner confirming similarity in the disputed signature and the Respondent's signature;
 - b) That it was not possible for the Respondent to have issued a contract of employment dated 10th

September 2014 for a job that had not been secured by then;

c) That the Respondent has consulted many handwriting experts who have disagreed with the opinion of the Forensic Document Examiner;

d) That the Court ought to direct further investigations to establish forgery of the Respondent's signature;

e) That the Claimant may have superimposed the Respondent's signature to justify the said contract;

f) That the Respondent denies issuing any contract of employment to the Claimant.

7. In his replying affidavit sworn on 4th October 2016 the Claimant states that the Respondent's application has no basis in law and is an abuse of the court process. He adds that the Respondent is attempting to prosecute the whole suit through applications.

8. In considering the Respondent's application the Court must consider the nature and objective of this Court. Section 3(1) of the Employment and Labour Relations Court Act states as follows:

"The principal objective of this Act is to enable the Court to facilitate the just, expeditious, efficient and proportionate resolution of disputes governed by this Act."

9. Evidently this is not a criminal court and pretrial discovery and gathering of evidence must be managed. The Respondent disagrees with the opinion of the Forensic Document Examiner and he is entitled to do so. However, in expressing his disagreement he cannot be allowed to turn the Court into an investigative agency.

10. By ordering forensic examination of the disputed contract, the Court has in my view, expended its inquiry time. What is left is for the parties to present evidence in support of their respective cases. I must add that the report of the Forensic Document Examiner remains an opinion to be considered alongside oral and documentary evidence adduced before the Court.

11. For this reason the Respondent's application dated 23rd September 2016 is declined with costs in the cause.

12. Orders accordingly.

DATED SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI

THIS 13TH DAY OF APRIL 2017

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JUDGE

Appearance:

Mr. Gachuna for the Claimant

Mr. Kurauka for the Respondent