



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

CAUSE NO 2254 OF 2015

JAIME ANDRES CARPINTERO.....CLAIMANT

VERSUS

SETRIGHT TECHNOLOGIES LIMITED.....RESPONDENT

RULING

1. By a Memorandum of Claim dated 16th December 2015 and filed in Court on even date, the Claimant sued the Respondent for damages for unlawful termination and accrued dues.
2. The Respondent subsequently filed a Notice of Preliminary Objection dated 8th February 2016 seeking orders to strike out the Claimant's claim on the following grounds:
 - a) The Court lacks jurisdiction to deal with the matter on the basis that the Respondent was not the employer of or contracting party with the Claimant. The Consultant's Agreement forming the basis of this suit and made on 1st October 2014 is between Setfright Technologies Pty Limited of South Africa and the Claimant or Dar-es-Salaam;
 - b) The Respondent is merely a sister company of Setfright Technologies worldwide with other sister companies based in Kenya, South Africa, Tanzania, Mozambique, Angola and Mauritius; and each are separate and distinct entities from each other and cannot assume contractual obligations for one another;
 - c) The services contracted were to be offered and undertaken in Tanzania and all applicable laws, regulations and activities were in Tanzania, outside the jurisdiction of this Court;
 - d) All the documents in support of the claim and attached to the Memorandum of Claim describe the Claimant as the Business Development Manager of Setfright Technologies Pty Ltd in charge of Angola, Mozambique and Tanzania;
 - e) The termination of the Consultancy Agreement dated 30th April 2015 was by the Chief Executive Officer of Setfright Technologies Pty Ltd, South Africa and not the Respondent and the two are separate and distinct legal entities;
 - f) The invoices, taxes and regulations attached to the claim are by the Tanzania Revenue Authority for Setfright Technologies Tanzania Ltd and not the Respondent;
 - g) The attempts by the Respondent in Kenya to amicably resolve the dispute between the Claimant and his employer which is a sister company to the Respondent on a purely without prejudice basis

cannot attach liability or confer jurisdiction upon the Court;

h) The cause of action is therefore outside and beyond the jurisdiction of this Court and the suit should be struck out for want of jurisdiction.

3. By consent of the parties, the Preliminary Objection was dispensed with by way of written submissions. In the Respondent's submissions filed on 2nd February 2017, it is submitted that under Section 12 of the Employment and Labour Relations Court Act, the jurisdiction of the Court to entertain claims arising from employment is premised on the existence of an employment relationship.

4. The Respondent further submits that there was no employment relationship between the Claimant and the Respondent and the claim now before the Court is without basis.

5. On his part the Claimant submits that Tony Ketter, the Chief Executive Officer of the Respondent purported to enter into a Consultancy Agreement with the Claimant for and on behalf of Setfright Technologies Pty Limited, while the instructing and paying authority was the Respondent.

6. I have looked at the Consultant's Agreement signed by the Claimant on 1st October 2014 which is the basis of the claim before the court and make the following observations:

a) That the contract is between Setfright Technologies Pty Limited having its registered office in South Africa and the Claimant;

b) That there is nothing in any part of the contract that suggests that the Claimant was employed by or for the benefit of the Respondent.

7. In light of this the Court did not find any employment relationship between the Claimant and the Respondent capable of enforcement. For this reason the Preliminary Objection raised by the Respondent is upheld and the claim is struck out.

8. Each party will bear their own costs.

9. It is so ordered.

DATED SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 12TH DAY OF MAY 2017

LINNET NDOLO

JUDGE

Appearance:

Miss Njonjo for the Claimant

Mr. K'Opere for the Respondent