



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF
KENYA AT NAIROBI
CAUSE NUMBER 1001 OF 2016
JOHN JELIX ONYANGO ADERO.....CLAIMANT/RESPONDENT
VERSUS
WEATHERFORD SERVICES AND
RENTAL LIMITEDRESPONDENT/APPLICANT

RULING

1. By a Motion dated 3rd day of November, 2016 the Applicant/Respondent seeks to be struck out from the suit and in the result the claimant's suit as against the respondent be dismissed.
2. The application was based on the main grounds that the applicant has never engaged or employed the claimant in any capacity. Second, that there was no nexus whatsoever with the respondent and that the respondent has never benefited from the claimant's services.
3. The application was further supported by the affidavit of Elizabeth Rogo who deponed in the main that:-
 - (a) **The Respondent was accorded defensive driving training by the Applicant and was issued with a badge that allowed him access to the Applicant's offices by virtue of the fact that the Respondent was working for an employee of the Applicant as a private driver of the employee.**
 - (b) **It was incumbent that the Respondent be taken through this defensive training as he would be driving a company vehicle that had been assigned to an employee of the Applicant.**
 - (c) **As a matter of practice, the Applicant does not employ drivers. It only engages them as contractors. All such drivers including taxi operators undergo basic driving training and certification facilitated by the Applicant and are issued with badges to facilitate access to the Applicant's office as per the company policy to the numerous and frequent interaction with the Applicant's employees.**
 - (d) **No contractual relationship arose between the Applicant and Respondent and therefore no salaries or other amounts were ever paid and neither is any due from the Applicant to the Respondent.**
 - (e) **No cause of action lies as against the Applicant with respect to the facts in question.**

4. The application was opposed by the claimant who filed a Replying Affidavit in which he deponed in the main that:

(a) Upon being employed by the Respondent on 5th of May, 2014 as a driver, I was assigned motor vehicle registration No. KCE 144S Pajero to drive.

(b) I was driving the Elizabeth Rogo – the County and Area Manager of the Respondent.

(c) Upon being employed by the Respondent, I was issued employees identity card as such driver of the Respondent. Annexed and marked JJOA 1 is a copy of the identity card.

(d) I was later on taken for advanced course in driving by the Respondent and issued with a certificate. Annexed and marked JJOA II is a copy of the certificate.

(e) I worked for the Respondent until 30th day of April, 2016 when my employment was wrongfully terminated.

5. On 24th October, 2016 the court ruled that it did not consider the fact that the respondent could have been wrongly joined in the suit, a matter of preliminary objection. The court therefore directed then that if it was that the respondent had been wrongly joined, that would be an appropriate case for the respondent to apply to be removed from the suit.

6. What the court contemplated was an application supported by facts and materials which reasonably showed that indeed the claimant herein was not the respondent's employee.

7. The respondent has instead brought an application supported by the affidavit of Elizabeth Rogo which in essence raised but on oath the averments in the memorandum of response. The depositions by Mrs Rogo have been contested by the claimant in his replying affidavit.

8. The court is therefore faced with factual contestations in form of affidavits. This is rather an unsafe situation for the court to grant the orders sought.

9. In the circumstances the court will decline the orders and direct that the matter proceeds to trial on merit when the parties will present their various positions and benefit from cross-examination in order for the court to reach a just conclusion.

10. The application is dismissed with costs.

It is so ordered.

Dated at Nairobi this 23rd day of June 2017

Abuodha J. N.

Judge

Delivered this 23rd day of June 2017

In the presence of:-

.....for the Claimant

and

.....for the Respondent.

Abuodha J. N.

Judge