



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NUMBER 1675 OF 2015

BEATRICE OM'MBAKA OSIENWA.....CLAIMANT

VERSUS

**INFORMATION PROFESSIONALS AFRICA LIMITED.....1ST
RESPONDENT**

VISCAR INDUSTRIAL CAPACITY LIMITED.....2ND RESPONDENT

RULING

1. The respondent herein raised an objection that the Court did not have jurisdiction to hear this suit for the reason that there was no employer-employee relationship between the claimant and the respondent. According to the respondent, the claimant was a consultant hence a holder of contract for services as opposed to contract of service which is the essence of an employment relationship.
2. Counsel for the respondent in his submissions therefore argued that this Court's jurisdiction being specialized and confined to among others, disputes arising out of contract of service, it does not have jurisdiction to adjudicate over the dispute herein which was a contract for services.
3. The Court has carefully considered the pleadings herein more particularly the defence filed by the respondents. The defence at paragraph 3 and 4 for example deny that the claimant was engaged by the respondent as alleged but does not go further to state how else she was engaged if at all. Nowhere in the pleadings has the respondent directly raised the issue of the claimant being engaged as a consultant. The issue is raised only in the notice of preliminary objection and submissions by counsel for the respondent.
4. The claimant on the other hand has averred that she was part of the support for the respondents who were consultants. She exhibited documents with her memorandum of claim in an attempt to justify her contention that indeed she was the respondent's employee. The respondent has on the other only attached case law as exhibits to support their contention.
5. In the circumstances, the Court is not reasonably persuaded that the preliminary objection has been adequately laid out to warrant the discontinuance of this suit before this Court for want of jurisdiction.
6. The Court therefore disallows the objection and directs that the suit proceeds to trial on merit. The respondent is however free to revisit the issue as one of the issues for trial and final submissions.
7. It is so ordered.

Dated at Nairobi this 17th day of June 2016

Abuodha Jorum Nelson

Judge

Delivered this 17th day of June 2016

In the presence of:-

.....for the Claimant and

.....for the Respondent.

Abuodha Jorum Nelson

Judge