



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT NAIROBI**

**CAUSE NO. 1052 OF 2013**

**PATRICK ASIGARE ABWOVA.....CLAIMANT**

**VERSUS**

**AVCO AGENCIES LIMITED.....RESPONDENT**

**JUDGMENT**

1. The claimant in this suit avers that he was employed by the respondent as a carpenter on or about 3<sup>rd</sup> January, 2011 at a daily wage of Kshs.750/=. According to him, he worked until 16<sup>th</sup> May, 2013 when the respondent unfairly and unlawfully terminated his services without giving him notice or letter to show cause why he should not be terminated from employment.
2. The claimant further averred that during the period he worked for the respondent, he never went on leave.
3. He further averred that upon termination, the respondent never paid his terminal dues hence he sought the order of the Court that he be paid as tabulated in his memorandum of claim.
4. The respondent on the other hand in short and crisp response denied ever employing the claimant hence according to the respondent, it did not owe any monies to the claimant. The respondent therefore urged the Court to dismiss the claimant's suit with costs.
5. The claimant testified at the hearing and closed his case. During cross-examination however, an issue arose as to who actually employed the claimant. That is to say whether he was an employee of the respondent or one Mr. Karani. The claimant insisted he was employed by the respondent and that Mr. Karani was the foreman and the one who used to pay them on site.
6. The said Mr. Karani was called by the respondent as a witness and he informed the Court that he was a sub-contractor. He further stated that the claimant was one of his "fundis" and whenever he got work he would call him and use his services. He further stated that the respondent was his main contractor. He denied being a foreman and that the respondent used to pay him per project.
7. After the closure of the claimant's case, Mr. Nyabena for the claimant filed a motion dated 21<sup>st</sup> November, 2014 seeking the joinder of Mr. Karani as a 2<sup>nd</sup> respondent to the suit and that he be given leave to file his defence within 14 days. This unprecedented move was opposed by Counsel for the respondent arguing in the main that the issue of who was the claimant's employer was raised early in time, well before the current suit was filed but the claimant insisted on

proceeding with the suit against the respondent even without joining Mr. Karani as co-respondent.

8. The Court having listened to arguments by both Counsel concurred with Counsel for the respondent and declined the orders sought by Mr. Nyabena.

9. The Court has before it, a fundamental question of whether the respondent is the proper party in this suit. The documents produced by the respondent in Court, the testimony by Mr. Karani as well as pre-court correspondence are overwhelming. This clearly indicates that Mr. Karani is the one who ought to have been sued for wrongful termination and terminal dues, if at all. In the circumstances, the Court will disregard the evidence by the claimant in proof of his claim and order that the suit be dismissed as incompetent against the respondent.

10. The costs of the suit are awarded to the respondent.

11. It is so ordered.

Dated at Nairobi this 10<sup>th</sup> day of July 2015

Abuodha J. N.

Judge

Delivered this 10<sup>th</sup> day of July 2015

**In the presence of:-**

.....for the Claimant and

.....for the Respondent.

Abuodha J. N.

Judge