

REPUBLIC OF KENYA

IN THE INDUSTRIAL COURT OF KENYA

AT NAIROBI

CAUSE NO. 2450 OF 2012

PETER NGEKU THUO.....

.....CLAIMANT

VERSUS

GREEN WORLD INTERNATIONAL KENYA

LIMITED.....RESPONDENT

RULING

1. The Application before me seeks to have the suit dismissed for being frivolous and vexatious and an abuse of the process. The contract was signed but terminated the same day by the Claimant. He is now seeking compensation on the same.
2. Mr. Njuguna for the Respondent asserts that the Claimant sought to be relieved from the contract the same day. He therefore submits there was no performance and the contract ended without performance.
3. Mr. Nyamiaka for the Claimant opposed the Application and stated that the contract was for 2 years and that the Affidavit in support contains falsehoods. He maintained that the contract was illegally and maliciously terminated. He thus urged that the matter be heard on merits and a determination given.
4. In a brief reprise Mr. Njuguna stated that the claim is for unfair termination and that the Claimant has not satisfied the threshold of Section 45(3) of the Employment Act. The Claimant sought to be relieved of his employment as he had found another employment as indicated in the Defence para 4. A party cannot seek to rely on a contract he has not performed.
5. The Claimant sought to be relieved of duties the very day he signed the contract. The affidavit of William Su deposed to on 12th July 2013 makes that deposition. There was no performance of contract and there can be no cause of action based on it. I agree with Mr. Njuguna that a party cannot seek to rely on a contract he has not performed. The suit is dismissed with costs to the Respondent.

It is so ordered.

Dated, signed and delivered this 1st day of November 2013

Nzioki wa Makau

JUDGE