

REPUBLIC OF KENYA

Industrial Court of Kenya

Cause 178 of 2012

SAMUEL ORURU OKEMWA CLAIMANT

VERSUS

KENINDIA ASSURANCE CO. LIMITED.....RESPONDENT

RULING

1. The Respondent has raised a preliminary challenge on the jurisdiction of the Court. It is alleged that the Claimant was not an employee, but an agent of the Respondent, under a contract of agency concluded on 31st July 2004. Parties agreed to dispose of the challenge by way of written submissions.

2. The parties were advised by the Court on 15th April 2013, that the Ruling would be delivered on notice.

3. Upon reading the pleadings, and the submissions of the respective parties, the *Court Finds and Orders-*:

4. The question whether a person is an employer or an employee of another, requires evidential proof. The material on record is insufficient to persuade the Court to make a conclusive view on the nature of the relationship between the Claimant and the Respondent. It is necessary for the parties to avail to the Court proper evidence, to show there was or there was not, an employment relationship as defined in statute and in common law. The Court does not therefore think it is prudent to make a final pronouncement on the matter, before hearing the parties in full. On this ground, the Court Orders-:

[a] The preliminary challenge is joined to the merits of the case;

[b] The Court shall determine the issue upon hearing the Claim in full; and,

[c] No Order on the costs

Dated and delivered at Nairobi this 17th day of May 2013

James Rika

Judge