

REPUBLIC OF KENYA

IN THE INDUSTRIAL COURT AT NAIROBI

CAUSE NUMBER 1659 OF 2012

BETWEEN

WILLIAM MIGWI

KANYUA.....CLAIMANT

VERSUS

RISK SOLUTIONS INSURANCE BROKERS

LTD.....RESPONDENT

Rika J

CC. Leah Muthaka

Claimant in Person

Mr. Musyoka instructed by Onesmus Githinji & Co. Advocates for the Respondent

RULING

The Respondent has raised a preliminary challenge on the jurisdiction of the Court. It is stated that the Claimant was not an employee of the Respondent. He seeks professional fees from the Respondent, not salary or wages. The Court's jurisdiction is limited to disputes involving employers and employees. A claim for professional fees should have been filed in the Civil Courts. The Respondent prays the Court to strike out the Claim.

The Claimant maintains he was employed by the Respondent as an Accountant. He worked for 7 years, and was Head of the Section. He was provided with the tools of work by the Respondent. He reported to work everyday from morning to evening. It was agreed between him and the Respondent that he be paid professional fees. This was not necessarily because he was rendering professional fees.

The Court Finds and Orders:-

1. The preliminary challenge raises matters of fact, that merit further enquiry. The material on record is not sufficient for the Court to have a conclusive view, on the nature of the relationship between the parties. It would be necessary for the parties to explain their pleadings and documentation by way of oral evidence, for the Court to determine if an employment relationship exists, and consequently, if the dispute is triable by the Industrial Court under its Constitutive Act of Parliament. ***IT IS HEREBY ORDERED:-***

- (a) The Preliminary Objection is joined to the substantive dispute.***
- (b) The Court shall give a determination upon hearing of the dispute in full.***
- (c) Parties to take a suitable hearing date at the Registry.***

Dated and delivered at Nairobi this 28th day of June 2013

James Rika

Judge