



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT OF KENYA

AT NAIROBI

CAUSE NO. 1381 OF 2012

ISAAC ALUOCH POLO ALUOCHIER.....CLAIMANT

-VERSUS-

GEORGE JOSIAH.....RESPONDENT

Mr. Isaac Aluoch Claimant in person.

Mr. Amuga for Respondent.

RULING

The Claimant has brought this suit in his capacity as an assignee of unpaid wages and other remuneration owed to one **Nelson Obulimo Alieno** of **ID No.** [particulars withheld]

Mr. Alieno is alleged to have been a house gardener of the Respondent from about 5th September, 2008 to June, 2011 at a monthly salary of Kshs.4,500/=. It is alleged that the Respondent owes Kshs.208,090/= being the total remuneration owed to the assignor.

The Claimant has attached an agreement of assignment between himself and the alleged assignor, but no letter of employment has been attached as *prima facie* proof of the alleged employment terms and conditions thereof.

The Respondent filed a statement of Response to the claim dated 4th December, 2012 on 5th December, 2012. The Respondent denies that he employed Mr. Alieno as a house gardener around 5th September, 2008 as alleged or at all. The Respondent further denies the salary of Kshs.4,500/= and other terms and conditions of service attributed to the alleged employee and puts the Claimant to strict proof thereof.

The alleged assignment of wages is also denied by the Respondent and therefore denies the claim for Kshs.208,090/10 and prays the court to dismiss the same with costs.

In brief the Respondent raises a preliminary objection to the competence of the claim or the Claimant's *locus standi* to bring the suit.

On 19th August, 2013 the Respondent filed written submissions on the preliminary objection and these were responded to by the Claimant on 25th June, 2013.

The issue for determination is whether the Claimant has *locus standi* in *judicio* to bring the suit.

In the case of **Halal Shipping Co. Ltd v Secunter Bremer Allegeimeine and Another Civil Appeal No. 56 of 1964 [1965] East Africa Law Reports** Law J.A restated the principles laid down by the House of Lords in **Midland Silicones Ltd v Scruttons Ltd (1)** as follows:

“(a) it is a fundamental principle that a stranger to a contract cannot sue on it, and

(b) that a stranger to a contract cannot, in question with either of the contracting parts, take advantage of the provisions of the contract even if they are clearly intended to benefit him.”

The Respondent therefore has submitted that the Claimant cannot rely on a purported contract of employment between one Mr. Nelson Obulimo Alieno and Mr. George Josiah to claim payment to him of wages and remuneration arising from the said contract.

Furthermore, no such contract exists and none has been produced as evidence in this respect.

That even if such a contract existed it is privy to the parties and no 3rd party would found a suit on it. Worse still no agreement of assignment has been produced either and the suit is purely based on conjecture, same is incompetent for lack of *locus standi* in *judicio*.

The counsel for the Respondent further submitted that **Section 12 (2)** of the **Industrial Court Act, 2010** provides:

“(2) an application claim or complaint may be lodged with the court by or against an employee, an employer, a trade union, an employer's organization, a federation, the Registrar of Trade Unions the cabinet secretary or any office established under any written law for such purposes.”

It is therefore clear that only an employee may bring the kind of suit brought before the court. A third party has no *locus standi* to file a claim on behalf of an employee unless it is one of the organizations listed in **Section 12 (2)** cited above.

The Claimant relies on **Article 48** of the **Constitution of Kenya, 2010** to assert his right to access justice with respect to property in which he has an interest.

The Claimant further submits that **Article 40 (3) (b) (ii)** of the Constitution guarantees protection of property rights. That the contract of assignment has accorded him property rights which rights the courts of law have an obligation to protect when called upon to as the Claimant has clearly done.

With respect to the Claimant, whereas **Article 48** obliges the State to guarantee access to justice to all persons, the issue of *locus standi* still remains a pre-condition to entertain of suits by the various courts of law.

In this respect, **Article 162 (2) (a)** of the Constitution provides for establishment of a court with the status of the High Court to hear and determine disputes relating to employment. The jurisdiction of the court established thus is provided under **Section 12** of the **Industrial Court Act** referred to earlier in this ruling.

The provisions of **Article 40 (3) (b) ii** with respect to deprivation of property by the State has no

relevance to the matter before court and the same is inapplicable in the circumstances of this case.

According to Black law Dictionary 9th Edition p.136

“An assignment is a transfer or setting over of property, or of some right or interest therein from one person to another; the term denoting not only the act of transfer, but also instrument by which it is effected.”

The assignor only transfers his rights subject to any defences which could be pleaded against him. One such defence is that the Industrial Court may only *“hear and determining all disputes referred to it in accordance with Article 162 (2) of the Constitution and the provisions of this Act or any other written law which extends jurisdiction to the court relating to employment and labour relations including a – j.”* and therefore lacks jurisdiction to entertain this matter.

Contracts of assignment are ordinarily commercial in nature. Employees do assign part of their wages and other remuneration for payment of creditors.

A speculative assignment by a former employee of expected award by a Labour Court of unpaid wages and compensation in the court’s view falls outside the contemplation of the provisions of **Section 12 (1) a – j** of the Industrial Court Act, 2011. This in the court’s view is not a matter in respect of which jurisdiction has been extended to this court and the same does not relate to employment and labour relations in the manner contemplated under **Article 162 (2)** of the Constitution as read with **Section 12** of the Industrial Court Act.

The court in the light of above upholds the preliminary objection raised by the Respondent with the consequence that the entire suit is dismissed with costs.

Dated and delivered at Nairobi this 27th day of August, 2013.

MATHEWS N. NDUMA

PRINCIPAL JUDGE