Kioko & 2 others v Safaricom Limited (Cause 233 of 2017)
[2023] KEELRC 2399 (KLR) (4 October 2023) (Judgment)

Neutral citation: [2023] KEELRC 2399 (KLR)

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE 233 OF 2017

JK GAKERI, J

OCTOBER 4, 2023

BETWEEN

GREGORY MWENDWA KIOKO ..... 1ST CLAIMANT

ANN JEBICHI CHIRCHIR ..... 2ND CLAIMANT

JUSTUS SANG KIBET ..... 3RD CLAIMANT

AND

SAFARICOM LIMITED ..... RESPONDENT

JUDGMENT

1. The three Claimants filed this claim against the Respondent on 9th February, 2017 alleging unfair termination of employment.

2. The Claimants aver that on 12th September, 2016 the Respondent posted an on-line advertisement on its website inviting applicants for the position of Customer Experience Executives (CEE) for a duration of 6 months.

3. The advertisement catalogued the core responsibilities and required a Degree or Diploma in any business field, proficiency in Kiswahili and English, great service attitude, ability to handle pressure and team player.

4. The Claimants aver that they sent their Candidate Profiles and Curriculum Vitae to the Respondent and by email dated 11th October, 2016 the Respondent acknowledged receipt for showing interest to "work" for the Respondent and the Claimants underwent the 5 level selection process to take place from 12th to 28th October, 2016 and the positions offered in early November, 2016.

5. That the Claimants thought that they were being offered jobs and all were successful in the 4th steps and on 10th November, 2016 they signed a "pre-employment screening" on reference checks and all

the Claimants signed the form and all passed the pre-employment screening and were congratulated for choosing to work for the Safaricom family.

6. That on 14th November, 2016, they received an email on the 8 weeks training on the Respondent's products and systems to enable them take up employment with the Respondent but on 15th November, 2016 they were confronted with letters pre-signed by Maria Shipiri, the Director – Resources and asked to sign on the spot as a pre-condition for commencing the training schedule to commence on 16th November, 2016.

7. That the job opportunity had transitioned to a Training opportunity at a monthly stipend of Kshs.25,000/= for 8 weeks terminable by 5 days notice or pay in lieu.

8. That the Claimants signed the letters under duress.

9. It is the Claimants averment that the training would lead to employment at Kshs.57,000/= for the remaining period of the contract.

10. That the Respondent discontinued the training on 25th November, 2016 after 10 days on the ground that the Claimant's credentials were not suitable for continuation in the training programme but was silent on the alleged credentials.

11. That the letter terminated the Claimants employment.

12. According to the Claimants, their right to fair labour practices were violated by the Respondent, that the Respondent misled them, coerced them to sign the letter of training thereby violating their right to human dignity and discriminated against them contrary to Section 5(3)(a) and (b) of the *Employment Act*, 2007 and the 5 days notice violated the Act too.

13. The Claimants pray for;

    i. General damages for violation of constitutional rights.

    ii. General damages for trauma, embarrassment and ridicule.

    iii. Punitive and exemplary damages.

    iv. Payment of balance of the training period.

    v. 12 months compensation.

    vi. One month's salary in lieu of notice.

    vii. Medical cover for 6 months.

    viii. Costs of this suit plus interest at court rates.

    ix. Any other relief deemed fit and just by the court.

Respondent's case

14. The Respondent admits that it advertised for a Contractor – Customer Experience Executive in September 2016 to be engaged on a contract basis for six (6) months and the Claimants applied and the levels of recruitment were explained by email and all Claimants signed the Consent Form in October and November 2016.

15. That the form enabled the Respondent perform checks of the Claimant's employment, educational and professional backgrounds.

16. That by letter dated 14th November, 2016, the Respondent Director Customer Operations, Ms Jannet Atika, while congratulating the applicants informed them of the 8 weeks training programme and all trainees had to avail copies of their academic and professional certificates and the training was not an offer for employment and all the Claimants signed the letter on 16th November, 2016 and a competency examination would be administered at the end of the training which would determine whether one would be employed or not.

17. That the training was terminable by 5 days notice of either party and the Respondent could do so without notice for justifiable reasons and the Claimants training was discontinued by letter dated 25th November, 2016.

18. The Respondent prays for dismissal of the claimants' case with costs.

Claimants evidence

19. CWI, Mr. Gregory Mwendwa confirmed on cross-examination that the engagement by the Respondent was employment not training and he signed the offer for training under duress and neither protested in writing nor orally and was aware that it was a 8 week training programme.

20. That he was not accorded the 5 days notice as provided by the contract but was paid as promised by the discontinuation notice.

21. The witness admitted that he had no evidence that the sum of Kshs.57,000/= was due to him.

22. He confirmed that the agreement provided for a 5-days notice.

23. On re-examination, the witness rehashed the contents of the advertisement and its requirements and levels of interview.

24. That he signed the training letter under duress or coercion and the job offer would be after the training.

25. That the salary of Kshs.57,000/= was made orally.

26. The witness testified that there were 12 trainees and 9 got job offers.

27. It was his testimony that the discontinuation letter did not identify the credentials he was unable to meet.

28. CWII, Ann Jebichi confirmed on cross-examination that after recruitment, she received a training offer, read, understood its contents and signed without any protest but she had not been told about the training and had already been hired but had no offer letter.

29. The witness stated that she was forced to sign the letter but admitted that training was to integral for any job and it was essential that she be trained as a logical process as she was doing other businesses.

30. That the Kshs.57,000/= per month was agreed upon orally. However, the witness could not recall with whom it was agreed. That she was paid for the 5 days notice.

31. On re-examination, the witness stated that the Respondent's advertisement made no reference to training.

32. The witness testified that they were coerced to sign the letter on training as no explanation was given.

33. That the letter dated 14th November, 2016 made no reference to training.

34. The witness further testified that the termination letter did not provide any reason for the discontinuation of training as her credentials were not questioned.

35. CWIII, Mr. Justus Kibet testified on cross-examination, that he received the letter of training on 16th November, 2016, understood its contents and signed and it was for training not employment and he raised no concerns or protest.

36. It was his testimony that the training was to acclimatize with the environment and was a normal undertaking by companies and an ordinary process.

37. That he received the letter of discontinuance of the training and knew that background checks would be conducted.

38. That the Kshs.57,000/= was notified to them orally but had no documentary evidence.

39. On re-examination, the witness testified that he understood the training to mean it was part of the job preparation as newly recruited employees.

Respondent's evidence

40. RWI, Mr. Odhiambo Ooko testified that he did not file any document in support of the Respondent's case and adopted the documents filed by the Claimants. He admitted that the Respondent put up the advertisement on its website with a job title in the Contact Centre, Operations Department, Nairobi, Kenya and makes no reference to training and the Claimants applied and could have failed at a stage of the recruitment process.

41. That the Claimants went through the process successfully and there were no reservations about their credentials. He testified that background checks was an essential condition for employment.

42. The witness confirmed that the letter stated that the Claimants would be taken through training for 8-weeks in preparation for the work ahead and it was a pre-condition and the letter did not state that they were being recruited for training.

43. The witness stated that according to paragraph 1 of the Training Offer, the opportunity was for training and an offer for employment and the advertisement was not for trainees.

44. That the letter of termination did not set out the credentials not fulfilled by the Claimants and there was neither a warning nor hearing.

45. That the notice period depended on the terms of the contract.

Claimants submissions

46. Counsel did not isolate particular issues for determination but addressed the 4 step recruitment process and the pre-employment screening.

47. According to counsel, after the Claimants successfully went through the 4 step recruitment process and received an email dated 14th November, 2016, they had crossed the rubicon and were employees of the Respondent and would be taken through a 8 week training which according to counsel was an induction program for the new employees but the employment subsequently became a training opportunity only as the Claimants were compelled to sign a contract for the training which contradicted the advertisement and the Respondent could not change the goal post mid-stream as it made a representation which the Claimants relied upon and applied and could not change it to a training opportunity only.

48. That the termination letters were similar in every respect and was silent on the credentials the Claimants did not meet.

49. Counsel further submitted that the Claimants had demonstrated that they met the requirements of the advertisement and were thus employees as defined in Section 2 of the *Employment Act*, 2007.

50. Counsel relied on the decisions in Mary Wanjiru Ndwiga & 913 others V Permanent Secretary Ministry of Health & Attorney General and Yussuf Alio Guyo V Commandant Kenya Prisons Staff Training College & others to buttress his submission that trainees have been recognized as employees within the meaning of Section 2 of the *Employment Act*, 2007 and that the Respondent admitted as much.

51. Counsel relied on the provisions of Section 35(1)(c)and 45(2) of the *Employment Act*, 2007 to urge that notice was necessary and termination had to be substantively and procedurally fair.

52. Counsel further urged that all employment must be terminated for cause as held in Theresiah Wayua King'oo V Nodor Kenya EPZ Ltd and Jackline Migare Kitunzi V Junior Hearts Academy as well as others.

53. That the Claimants would be paid a stipend of Kshs.25,000/= per month and a 28 days notice was necessary and the 5 days notice period was void by virtue of Section 3(6) of the *Employment Act*, 2007 on minimum terms and conditions of employment below which parties cannot contract as held in Fadhil Juma Kisua V Kenya Ports Authority.

54. Counsel further urged that the tenets of fairness were not complied with as the letter of termination lacked particulars that rendered the Claimants unsuitable for the training programme, thus the requirements of Section 45 and 41 of the *Employment Act* were not met as the Respondent invoked the termination clause.

55. Counsel invited the court to rely on the decision in Anthony Mkala Chitavi V Malindi Water & Sewerage Co. Ltd (2013) eKLR and Mary Chemweno Kiptui V Kenya Pipeline Co. Ltd (2014) eKLR to underscore the essence of procedural fairness in termination of employment and urged that Section 41 was couched in mandatory terms.

56. Counsel urged that the Claimants did not contribute to the termination of their employment and were treated discriminatively and hoped to work for 6 months and should be compensated for four months.

57. That the Respondent treated the vulnerable persons oppressively.

Respondent's submissions

58. Counsel isolated four issues for determination on;

    i. Whether there was a contract of employment between the parties.

    ii. Whether termination of the training was fair, justified and lawful.

    iii. Whether the Claimants signed the training contract under duress.

    iv. Whether the Claimants are entitled to the reliefs sought.

59. On the 1st issue, counsel submitted that the training contract was a mere opportunity to train not employment and relied on the sentiments of the court in Ready Mixed Concrete (South East) Ltd V Minister of Pension & National Insurance (1968) 2 QB 497.

60. Counsel urged that the monthly stipend was not a salary and they had to sit an examination at the end of the training.

61. Counsel submitted that the training could not have been employment as the Claimants had to sit an examination to determine whether they were employable or not.

62. According to counsel, there was no employment relationship between the parties and the provisions of the *Employment Act*, 2007 were inapplicable.

63. On termination of the training, counsel submitted that the provisions of the *Employment Act* were inapplicable as the contract entered into involved opportunity as opposed to employment.

64. Reliance was made on the decision in Moses Kuria V Airbus Southern Africa (PTY) Ltd Kenya Branch (2022) eKLR where the court held that the training offered by the Respondent was not enforceable as a benefit.

65. Counsel submitted that the training contract had an inbuilt termination mechanism by other party and the termination in this case was justified.

66. As to whether the Claimants signed the contract under duress, the Respondent's counsel relied on Section 107 of the *Evidence Act* to urge that he who alleges must prove and relied on the sentiments of the court in Muriungi Kanoru Jeremiah V Stephen Ungu M'mwarabua (2015) eKLR on the burden of proof for emphasis.

67. Counsel submitted that since the Claimants alleged that they signed the document under duress, it was incumbent upon them to adduce evidence to establish the alleged duress. That they had sufficient time to read and understand the contents.

68. According to counsel, the Claimants had failed to prove duress.

69. As regards, the reliefs sought, counsel submitted that since the reliefs claimed related to unfair termination of employment, general, punitive and exemplary damages were unavailable.

70. Reliance was made on the decision in David Mwangi Gioko & 5 others V Nairobi City Water & Sewerage Co. Ltd (2013) eKLR as well Peter Gachenga Kimuhu V Kenol Kobil Ltd (2014) eKLR and Erick Karanja Gakonyo V Samson Gathimba (2011) eKLR among others to urge that general and aggravated damages are unavailable for breach of contract.

71. Counsel further urged that the Claimants had failed to meet the threshold of a constitutional petition as enunciated in Anarita Karimi Njeru V Republic (1979) KLR 154 as they had failed to demonstrate how their fair labour practices were violated.

72. Counsel urged the court to dismiss the prayer for general damages.

73. On payment for the balance of the training period, counsel submitted that the *Employment Act*, 2007 had no provision for payment of salary till retirement and cited the decisions in Alphonse Maghanga Mwachanya V Operation 680 Ltd (2013) eKLR and D.K. Njagi Marete V Teachers Service Commission (2020) eKLR to urge that the Claimants were not entitled to anticipatory earnings.

74. Finally, counsel submitted that since the Claimants had only been trained for 10 days, 12 months compensation would be unreasonable and without a legal basis as they had been paid for the 5 days notice.

Findings and determination

75. The issues that commend themselves for determination are;

    i. Whether the Claimants were employees of the Respondent.

    ii. Whether the Training Contract dated 16th November, 2016 was vitiated by duress or coercion.

    iii. Whether the Claimants are entitled to the reliefs sought.

76. As to whether there was a contract of service between the parties, counsels for the parties have taken contrasting positions. While the Claimants urge that they were indeed employees of the Respondent having crossed the rubicon as counsel submitted, the Respondent's counsel submitted that they were not as they had a written contract for a training opportunity.

77. Section 2 of the *Employment Act*, 2007 defines an employee as "a person employed for wages or a salary and includes an apprentice and indentured learner."

78. The term employer on the other hand is defined in very broad terms to mean "any person, public body, firm, corporation or company who or which has entered into a contract of service to employ any individual and includes the agent, foreman, manager or factor of such person, public body, firm, corporation or company.

79. Finally, the *Employment Act*, 2007 defines a contract of service as "an agreement whether oral or in writing and whether expressed or implied to employ or to serve as an employee for a period of time, and includes a contract of apprenticeship and indentured learnership but does not include a foreign contract of service to which Part XI of this Act applies."

80. I will now proceed to apply the foregoing provisions of law to the facts of the instant case.

81. It is common ground that the Respondent advertised the position of Customer Experience Executive in the Contact Centre, Operations Department within the Customer Operations Division for six (6) months on its website on 12th September, 2016.

82. The advertisement included detailed core and essential responsibilities.

83. The Qualification criteria was a Degree or Diploma in a business related field, proficiency in spoken and written English and Kiswahili, great service attitude towards customer satisfaction, ability to handle pressure and perform duties well, ability to be a team player to achieve own and team targets.

84. Previous work experience was not essential.

85. The advertisement was explicit that "All qualified Kenyan applicants will receive consideration for employment without regard to race, colour, religion, gender, tribal origin, disability or age . . ."

86. Applications had to be submitted through the Respondent's portal and deadline was 13th September, 2016.

87. It is not in contest that the Claimants submitted their applications and received a response inviting them to participate in the selection process.

88. The letter was unambiguous that the selection process would involve several levels of assessments with the 1st being Digital Assessment, the 2nd was Aptitude Competency Assessment, 3rd oral interview assessment. The 4th and final level was a medical test and a reference check.

89. The Claimants completed all the levels successfully and all signed the necessary document to authorise the Respondent to conduct background checks.

90. By letter dated 14th November, 2016, the Respondent congratulated the Claimants for having gone through the recruitment process successfully. The letter reads as follows;

> " Dear Family Member,
>
> Let me congratulate you for choosing to work for the Safaricom family.
>
> You have gone through an intensive recruitment process as we needed to select only the best to work with us to support the customer, who is very dear to us.
>
> In the next 8 weeks, you will be taken though a comprehensive training program that will equip you with Safaricom products, services and systems knowledge. The training will allow you to support and engage with our customers at various touch-points and also model you to be a Safaricom ambassador.
>
> Once again congratulations and I wish you every success in Safaricom.
>
> Regards
>
> Signed
>
> Jannet Atika
>
> Director Customer Operations"

91. However, things appear to have taken a different turn by the following day as the Claimants received a Training Offer-Trainee Customer Experience Executive for 8 weeks. The letter was explicit that;

> " This opportunity is for purposes of training only, and it is not an offer for employment."

92. All the Claimants signed the Training Offer. The offer required confirmation of citizenship, certificate of good conduct, academic and professional qualifications and satisfactory medical report. Insurance cover was for the duration of the training only. Attendance was compulsory except with consent of the trainer and not for more than 3 days. A stipend of Kshs.25,000/= was payable per month. Discontinuation of the training by either party required a 5 days notice or pay in lieu.

93. In addition, the Claimants were to sit a competency and knowledge based examination after each module and a competency examination at the end of the training. Similarly, the document stated that;

> " Employment within the company is subject to the company's recruitment policies."

94. The Claimants have not faulted the Respondent for violating its recruitment policies. The training was discontinued after 10 days allegedly for unidentified unsuitability of their credentials.

95. The critical issue is whether the Claimants were indeed employees of the Respondent by the time they signed for the Training Offer on 16th November, 2016.

96. Having completed the vigorous recruitment process, the Claimants expected a contract of service to formalise the process but none was provided to the three Claimants.

97. Was the letter signed by Jannet Atika dated 14th November, 2016 congratulating the claims the Respondent's confirmation or acknowledgement of the employment status of the Claimants?

98. The letter wished the Claimants success for choosing to work for the Respondent.

99. Contrary to the Claimant's counsels submission that the fact that the Claimants went through the 4-stage recruitment process successfully and received the letter alluded to above would not, in the court's view mean that they had become employees of the Respondent. No doubt the letter by the Director Customer Operations Jannet Atika appear to have been a kin to king on the cake and the 8 week training the last door or induction for the new employees.

100. However, uncharacteristically, the Respondent formalised the training program for the Claimants and their colleagues, perhaps because of the resources to be expended.

101. Instructively, the advertisement stated that all qualified Kenyan would be considered for employment.

102. In the court's view, if the Respondent had made a decision to employ the Claimants, the congratulatory letter ought to have been accompanied by the letter of appointment or offer.

103. In the law of contract, courts have distinguished offers from invitations to treat. Whereas an offer is an unequivocal, manifestation by one party of its intention to contract with another such as offer of employment or admission to college, an invitation to treat is an invitation to negotiate or make an offer such as sale by display and auction sales.

104. However, an advertisement can constitute an offer as exemplified by the Court of Appeal decision in Carlill V Carbolic Smoke Ball Co. Ltd (1893) 1 QB 256.

105. Advertising for positions for purposes of employment is however different as it is neither an offer nor an invitation to treat. It is a mere display of the positions.

106. By placing an advertisement in the newspaper, public display or website, a prospective employer is merely notifying prospective applicants that positions exist in the organization and interested persons are free to respond to the notice. The applications made by prospective employees or students in the case of schools, colleges or universities constitute an invitation to treat and the prospective institution or employer is free to make an offer to the applicant(s) it finds suitable. Inevitably, in an employment setting, the prospective employer is the offeror and the prospective employee the offeree as no employment relationship can exist except with the acceptance of the prospective employee.

107. In the instant case, the Respondent regrettably, shied away from making an offer of employment to the Claimants and made a training offer in lieu and the Claimants accepted the same hook, line and sinker. Perhaps oblivious of the fact that they may have settled for less.

108. Typically, employers train employees while on the job not before they have accepted the offer of employment which would be risky if the identified persons declined the offer.

109. From the standpoint of the general principles of the law of contract and in the court's view, there was no contract between the Claimants and the Respondent. The Respondent invited applications from prospective applicants who made invitations to treat to the Respondent who did not make an offer to employ them but an offer to train for 8 weeks which the Claimants accepted and were thus bound by it. The 1st Claimant testified that they were 12 at the Jambo Call Centre and those who remained received job offers. It is unclear as to the number that remained as others may have left under the training contract.

110. Were the Claimants apprentices or indentured learners?

111. Section 2 of the *Employment Act*, 2007 as adverted to elsewhere in this judgement recognizes an apprentice as well as an indentured learner as an employee.

112. According to Black's Law Dictionary, 10th Edition at page 122, apprentice means;

> " A person bound by an indenture to work for an employer for a specified period to learn a craft, trade or profession or a learner in any field of employment or business especially one who learns by hands on experience or technical on the job training by one experienced in the field; specifically someone who works for an employer for a fixed period in order to learn a particular skill or job."

113. Similarly, Black's Law Dictionary, 10th Edition at page 1575 defines an Indentured Servant as;

> " A servant is who contracted to work without wages for a fixed period in exchange for some benefit, such as learning a trade or cancellation of a debt or paid passage to another country and the promise of freedom when the contract period expires."

114. Relatedly, an intern is defined as;

> " An advanced student who is apprenticing to gain practical experience before entering a specific profession."

115. In Michael Ouma Odero on his own behalf and on behalf of 506 others V Public Service Commission & 2 others (2021) eKLR, Byram Ongaya held that interns were indeed employees and their relationship with the Respondent in that case was an employment relationship within the meaning of the *Employment Act*, 2007.

116. In the instant case, the Claimants signed a training contract, for a duration of 8 weeks and were entitled to Kshs.25,000/= per month.

117. Although the Claimants testified that they were claiming Kshs.57,000/= because it had been promised, they adduced no evidence as to when, by whom and the circumstances in which the promise was made and the amount agreed upon as there was no documentation.

118. An overview of the definition of apprentice, indentured servant or learner or intern reveal that all are persons engaged to work for an employer.

119. In the court's view and guided by the foregoing authorities, the court is persuaded that the Claimants have failed on a balance of probabilities to demonstrate that they were employees of the Respondent. The agreement they signed on 16th November, 2016 was unambiguous that it was a training opportunity and not an offer for employment.

120. As to whether the training contract between the Claimants and the Respondent was vitiated by duress, parties have adopted different positions. While the Claimants testified they signed the contract under duress, the Respondent's counsel submitted that the Claimants were obligated to establish the alleged duress, but failed to do so.

121. The 1st Claimant, on re-examination testified that he believed that the job offer would be given after the training but stated that he signed the letter under duress.

122. The 2nd Claimant testified on cross-examination that she had no offer of employment from the Respondent. She testified that they were coerced to sign the training offer.

123. The 3rd Claimant was the most forthright that he understood the contents of the document, as he had a day to read it and reflect and signed it and it was for purposes of training only. He did not testify that he signed the document under duress.

124. All the Claimants confirmed on cross-examination that they neither raised any concerns nor protested that the arrangement had changed.

125. The 3rd Claimant confirmed that the training was normal and was not part of the job but to acclimatize with the Respondent's environment.

126. According to Black's Law Dictionary (10th Edition) at page 614, Duress means;

1. Strictly, the physical confinement of a person or the detention of a contracting party's property.

2. Broadly, a threat of harm made to compel the person to do something against his or her will or judgement especially a wrongful threat made by one person to compel a manifestation of seeming assent by another person to a transaction without real volition.

127. At common law, duress signifies actual violence or threats of violence to the person calculated to produce fear, loss of life or bodily harm.

128. In effect, duress amounts to external pressure which denies a contracting party free will in making judgement on whether or not to enter into a contractual relationship.

129. Puzzlingly, none of the Claimants availed evidence of the circumstances in which the training contract was signed. They availed no evidence on the particulars of the alleged duress including who was responsible for the threat or actual violence and by whom. How many persons were in the office when the contract was signed?

130. None of the Claimants testified that he/she did not read or understand the contents of the document.

131. The pleadings on record lacks particulars of duress.

132. At common law, for duress to vitiate a contract, it must be demonstrated that it was exerted by the other party to the contract.

133. In this case, the Claimants could neither identify the form the alleged duress took or place where it took place nor the person who perpetrated it.

134. As correctly submitted by the Respondent's counsel, the operative mantra is that he who alleges is bound to prove the allegations.

135. Section 107 of the *Evidence Act* provides;

1. Whoever desires any court to give judgement as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.

2. When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.

136. Similarly, Section 109 imposes an obligation on the party relying on a particular fact to prove its existence.

137. The court is in agreement with the sentiments of the court in Muriungi Kanoru Jeremiah V Stephen Ungu M'wirabua (Supra) on the burden of proof.

138. As adverted to elsewhere above, the Claimants adduced no evidence to demonstrate the alleged duress. The allegation was not substantiated.

139. For the foregoing reasons, it is the finding of the court that the Claimants have failed to prove that the training contract they executed on 16th November, 2016 was vitiated by duress. They signed a legally binding contract and were bound by its terms.

140. The concluding paragraph of the letter was categorical that;

> "I . . . have read, understood and accept to be bound by the terms of this Training Offer."

141. None of the Claimants alleged that the contents of the document were misrepresented or the Respondent exerted undue influence or they made a mistake.

142. The Claimants appended their signatures on the document while cognizant of its provisions and effect and are thus bound by its contents including the termination clause. The contract accorded the Respondent liberty to discontinue the training at will.

143. Contrary to the Claimant's counsel's submission that the Claimants were to be paid a salary or wage as the definition of the term employee encompasses, the contract they signed designated the payment as a "stipend" payable only for the duration of the training and insurance cover was extended to the Claimants for the duration of the training.

144. Having found that the Claimants have failed to demonstrate that they were employees of the Respondent or had a legitimate expectation, the court is persuaded that it has no jurisdiction to entertain suit and as jurisdiction is everything, the court will down its tools at this stage.

145. In the upshot, the instant suit is for dismissal and it is accordingly dismissed with no orders as to costs.

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI ON THIS 4TH DAY OF OCTOBER 2023

DR. JACOB GAKERI

JUDGE

ORDER

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court has been guided by Article 159(2)(d) of *the Constitution* which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of *the Constitution* and the provisions of Section 1B of the *Civil Procedure Act* (Chapter 21 of the Laws of Kenya) which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

DR. JACOB GAKERI

JUDGE