

2026 April | Employment

THE COURT CONSIDERS NATURE OF ENGAGEMENT WHEN DETERMINING WHETHER AN EMPLOYMENT RELATIONSHIP EXISTS.

Deusdedit Luseka Mukabwa v Better Stream Care Limited [2026] KEELRC 736 (KLR)

1. Background

- 1.1 The Claimant, Deusdedit Luseka Mukabwa, a medical professional, entered into an engagement titled “Collaboration Agreement” with the Respondent, Better Stream Care Limited, on 19th May 2022. The agreement was to run for ten years with an option to renew and entitled the Claimant to a monthly salary of Kshs. 143,000/- and an annual payment of Kshs. 150,000/- for the Respondent’s utilisation of his medical licence.
- 1.2 The engagement proceeded without incident until April 2023, when the Respondent allegedly defaulted on salary payments. The Claimant averred that he continued to diligently discharge his duties until 24th September 2024, when his engagement was terminated.
- 1.3 The Claimant filed a claim before the Employment and Labour Relations Court (“ELRC”) at Kisumu seeking a sum of Kshs. 1,328,484/- as unpaid salary for 2023 and 2024; Kshs. 24,000/- as

unremitted welfare deductions for 2024; Kshs. 550,000/- as unpaid licence fees; a certificate of service; costs; and interest.

- 1.4 The Respondent opposed the claim, contending that the relationship between the parties was governed by a hospital–doctor collaboration agreement, constituting a contract for service rather than a contract of service. It further argued that the agreement did not meet the statutory requirements of an employment contract under section 10 of the Employment Act.

2. Court’s Determination

The Court held as follows:

- 2.1 The primary issue for determination was whether there was an employment relationship existed between the parties.
- 2.2 What forms an employment relationship is not the heading or designation of the contract but the actual way the parties engage.
- 2.3 When a person performs work or services under the direction, control,

and supervision of another in return for remuneration, an employment relationship is established.

2.4 The Claimant was an employee of the Respondent, as the Respondent exercised control over the Claimant and the Claimant provided services under the direction and supervision of the Respondent.

2.5 The Respondent did not follow due process in terminating the Claimant's employment as required under section 41 of the Employment Act.

2.6 Consequently, the Court entered judgment in favour of the Claimant for unfair termination.

Key Contacts



Anne Muema
Advocate / Managing Partner

Email: amutheu@mutieadvocates.com



Maureen Kubai
Associate

Email: mkubai@mutieadvocates.com

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Website: www.mutie-advocate.com

Phone: +254 768 042 180

E-mail: info@mutieadvocates.com

Address: Assi Centre, School Lane, Westlands

P O Box 211-00621, Nairobi

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