

Why Small and Medium-sized Enterprises require written Contracts of Employment

Small and medium-sized enterprises are the backbone of Kenya's economy, creating both formal and informal job opportunities and driving innovation across multiple sectors. However, most SMEs rely on informal agreements and understanding when engaging employees. This approach may feel practical and convenient, but it creates legal and operational risks.

THE LEGAL ANALYSIS

Section 9 of the **Kenya Employment Act** requires that any contract of service for a period amounting to three months or more, or for work that cannot reasonably be completed within that period, shall be in writing. The duty to prepare the contract rests with the employer, who must also ensure that the employee consents to it by signature or by thumbprint. **Section 10** of the Act lists the particulars that must appear in that written contract.

The practical implications of **Sections 9 and 10** shows up in litigation. Where an employer fails to produce a written contract or written particulars in legal proceedings, the burden of proving or disproving any alleged term of employment shifts to the employer. In practice, this means that if an employee later claims against the employer whether rightly or wrongly, and the employer has no written record, the law does not require the employee to prove it. Instead, it asks the employer to disprove it. Kenyan Courts have time and again upheld this principle, as was seen in the case of **Jackson Muiruri Wathigo t/a Murtown Supermarket v Lilian Mutune [2021] KECA 388 (KLR)**

Advantages of a written Contracts of Employment

A well-drafted contract does more than satisfy the provisions of the law. It provides clarity; records essential terms so that both parties understand their obligations and expectations, thus reducing

misunderstandings that commonly lead to disputes. It provides legal protection; clearly outlines the disciplinary, and grievance procedures, and safeguards that protect business assets. It provides evidential value, by providing a point of reference should a dispute arise.



Conclusion and Recommendation

Many SME owners overlook formal contracts because the business is "small" or because relationships feel personal and trusting. Trust is valuable, but it is not a substitute for clarity. Disputes rarely arise when everything is going well. They surface when performance declines, the business needs to make changes, or personal relationships sour. At that point the absence of a written record becomes an inconvenience, that more often than not squarely falls on the employer.

A written contract of employment protects the employee just as much as it protects the business. For a growing SME, providing a written contract when engaging an employee is considerably less expensive than the dispute it prevents.

