



**City Star Shuttle Limited & another v Selective Outsourcing Services (K) Limited (Civil Appeal 606 of 2018) [2022] KEHC 14048 (KLR) (Civ) (19 October 2022) (Ruling)**

Neutral citation: [2022] KEHC 14048 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CIVIL**

**CIVIL APPEAL 606 OF 2018**

**JK SERGON, J**

**OCTOBER 19, 2022**

**BETWEEN**

**CITY STAR SHUTTLE LIMITED ..... 1<sup>ST</sup> APPELLANT**

**SAMUEL NJOROGE KAMAU ..... 2<sup>ND</sup> APPELLANT**

**AND**

**SELECTIVE OUTSOURCING SERVICES (K) LIMITED ..... RESPONDENT**

**RULING**

1. This ruling has been triggered by an issue which was raised by the appellants herein to the effect that the respondent is a non-existent entity.
2. The issue was to be dispensed with through the filing of written submissions. Going by the record, at the time of writing this ruling, this court had only seen the submissions by the appellants, as had been availed.
3. I have considered the submissions on record.
4. A brief background on the subject is that the appellants filed the application dated December 20, 2018 and sought for an order of a stay of execution pending an appeal against the judgment delivered by the trial court on November 30, 2018 in Milimani CMCC No 992 of 2016.
5. To oppose the application, the respondent put in the replying affidavit sworn by its Managing Director, Jane Njeri Mwaura on February 11, 2019, to which the appellants rejoined with the further affidavit sworn by the 2<sup>nd</sup> appellant on March 11, 2019 claiming non-existence of the respondent. The respondent retorted with the replying affidavit sworn by Jane Njeri Mwaura on June 25, 2019.



6. Returning to the issue for consideration, which is whether the respondent is an existing entity, the appellants on the one hand state and submit that upon their advocates seeking to ascertain the whereabouts of the respondent's business, they came to discover that the company name "Selective Outsourcing Services (K) Limited" does not appear on the database of registered companies but that the certificate of incorporation availed belongs to "Selective Autosourcing Services (K) Limited" who is an entirely distinct entity from the respondent herein.
7. For the reasons given above, the appellants urge that the proceedings and judgment emanating from the lower court be declared a nullity and consequently, that the present appeal be declared unmaintainable, citing among others, the case of *Ernie Campell & Co Ltd v Automobile Association of Kenya* [2006] eKLR in which the court determined that:

"In the Fort Hall Bakery Supply Co v Frederick Muigai Wangoe [1959] EA 474, at page 475, the Hon Templeton J held as follows:

"A non-existent person cannot sue, and once the court is made aware that the plaintiff is non-existent, and therefore incapable of maintaining the action, it cannot allow the action to proceed."
8. In reply, the respondent through its managing director states that contrary to the averments being made by the appellants, the respondent is a duly registered company with documentation to support that position.
9. The respondent further states that upon learning that its existence had been brought to question, it instructed its lawyers to conduct a search with the aim of ascertaining its status and which search disclosed that save for a typographical error in the word "Outsourcing" which instead reads as "Autosourcing" the other particulars of the respondent are consistent.
10. The respondent therefore suggests that the clerical officer at the Registrar of Companies, Jemimah Mungai, who had written to the appellants' advocates in respect to the particulars of the respondent, be summoned to explain the typographical error.
11. The record shows that pursuant to issuance of witness summons, the abovementioned Jemimah Mungai swore an affidavit on October 4, 2019 where she states that on August 18, 2010 the companies registry received an application by Jane Mwaura for reservation of the name "Selective Autosourcing Services (K) Limited" and which reservation was done and followed by a registration of the abovementioned name on October 5, 2010 as a private company vide certificate No CPR/2010/31891 and whose directors were Jane Njeri Mwaura and Joseph Mwaura Kamau holding 600 and 400 shares respectively.
12. The deponent further states that the companies registry subsequently received an application on February 3, 2011 for reservation of "Selective Outsourcing Services (K) Limited" and that subsequently, the directors of Selective Autosourcing Services (K) Limited lodged a special resolution dated February 7, 2011 and sought for registration of a change of name from Selective Autosourcing Services (K) Limited to Selective Outsourcing Services (K) Limited.
13. The deponent states that a certificate of change of name was issued on March 2, 2011 but that the search later undertaken by the appellants' advocates did not capture the particulars relating to the change of name mentioned hereinabove; rather, they reflected the particulars of Selective Autosourcing Services (K) Limited.



14. Upon my perusal of the record, it is apparent that a company by the name Selective Autosourcing Services (K) Limited was registered on October 5, 2010.
15. Going by the record, I observed that the respondent has adduced credible evidence to demonstrate that save for the difference in the wordings “Autosourcing” and “Outsourcing” upon registration, the other particulars in both instances are similar.
16. Upon my further perusal of the record, it is also apparent that a change of name was later effected and a certificate of change of name was issued by the Registrar of Companies on 2<sup>nd</sup> March, 2011 bearing the name “Selective Outsourcing Services (K) Limited” who is the respondent herein. There is nothing credible to indicate that the said certificate is invalid.
17. Upon my consideration of the material and evidence tendered, it is therefore more plausible than not that the change of name was not updated in order to reflect on the registration of companies portal, which would likely explain the variance in the company details at the point of conducting a search.
18. Suffice it to say that, it is noteworthy that nothing has been placed before me to indicate that the issue of existence of the respondent was ever raised or placed before the trial court for consideration, as would have been appropriate. Going by the averment made by the parties herein, the matter proceeded and judgment was delivered in favour of the respondent.
19. All in all, I find no credible evidence that can lead me to the conclusion that the respondent herein is a non-existent entity.
20. In the end, I hereby find that the respondent is a proper and legal entity in both the suit and the present appeal. Consequently, I hereby direct that the Registrar of Companies to amend and/or rectify the particulars of the respondent accordingly.

**DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT NAIROBI THIS 19<sup>TH</sup> DAY OF OCTOBER, 2022.**

.....

**JK SERGON**

**JUDGE**

**In the presence of:**

..... for the 1<sup>st</sup> and 2<sup>nd</sup> appellants/applicants.

..... for the respondent.

