



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT ELDORET**

**CAUSE NO. 187 OF 2017**

**(Originally Nakuru Cause No. 396 of 2016)**

**RONALD LUVISIA MASINDE.....CLAIMANT**

**VERSUS**

**ELDORET GRAINS LIMITED.....RESPONDENT**

**RULING**

1. The Claimant instituted legal proceedings against the Respondent on 7 October 2016 and the issues in dispute were stated as

- a. whether the claimant was unlawfully, unprocedurally and unfairly terminated from employment by the respondent;
- b. whether the claimant is entitled to compensation for unlawful, unprocedural and unfair termination from the employment as prayed for in the memorandum of claim;
- c. whether the claimant is entitled to an award of a certificate of service;
- d. Who should pay costs and interests of the suit.

2. In an unprecedented practice, the law firm of Mwakio, Kirwa & Co. Advocates also annexed to the Memorandum of Claim other Memorandum(s) of Claims containing pleadings in respect of *Philip Maina v Eldoret Grains Ltd*, *Benson Aswani Senelwa v Eldoret Grains Ltd*, *Kizito Warukoi v Eldoret Grains Ltd*, *Wyclife Mukwana Wekesa v Eldoret Grains Ltd*, *Samson Lumasayi Mamba v Eldoret Grains Ltd*, *Collins Wanjala Wamacho v Eldoret Grains Ltd* and *Peter Kipchirchir v Eldoret Grains Ltd*.

3. Appropriate filing fees for these other pleadings were not paid nor were Cause numbers allocated to them. The Notice of Summons issued however indicated these other Causes as part of Cause No. 396 of 2016.

4. To all intents and purposes these purported Claims are invalid and are struck out.

5. On 17 March 2017, the firm of Kitiwa & Co. Advocates, acting for the Respondent filed a Notice of Motion seeking

- a). The Respondent be granted leave to issue a third party notice to Ready Consultancy Company Ltd of P.O. Box 99734 Mombasa.

b). Costs of this application be in the cause.

6. The motion was anchored on the ground that the Respondent was not the employer of the Claimant(s) and that the Claimant(s) were instead the employees of the intended third party, Ready Consultancy Limited.

7. When the motion came up on 27 April 2017, Mr. Kariuki for the Claimant(s) informed the Court that the motion was not opposed.

8. The legal implication of the Claimant(s) conceding the motion is that they were admitting that the Respondent was not their employer and therefore no cause of action accruing out of an employment relationship could be maintained against it.

9. In the view of the Court, having conceded that the wrong party was sued, the instant Memorandum of Claim cannot be sustained through third party notice or proceedings.

10. That approach can only muddy the already confused pleadings presented to Court.

11. The Court therefore orders that the Memorandum(s) of Claim(s) presented herein be struck out with costs to the Respondent.

12. The costs should be borne personally by the Claimant(s) advocate on record.

13. And because the cause(s) of action advanced herein accrued in Eldoret, this file should be allocated a new number and archived in Eldoret sub-registry of the Court.

**Delivered, dated and signed in Eldoret on this 28<sup>th</sup> day of July 2017.**

**Radido Stephen**

**Judge**

**Appearances**

For Claimant Mr. Kariuki instructed by Mwakio, Kirwa & Co. Advocates

For Respondent Ms. Lusweti instructed by Kitiwa & Co. Advocates

Court Assistant Nixon/Martin