



**REPUBLIC OF KENYA**

**IN THE INDUSTRIAL COURT OF KENYA AT NAIROBI**

**CAUSE NO. 888 OF 2010**

**STEPHEN KARIUKI.....1<sup>ST</sup> CLAIMANT**

**MOSES MWANGI.....2<sup>ND</sup> CLAIMANT**

**VERSUS**

**MICHAEL NJOROGE..... 1<sup>ST</sup> RESPONDENT**

**SANDSTONE LOGISTICS LTD/**

**CYLINDER WORKS LTD.....2<sup>ND</sup> RESPONDENT**

**RULING**

By a Notice of Preliminary Objection dated 6<sup>th</sup> August 2013 the Respondents have raised the following preliminary issues for determination.

1. The Claimants' suit as drawn & filed is bad in law, fatally defective, hopelessly misconceived, discloses no reasonable cause of action against the 1<sup>st</sup> Respondent whom the Claimants have also sought to make liable for alleged acts of a Limited Liability Company in violation of the law.
2. The Claimant's suit as drawn & filed is bad in law, fatally defective, hopelessly misconceived and is a gross abuse of the process of this Honorable Court, for the reason inter alia, that the Claimants have wrongly enjoined themselves as Co-Plaintiffs in the Suit.

When the parties appeared before me on 10<sup>th</sup> October 2013 for hearing they agreed to canvass the Preliminary Objection by way of written submission.

In the Respondents written submissions it is submitted that the 1<sup>st</sup> Respondent has been wrongfully joined by the Claimants as in the pleadings both Claimant state that they were former employees of Sandstone Logistics Ltd/Cylinder works Ltd. It is further submitted that there is a misjoinder of Claimants as the Claimants were employed on different dates in different positions and were terminated on different dates.

The Claimants on the other hand submit that the issues raised in the Preliminary Objection do not fall within the parameters of a preliminary objection as pronounced in the **MUKISA BISCUITS CASE** as they are not based on a pure point of law, that the claim is not defective as the laws governing the filing of claims in this court, that is, the Industrial Court (Procedure) Rules 2010 allows joinder of Claimants, that this is a technical objection, that the 1<sup>st</sup> Respondent is an agent of the 2<sup>nd</sup> Respondent as defined in the Employment Act and that the Respondent has failed to disclose the relationship between the 1<sup>st</sup> and

2<sup>nd</sup> Respondents. It is further submitted that objections were not made before the Chief Industrial Relations Officer and they have now become part of admitted facts by the Respondent.

The Respondents referred me to the case of **Ethics & Anti – Corruption Commission & 3 Others V African Safari Club Limited & 2 others [2013]eKLR**.

I have considered the submission of the parties on the Preliminary Objection. I find both grounds of the Preliminary objection to be technical objections. Article 159 of the Constitution requires this court to administer Justice without undue regard to procedural technicalities. Section 20(1) a of the Industrial Court Act echoes the provisions of Article 159 by providing that proceedings under the Act the court shall act without undue regard to technicalities.

On 7<sup>th</sup> February 2013 I directed the Respondent to file full particulars relating to the employment of the Claimants and specifically information relating to annual leave, work on public holidays, overtime and house allowance based on records that employers are required to keep. This was to be done by way of Supplementary Submissions within 14 days. Instead of filing those particulars the Respondent instead filed the Notice of Preliminary Objection on 6<sup>th</sup> August 2013.

I find the Preliminary Objection to be an attempt to circumvent the order to file the particulars.

For these reasons, I find the Preliminary Objection to be without merit and dismiss the same.

I further direct the Respondents to file the employment particulars as directed on 7<sup>th</sup> February 2013 within 14 days.

Orders accordingly.

Delivered and signed in open court on **3<sup>RD</sup>** day of **April** 2014

**HON. LADY JUSTICE MAUREEN ONYANGO**

**JUDGE**

In the presence of:

Nyabera holding brief for Opiyo for Claimants

Wachira holding brief for Nyaga for Respondent