

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI MILIMANI LAW COURTS

CIVIL CASE 591 OF 2005

XAVIER OKADO LUGAGA.....PLAINTIFF/RESPONDENT

-versus-

THE STANDARD LIMITED.....DEFENDANT/APPLICANT

RULING

The Applicant, who is the Defendant in this suit, filed this chamber summons dated 23rd February 2006 praying”

“(a) *THAT the plaint filed herein on 17th May 2005 and amended on 10th February 2006 be struck out.*

(b) *THAT in the alternative the following paragraphs of the amended plaint be struck out, paragraphs 3, 5, 6, 7, 7A.”*

Grounds upon which the chamber summons is based are set out on the face of the said chamber summons and there is also a supporting affidavit by Nelly Matheka who said was the Defendant’s Company Secretary. It is dated 23rd February 2006.

The chamber summons is brought under Order VI Rule 13(1) (b), (c) and (d) of the Civil Procedure Rules and therefore during the hearing Mr. Gitonga, counsel for the Defendant/Applicant told me that he had abandoned ground number 1 of the application. That means the issue of not disclosing a reasonable cause of action against the Defendant does not arise.

Otherwise looking at the Amended Plaint in question and the Defendant’s defence, there is no doubt that a number of triable issues arise such as whether the Plaintiff worked for the Defendant diligently, faithfully, honestly, professionally and whether upon his dismissal, the Plaintiff lost gratuity benefits, was not paid all the money that was due to him from the Defendant and whether the termination of that employment was done lawfully. Those are issues that cannot just be assumed when contested because each employee signs his own separate contract with his employer with liberty to vary terms in the contract in accordance with their mutual agreement.

That being so, I do not see the propriety of an application like this chamber summons which was brought on the basis of Order VI Rule 13(1) (b), (c) and (d) yet when grounds of the chamber summons and/or supporting affidavit are looked at, the aforesaid grounds under rule 13(1) are hardly seen as the contents are clearly contested issues such as the allegations in ground number 2 in the chamber summons that the Plaintiff was dismissed from employment “following his lack of professionalism and carelessness; and the claim in ground 3 that the sum of money Kshs.277,657.05 was all the money that was due to the Plaintiff from the Defendant; and in ground 6 that the other claims made by the Plaintiff are unclaimable; and going ahead in ground number 5 to challenge the Amended Plaint as if to-day was the hearing of the application to-admit that plaint.

The Plaintiff’s counsel filed grounds of opposition to this chamber summons and ought to have been keen to appear during the hearing to challenge the chamber summons but I am surprised he is exhibiting tendencies of not being keen to attend court even in serious matters like this one where his client’s suit is to be thrown out.

The Plaintiff can however take solace from the fact that I find nothing in the said Amended Plaintiff which calls for action of this court upon grounds in Order VI Rule 13(1) (b) or (c) or (d) of the Civil Procedure Rules. Instead, it is this chamber summons that I find to be vexatious, embarrassing and without merit.

Accordingly, the said chamber summons is hereby dismissed with costs to the Plaintiff.

Dated this 31st day of October 2008.

J. M. KHAMONI

JUDGE

Present:

Mr. Gitonga for the Applicant.

Kabiru – Court Clerk.