

**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA**

Civil Suit 261 of 2006

JOSEPH K. MWEKE & 414 OTHERS.....PLAINTIFF

VERSUS

SIN LANE KENYA (EPZ) LTD.....DEFENDANT

R U L I N G

The 415 plaintiffs in this case claim in their plaint that on the 14th November 2006 the management of their employer, the defendant company, verbally informed them that there is no more work for them and that they are being declared redundant. Thereafter the defendant started removing machinery and electric installations from its factory at Changamwe and stuffing them into containers ready to ship them to unknown destination. Fearing that the shareholders and directors of the company who are foreigners might slip out of the country without paying their terminal benefits they filed this suit and sought an order that the defendant company do pay forthwith their terminal benefits, that is one month's salary in lieu of notice and severance pay at the rate of 15 days salary for every completed year of service.

Contemporaneous with the filing of the suit the plaintiffs also applied under Order 38 Rules 1 and 2 of the Civil Procedure Rules for the arrest of Chen Meilan the managing director of the defendant company to be brought to court to show cause why she should not furnish security for their claim. In the alternative they seek an order that the said Chen Meilan be ordered to furnish security in the sum of Sh.6 Million.

The said Chen Meilan swore and filed a replying affidavit in which she denied that she is a director or managing director of the company or that the company has any intention of closing down. She further stated that the allegation of closure emanated from the plaintiffs who demanded payment of their terminal dues but in spite of being assured that the company is not closing down went on strike. The company sought the intervention of the Ministry of Labour but the plaintiffs, unlike other employees, refused to heed the return to work formula and the company had no alternative but to dismiss them. As she is not the managing director leave alone a director but only a mere employee of the company she deposed that no orders can be granted against her as claimed.

When the application came up for hearing Mr. Abedi, counsel for the defendant raised a preliminary objection to the effect that Chen Meilan not being the defendant in this case the orders sought cannot issue against her. In the circumstances he submitted that the application should be struck out.

In response to that Mr. Kenzi, counsel for the defendant, argued that the said Chen Meilan being the known principal officer of the company, the orders sought can and should be issued against her.

I do not find any merit in Mr. Kenzi's argument. It is trite law that a company is a legal entity separate and distinct from its shareholders. There is no evidence that Chen Meilan is a shareholder or director of the defendant company and even if she was the orders sought cannot issue against her for the same reason that shareholders and directors are legal persons different from their company. Resort can only be had to hold the directors of a company liable for the debts of the company when the corporate veil has been lifted which has not happened in this case.

In the circumstances Mr. Abedi's preliminary objection has merit and I accordingly uphold it and strike out the plaintiffs' application dated 21st November 2006 with costs.

DATED and delivered this 8th day of February 2007.

D.K. MARAGA

JUDGE