



Watchdog Limited v Delight Apartment Management Ltd (Civil Appeal E011 of 2022) [2025] KEHC 3287 (KLR) (Civ) (13 March 2025) (Judgment)

Neutral citation: [2025] KEHC 3287 (KLR)

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

CIVIL

CIVIL APPEAL E011 OF 2022

PM MULWA, J

MARCH 13, 2025

BETWEEN

WATCHDOG LIMITED APPELLANT

AND

DELIGHT APARTMENT MANAGEMENT LTD RESPONDENT

JUDGMENT

Brief background

1. This is an appeal from the decision of the Principal Magistrate's Court, delivered on 10th January 2022, which allowed the Respondent's preliminary objection and struck out the suit with costs.
2. It is not in dispute that the Respondent hired the services of the Appellant vide a contract which was terminated before it lapsed. The Appellant sued the Respondent by the plaint dated 8th June 2021, seeking compensation for unpaid wages amounting to Kshs. 125,996/=
3. Opposing the suit, the Respondent filed a preliminary objection against the Appellant's suit, on the grounds that the suit was a nullity, as the Plaintiff was a non-existent entity within the meaning of Section 18(4) of the *Companies Act*, 2015. Additionally, the Respondent argued that the Plaintiff lacked locus standi to institute the suit, and that the suit was frivolous, misconceived, devoid of merit and an abuse of the court process. The preliminary objection was heard through written submissions.
4. In considering the preliminary objection, the trial court struck out the suit, finding that the Plaintiff lacked the capacity to bring the instant suit, and further arguing that it was a different entity from the party named in the Certificate of Incorporation.
5. Aggrieved by the trial court's ruling, the Appellant filed the instant appeal by way of a Memorandum of Appeal dated 14th February 2022, citing the following grounds of appeal:



- a. That the Honorable Magistrate erred in law and in fact in holding that the appellant herein never filed a response to the Notice of Preliminary Objection and delivered the ruling without considering the Appellant's submissions duly filed in court.
 - b. That the Honourable Magistrate erred in law and in fact in holding that the Appellant herein bears no locus standi to institute the proceedings and the suit at large despite the appellant having established its legal capacity to institute the suit and a valid claim against the Respondent herein.
 - c. That the Honourable Magistrate erred in law and in fact in finding merit in the Respondent's notice of Preliminary Objection despite the Preliminary Objection being a technical objection based on the wording and phraseology of the appellant's name and not on a substantive issue of law or fact.
 - d. That the Honourable Magistrate erred in law and fact in striking the appellant's suit which was a drastic and disproportionate action in consideration of the constitutional principles of exercise of judicial authority and power as set out at article 159 of *the Constitution* of Kenya 21010.
6. The Appellant urges the court to allow the appeal, set aside the ruling, and the order of the Honourable Magistrate made on 10th January 2022.
 7. This appeal was heard through written submissions. I have carefully reviewed the appeal and the submissions made by both parties together with the record of Appeal. The issue for determination is whether the ruling and orders issued by the trial court should be set aside and the appellant's suit reinstated.
 8. The Respondent's preliminary objection was predicated on the assertion that the Appellant's suit was a nullity due to an alleged lack of locus standi and the omission of the word "The" in reference to "Watchdog" in the Plaint. The Respondent contends that such an omission is fatal to the Appellant's suit, rendering it frivolous and incapable of standing.
 9. A preliminary objection was defined in the Supreme Court case of Hassan Ali Joho & Anor v Suleiman Said Shabal & 2 others SCK Petition 10 of 2013 (2014) eKLR as one which:

“...consists of a point of law which has been pleaded or which arises by clear implication out of pleadings and which if argued as a preliminary point may dispose of the suit.”
 10. The trial court in its judgment agreed with the Respondent that omitting the word “The” in reference to the Plaintiff was fatal and proceeded to find the Plaintiff lacked capacity to bring the instant suit. In my view, the matter in controversy can still be adjudicated with respect to the rights and interests of the parties before the court. The omission of a single word namely “The” does not go to the root of the Appellant's cause of action, which is grounded in a contractual dispute. The parties to the contract, both the Appellant and the Respondent, were fully aware of the transaction and the parties involved. There is no evidence to suggest that the omission of the word “The” caused any confusion or harm to the Respondent's ability to defend the suit.
 11. In its statement of defence and counterclaim dated 13th October 2020, the respondent acknowledged entering into an agreement with the Appellant and further accused the Appellant of breaching the terms of the contract. This admission establishes that there is a valid contract in dispute, and the Appellant has a legitimate interest in seeking redress for the alleged breach. The omission of the word “The” does not affect the substance of the claim nor the parties' obligations under the contract. The



Respondent cannot avoid its responsibilities by asserting that the Appellant lacked the capacity to bring the suit based on a minor drafting error.

12. The Court of Appeal in *William Kiprono Towett & 1597 Others v Farmland Aviation Ltd & 2 Others* (2016) eKLR held that no suit shall be defeated by reason of the misjoinder or non-joinder of parties. The court may in every suit deal with the matter in controversy so far as regards the rights and interests of the parties actually before it.
13. In light of the foregoing, I find it necessary to adhere to the principles espoused in Article 159 of *the Constitution* of Kenya, which emphasizes that justice shall be dispensed to all without undue regard to procedural technicalities. Specifically, Article 159(2)(d) mandates that courts shall administer justice without undue regard to procedural technicalities. The omission of the word “The” in the Plaintiff’s pleadings does not substantially affect the cause of action, nor does it prejudice the Respondent in defending the suit.
14. Moreover, the overriding objective of the courts, as outlined in Section 1A of the *Civil Procedure Act*, is to facilitate the just, expeditious, proportionate and affordable resolution of disputes. Dismissing the Appellant’s suit based on such a trivial technicality would contravene the spirit of the law, which seeks to ensure that substantial justice is done. The law and the courts must prioritize the substantive rights of parties over minor procedural defects that do not affect the core of the dispute.
15. Consequently, I find that the appeal is meritorious. I hereby allow the appeal, set aside the trial court’s findings and dismiss the preliminary objection raised by the Respondent. I further reinstate the Appellant’s suit, directing that the matter be heard on its merits.
16. Additionally, I order that the trial court file be remitted back for hearing, and the case be assigned to any other magistrate, other than Hon. Lilian Lewa, to ensure impartiality and a fair hearing.

It is so ordered.

JUDGMENT DELIVERED VIRTUALLY, DATED AND SIGNED AT NAIROBI THIS 13TH DAY OF MARCH 2025.

PETER M. MULWA

JUDGE

In the presence of:

Ms. Swaka h/b Mr. Njenga for Appellant

N/A for Respondent

Court Assistant: Carlos

