

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MISC. NO. 367 OF 2011

DAVID MWANGI MBURU PLAINTIFF

VERSUS

KPMG KENYA..... DEFENDANT

RULING

This is a suit by the plaintiff against the defendant which is still pending determination. The suit is premised on what appears to be an employment dispute between the plaintiff and a client of the defendant. At the centre of the dispute is a forensic investigation report said to have been prepared by the defendant.

There is already concern on the part of the defendant as to the use of the report in the plaintiff's pleadings and admissibility thereof. As a result, the defendant filed an application seeking orders of either the striking out of the suit or the expunging of the draft factual findings of the forensic investigation report.

The main reasons for seeking such orders are that the said report was legally privileged and illegally obtained by the plaintiff, and that the defendant never consented to the use of the report by the plaintiff. The application is opposed by the plaintiff who filed grounds of opposition.

I have looked at the pleadings of the parties, that is the plaint, the defence and reply to the defence. It is clear that the orders sought by the defendant are identifiable triable issues which cannot be addressed through an application such as the one presented by the defendant. For that reason alone the application must fail. It is therefore dismissed.

I note that this is a labour dispute. I order that this case file shall be transferred to the Employment and Labour Relations Court for hearing and determination. The costs shall be in the cause.

Dated, signed and delivered at Nairobi this 6th Day of April, 2017.

A.MBOGHOLI MSAGHA

JUDGE