



**Odhiambo v Kisang & 3 others (Cause E089 of 2023)  
[2024] KEELRC 1031 (KLR) (8 May 2024) (Ruling)**

Neutral citation: [2024] KEELRC 1031 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU  
CAUSE E089 OF 2023**

**S RADIDO, J  
MAY 8, 2024**

**BETWEEN**

**DR CHARLES OKECH ODHIAMBO ..... CLAIMANT**

**AND**

**DR OBADIAH KISANG ..... 1<sup>ST</sup> RESPONDENT**

**DORIS MWAREY ..... 2<sup>ND</sup> RESPONDENT**

**GILBERT KAMANGA ..... 3<sup>RD</sup> RESPONDENT**

**WORLD VISION KENYA ..... 4<sup>TH</sup> RESPONDENT**

**RULING**

1. Dr Charles Okech Odhiambo (the Claimant) sued Dr Obadiah Kisang, Doris Mwarey, Gilbert Kamanga and World Vision Kenya (the Respondents) on 2 December 2023, alleging wrongful termination of employment and breach of contract.
2. The remedies sought by the Claimant were:
  - (a) Declaration that the Claimant was and is still an employee of the 4<sup>th</sup> Respondent up to the 30<sup>th</sup> November 2023.
  - (b) A declaration that the withholding of the Claimant's dues is illegal and unfair.
  - (c) It is humbly prayed that this Honourable Court be pleased to order the Respondent to pay the Claimant's statutory entitlements and dues totalling to Kshs (sic) with interest at 30% with effect from the date of filing the case until the date of judgment.
  - (d) General damages for defamation of character.
  - (e) Aggravated damages.



- (f) Interest on (a),(b),(c), (d) and (e) from the date of filing the suit until the date of the judgment.
- (g) In addition, this Honourable Court is prayed to award costs of this suit to be borne by the Respondents.
3. On 13 February 2024, the Respondents filed 3 similar applications seeking that the 1<sup>st</sup> to 3<sup>rd</sup> Respondents be struck out from the Cause.
  4. The main ground advanced in support of the Summons was that these Respondents were acting as agents of World Vision, Kenya (the 4<sup>th</sup> Respondent) and that no relief was sought against them.
  5. The Claimant filed a replying affidavit in opposition to the Summons wherein he deponed that the applications were meant to delay the expeditious determination of the Cause and that the 1<sup>st</sup> to 3<sup>rd</sup> Respondents had defamed him in letters dated 29 August 2023.
  6. The Court took oral highlights on the applications on 8 April 2024.
  7. The Court has considered the 3 applications, affidavits and oral submissions.
  8. The Court has also looked at the Statement of Claim.
  9. Among the causes of action advanced by the Claimant was defamation thus:
    - (20) The Claimant avers that in a notice to show cause letter dated 29<sup>th</sup> August 2023, the 1<sup>st</sup> Respondent published defamation words that on or about Wednesday 11<sup>th</sup> May 2022, the Claimant sexually harassed one of the hotel female staff at Cicada Hotel in Eldoret when the Claimant requested for room service and she had to struggle to leave the room which actions are against the 4<sup>th</sup> Respondents adult safeguarding (sic).
    - (21) The Claimant avers that the defamatory words did not end there, the 1<sup>st</sup> Respondent continued in his letter and said that in August 2022, the Claimant used vulgar and demeaning sexual words to a female colleague while on duty, where it is alleged that the Claimant said these words to a staff member ‘wewe inafa upewe mwanaume akudinye, akupe watoto kumi ndio utulie and you reason like those who haven’t been married, woman doesn’t listen from their ears until they are fucked, it means they listen with their vagina open’.
    - (22) The Claimant avers that the 1<sup>st</sup> Respondent knowing or having reason to believe that those words were false went ahead to publish those words and thereafter placed the document in the personal file where all bosses and company employees who have access to that file would read the same.
    - (23) The Claimant strongly asserts that the letter was defamatory by innuendo. The said letter was false, reckless and malicious in material particulars and without justification and is calculated to discredit the Claimant and has indeed exposed him to danger of losing his reputation.
  10. The Claimant then gave particulars of the alleged defamation.
  11. It is incontestable that the Claimant has pleaded a cause of action for defamation against the Respondents.
  12. The Respondents acknowledged the action for defamation, for in their Proposed Issues filed on 22 February 2024, they included the question of whether the Respondents had defamed the Claimant.
  13. Whether the pleading has substance or meets the standard for pleading defamation is not for the Court to address at this early stage of the proceedings.



14. The question of whether any of the Respondents defamed the Claimant is therefore at large, and the 1<sup>st</sup> to 3<sup>rd</sup> Respondents are consequently necessary and proper parties to the Cause on defamation whether or not relief is sought against any of them.

**Order**

15. In light of the above, the 3 Summons seeking the striking out of the names of the 1<sup>st</sup> to 3<sup>rd</sup> Respondents are dismissed with costs in the cause.

**DELIVERED VIRTUALLY, DATED AND SIGNED IN KISUMU ON THIS 8<sup>TH</sup> DAY OF MAY 2024.**

**RADIDO STEPHEN, MCIARB**

**JUDGE**

Appearances

For Claimant MOA Advocates LLP

For Respondents Kibatia & Co Advocates

Court Assistant Chemwolo

