



**Namachanja v Jaldesa & another (Cause E749 of 2023)  
[2024] KEELRC 2099 (KLR) (2 August 2024) (Ruling)**

Neutral citation: [2024] KEELRC 2099 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E749 OF 2023**

**J RIKA, J  
AUGUST 2, 2024**

**BETWEEN**

**HENRY NAKITARE NAMACHANJA ..... CLAIMANT**

**AND**

**BORA WAQO JALDESA ..... 1<sup>ST</sup> RESPONDENT**

**KCB GROUP PLC ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. The Claimant filed his Statement of Claim against the Respondents, dated 4<sup>th</sup> September 2023.
2. He states that, he was employed by the Respondents as Head of Internal Audit Department, Senior Manager Level D, at the KCB Bank Limited in South Sudan.
3. The 1<sup>st</sup> Respondent was / is the 2<sup>nd</sup> Respondent's Managing Director.
4. The Claimant states that his contract was terminated unfairly and unlawfully by the Respondents, on 16<sup>th</sup> November 2022.
5. He asks the Court to declare that termination was unfair and unlawful, and award him compensation equivalent of his 12 months' salary, terminal benefits, costs and interest.
6. Although the Claim is against two Respondents, paragraphs 58, 59, and 61 are directed to one Respondent. It is not clear which of the two Respondents.
7. The 2<sup>nd</sup> Respondent has filed an Application dated 29<sup>th</sup> January 2024, asking the Court to strike out the Claim against the 2<sup>nd</sup> Respondent with costs, but not for the defects contained in paragraphs 58, 59 and 61 of the Statement of Claim; the 2<sup>nd</sup> Respondent seeks the drastic measure of striking out of the Claim, on the ground that the Claimant was employed by KCB South Sudan Limited, a different



- legal entity from the 2<sup>nd</sup> Respondent. The 2<sup>nd</sup> Respondent's Application is founded on the Affidavit of the Head-Employee Relations, of the 2<sup>nd</sup> Respondent, Robley Ngoje, sworn on 29<sup>th</sup> January 2024.
8. The Claimant opposes the Application, through his Replying Affidavit, sworn on 24<sup>th</sup> April 2024.
  9. He explains that he was recruited by KCB Bank Kenya Limited, at its Head Office at Kencom Nairobi; his appointment was approved and sanctioned by the 2<sup>nd</sup> Respondent's Group Human Resource Director; he reported to the Chairperson of the Board, Audit Committee of the 2<sup>nd</sup> Respondent, at Kencom; his salary was payable in Kshs. and statutory deductions retained in Kenya; his terminal dues were processed at Kencom; and the 2<sup>nd</sup> Respondent and its South Sudan sister, are subsidiaries, owned by the larger KCB business.
  10. Parties agreed to have the Application argued and considered on the strength of their Affidavits and Submissions, the latter which were confirmed to have been filed and exchanged at the last appearance before the Court on 3<sup>rd</sup> July 2024.

**The Court Finds: -**

11. The 2<sup>nd</sup> Respondent is a Group of banking companies. The business offers banking services in Kenya, South Sudan and as is commonly known, elsewhere regionally.
12. The individual banks operating in different territorial jurisdictions, may well be separate legal entities, but employment law is not unduly concerned with legal separateness; it suffices that the Claimant was employed by the same business formation. The business formation need not match the legal formation. The definition of the term 'employer' under Section 2 of the *Employment Act* is not confined to legal structures or juridical persons; even an Individual Manager, a natural person, can be deemed to be an Employer, in appropriate circumstances. It is perhaps the reason why the Claimant has sued the 1<sup>st</sup> Respondent, an individual, not a corporate in Kenya or Sudan, who was / is employed by the KCB business as the Managing Director.
13. The decision on corporate separateness, *Salomon v. A Salomon & Co. Limited* [1896] 1 UKHL, [1897] AC 22, which is commonly cited by Employers who have registered multiple legal structures to aid their businesses in avoiding legal and regulatory burdens, is of limited utility in employment claims. Incorporation often times, amounts to no more than a myth and a fiction, in dealing with the employer-employee relationship.
14. Employers adopt various business and legal structures, intended to avoid regulatory and legal burdens. Employment Claims should not be defeated in the maze of these layers upon layers of business and legal structures, adopted by Employers, and the *Employment Act* therefore, deliberately defines the term 'employer' broadly, to ensure Employees such as the Claimant, who feel unfairly treated on termination of their employment, are not left dangling in the wind, without an identifiable Employer, who can bear employment liability.
15. All factors point to an employer-employee relationship between the Claimant and the 2<sup>nd</sup> Respondent. His contract was drawn, executed, administered and eventually terminated by the KCB business corporation. All the decisional control relating to his contract of employment, vested with the businesses' Kencom House, Nairobi. If the 2<sup>nd</sup> Respondent feels that one of its subsidiaries is best suited to answer to the Claim, and that it has been improperly joined to the Claim, it ought to seek joinder of such of its subsidiaries, instead of asking the Court to dismiss the Claim without the benefit of hearing the Claimant. It is wrong to expect the Claimant to unmask the intricate web, that is KCB Group legal and business structures, and identify the most suitable subsidiary. The Claimant has exhibited



documents which indicate there is a common business structure, and the legal entities are only of secondary utility, from the perspective of a wronged Employee.

16. As stated at the outset, the Claimant nonetheless needs to amend his Statement of Claim, to bring clarity as to which of the Respondents, his prayers are directed. The Court is allowed under Rule 14 of its Procedure Rules, 2016, to call for further details from the Parties through amendment of pleadings.

**It is ordered: -**

- a. The Application filed by the 2<sup>nd</sup> Respondent dated 29<sup>th</sup> January 2024 is declined.
- b. The Claimant is granted 14 days to file and serve an Amended Statement of Claim.
- c. Costs in the cause.

**DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY AT NAIROBI, UNDER PRACTICE DIRECTION 6[2] OF THE ELECTRONIC CASE MANAGEMENT PRACTICE DIRECTIONS, 2020, THIS 2<sup>ND</sup> DAY OF AUGUST 2024.**

**JAMES RIKA**

**JUDGE**

