



**IN THE COURT OF APPEAL**

**AT NAIROBI**

**CORA: WAKI, WARSAME & SICHALE, JJA**

**CIVIL APPEAL NO. 146 OF 2016**

**BETWEEN**

**SHADRACK OBUYA MUKANDA.....APPELLANT**

**AND**

**JASON MOGAKA OTISO.....RESPONDENT**

(Being an appeal from the Judgment of the Employment and Labour Relations Court (Monica Mbaru, J) dated 7<sup>th</sup> April, 2016, **IN E&LRC Cause No. 342 of 2015**)

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**JUDGMENT OF THE COURT**

The appellant, **Shadrack Obuya Mukanda** was dissatisfied with the judgment of **Mbaru, J** delivered on **7<sup>th</sup> April, 2016**. In the judgment, the appellant was found to have unprocedurally terminated the employment of **Jason Mogaka Otiso**, the respondent herein.

The brief facts giving rise to this appeal are that in a Memorandum of Claim dated **6<sup>th</sup> March, 2015**, the respondent averred that: “**On or about February, 2013, the respondent employed the services of the claimant as a Security guard at a monthly salary of Kshs 6,000/= and did not give him an appointment letter as required by the laws; that the claimant commenced employment on February, 2013 as aforesaid and served the respondent with loyalty and diligence until June, 2014 when the claimant resigned due to frustration from the respondent and respondent refused to pay him, his terminal benefits**”.

The respondent sought several reliefs.

In a Memorandum of response dated **24<sup>th</sup> March, 2015**, the appellant denied having employed the respondent.

In the evidence adduced at the trial court, the respondent told the court that he was employed by the appellant in **February, 2013**. In cross-examination he stated “**I was employed by Security Coordinates Services by the Director Shadrack**”.

In his defence, the appellant testified that he is one of the four (4) directors of Security Coordinates Services Ltd, which was registered as a Limited Liability Company on **16<sup>th</sup> April, 2008** vide certificate No. **C.153122**.

The gist of the appellant’s appeal is that the trial Court failed “**---to find that Security Coordinate Services Limited ..... and the appellant are two separate and distinct persons**”. This was the point taken when the appeal came up for hearing before us on **13<sup>th</sup> May, 2019**.

**Mr. Kadera**, learned counsel holding brief for **Mr. Ochich** for the appellant, and in the appellant’s written submissions dated **10<sup>th</sup> May, 2019**, it was pointed out that a company is distinct and a separate entity from its directors.

We have considered the record, the rival arguments before us and the law.

In the timeless case of **Salomon vs. Salomon & Co. Ltd [1897] AC**, it was held:

**“the Company is at law different persons altogether from the subscribers to the memorandum and though it may be that after incorporation the business is precisely the same as it was before, and the same persons are managers and the same hands receive the profits, the company is not in law the agent of the subscribers or trustees for them nor are the subscribers as members liable, in any shape or form, except to the extent provided by the act”**

The appellant, being one of the directors, was a distinct and separate entity from Security Coordinates Services Ltd. In the claim, the respondent was named as **Shadrack Obuya Mukanda** T/A Security Coordinates Services. The learned Judge failed to find that a director cannot be sued for the acts and /or omissions of the company, which has its own legal status. Security Coordinates Services having transcended to a limited liability company on 16<sup>th</sup> April, 2008 vide Certificate of Incorporation dated 16<sup>th</sup> April, 2008, became a separate and distinct legal entity from its directors. It was therefore not proper for the respondent to go after one of its directors. The trial court failed to appreciate the clear and correct position of the law.

The upshot of the above is that we allow this appeal, set aside the judgment and decree of the Employment and Labour Relations Court dated **7<sup>th</sup> April, 2016** with costs to the appellant. The effect of which the respondent’s suit being Employment and Labour Relations Cause No. 342 of 2015 is dismissed with costs both in the two lower courts to the appellant.

**Dated and delivered at Nairobi this 25th day of October, 2019.**

**P. N. WAKI**

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**JUDGE OF APPEAL**

**M. WARSAME**

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**JUDGE OF APPEAL**

**F. SICHALE**

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**JUDGE OF APPEAL**

I certify that this is a true copy of the original.

DEPUTY REGISTRAR