



**Onchari v Akbar t/a Amrin Agencies Limited (Miscellaneous Case
E082 of 2024) [2025] KEELRC 665 (KLR) (28 February 2025) (Ruling)**

Neutral citation: [2025] KEELRC 665 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU
MISCELLANEOUS CASE E082 OF 2024
AN MWAURE, J
FEBRUARY 28, 2025**

BETWEEN

HEPSIBAN NYOMENDA ONCHARI APPLICANT

AND

HALLON AKBAR T/A AMRIN AGENCIES LIMITED RESPONDENT

RULING

1. The Applicant herein filed a Notice of Motion dated 15th October 2024 seeking the following orders that:
 1. Spent
 2. This Honourable Court be pleased to adopt the award of the County Labour office of Kshs.126,598/= in favour of the Applicant as judgment of the Court.
 3. Costs of this application be provided for.

Applicant's case

2. The Applicant avers that she was employed by the Respondent as a house help on 1st January 2021 earning a salary of Kshs.7,000/=.
3. The Applicant avers that without notice, she was unfairly terminated by the Respondent on 5th May 2022.
4. The Applicant avers that she reported her case to the County Labour office which attempted to resolve the dispute by conducting various conciliatory meetings.
5. The Applicant avers that the County Labour office found that the Respondent was liable and asked to pay her dues.



6. The Applicant avers that the Respondent was required to pay her Kshs.126,598/= and the County Labour office sent a demand letter requesting the Respondent to pay.
7. The Applicant avers that the Respondent has blatantly refused and/or ignored to pay the Applicant the aforementioned amount.
8. The Applicant avers that the Respondent acknowledged liability to pay the Applicant through his advocate to the ODDP vide a letter dated 23/11/2022.
9. The Applicant avers that she had filed a miscellaneous application vide MCELRC No. E021 of 2024 for adoption of the said award but it was struck out due to lack of jurisdiction.
10. The Applicant urges this Honourable Court to adopt the said award from the County Labour office as its Judgment and order the Respondent to pay the Applicant's dues as assessed by the County Labour office.

Respondent's Grounds of Opposition

11. In opposition to the application, the Respondent filed grounds of opposition dated 12th November 2024 where the Respondent came up with 12 grounds but this Honourable Court will summarize as follows that:
 1. The Application offends Rule 7 of the *Employment and Labour Court (Procedure) Rules 2024*
 2. Hallon Akbar is a natural person while Hallon Akbar trading as Amrin Agencies Ltd is a company.
 3. Hallon Akbar cannot be sued for the action of Amrin Agencies Ltd unless the corporate veil is lifted.
 4. Amrin Agencies Limited being a body corporate, its liabilities cannot be met by the shareholders and directors because of the doctrine of separate legal personality.
 5. The principle of natural justice of fair hearing was not upheld thus violating his constitutional rights; and
 6. There is no provision of the law that provides for adopting of the awards from the Labour office which is established to conciliate in trade disputes and not make enforcement of determinations.
12. The application was disposed of by way of written submissions.

Applicant's submissions

13. The Applicant relied on Section 107 of the [Evidence Act](#) which provides as follows:
 - “(1) Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.
 - (2) When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person.”



14. In *Anne Wambui Ndiritu V Joseph Kiprono Ropoi & Another* [2005] 1 EA 334, the Court of Appeal held that:

“As a general proposition under section 107(1) of the *Evidence Act*, Cap 80, the legal burden of proof lies upon the party who invokes the aid of the law and substantially asserts the affirmative of the issue. There is however the evidential burden that is cast upon any party, the burden of proving any particular fact which he desires the court to believe in its existence which is captured in sections 109 and 112 of the Act.”

14. The Applicant submitted that the issue of adoption and enforcement of an alternative dispute resolution agreement has been settled under Rule 69 of the *Employment and Labour Relations Court (Procedure) Rules 2024* provides as follows:

“(1) Where parties have entered into a conciliation, negotiation or mediation agreement, or, are bound by an arbitral award or a lawful decision reached in Alternative Justice Systems, a party may file the award, decision or agreement for adoption and enforcement as an order of the Court.

(2) An application under sub-rule (1) shall be by way of a miscellaneous application instituted through a notice of motion supported by an affidavit exhibiting the award, decision or agreement together with all relevant documents.”

16. The Applicant submitted that the award by the County Labour office was decided in an alternative justice system in accordance to Rule 69 of the *Employment and Labour Relations Court (Procedure) Rules 2024* and urged this Honourable Court to adopt the award.

16. The Applicant submitted that costs follow the event and therefore prays for the costs of the application.

Respondent’s submissions

16. The Respondent submitted that Hallon Akbar could not be sued for actions of the company, Amrin Agencies Ltd, unless the corporate veil is lifted and relied on Section 16(1) of the *Companies Act* provides as follows:

“On the registration of the memorandum of a company the registrar shall certify under his hand that the company is incorporated and, in the case of a limited body that the company is limited.”

16. The Respondent defined a limited company under section 2 of the *Companies Act* meaning a company limited by shares or a company limited by guarantee. The Respondent submitted that since Amrin Agencies Ltd is a corporate entity, its liabilities cannot be fulfilled by the shareholders and directors due to the principle of separate legal personality. The Respondent relied on the case of *Victor Mabachi and another V Nurturn Bates Ltd* [2013] eKLR the Court of Appeal held that a company, as a corporate entity, is considered a legal person with its own separate and independent identity distinct from its shareholders, directors, and agents unless there are circumstances that justify lifting the corporate veil.

16. The Respondent submitted that in the supporting affidavit HNOI, a reference was made to Hallon Akbar. However, in this case, the reference is to Hallon Akbar trading as Amrin Agencies Ltd. The Respondent contends that without clear boundaries, it is unreasonable to sue a natural person trading as a company, as this scenario is not contemplated by the *Companies Act*.



16. The Respondent reiterated Section 107 of the *Evidence Act* and submitted that there was no evidence of proceedings from the Labour office presented before this Honourable Court and there should be evidence to show the people who attended the proceedings when the award was made after following fair procedure. The Respondent relied on section 82(e) of the *Evidence Act* which provides as follows:
- “Without prejudice to any other mode of proof, prima facie evidence of the following public documents may be given in the manner hereinafter shown, that is to say—
- (e) proceedings of any local authority, or any corporate body created by Act or Ordinance, by a copy of the proceedings certified by the person having the lawful custody of the original thereof, or by a public document purporting to be printed or published by or by the authority of such authority or corporate body.”
16. The Respondent submitted that there were no proceedings that took place at the Labour office infringing the constitutional right to a fair hearing offending the principles of natural justice and relied on the case of *David Oloo Onyango V Attorney General* [1987] eKLR the court held that a decision that breaches the rules of natural justice cannot be justified by asserting that the outcome would have been the same. If the principle of natural justice is violated, the decision remains flawed, regardless of the outcome.
16. The Respondent argued that adopting an award from a process lacking fairness violates the right to expeditious, efficient, lawful, reasonable, and procedurally fair administrative action, as guaranteed by Article 47 of the *Constitution* and section 4(1) of the *Fair Administrative Action Act*.
16. The Respondent submitted that the demand letters marked HNO1 were to be produced by the maker in accordance with section 35(1)(a)(i) of the *Evidence Act* which provides as follows:
- (1) In any civil proceedings where direct oral evidence of a fact would be admissible, any statement made by a person in a document and tending to establish that fact shall, on the production of the original document, be admissible as evidence of that fact if the following conditions are satisfied, that is to say—
- (a) if the maker of the statement either—
- (i) had personal knowledge of the matters dealt with by the statement;
16. The Respondent submitted that the letters from the County Labour Officer were addressed to Mr. Hallon Akbar and questioned how the Applicant obtained copies of these letters. Additionally, the Respondent noted that the letters were signed by someone exercising delegated powers rather than the County Labour Officer. Therefore, the Respondent urged this Honourable Court to clarify the position held by the maker of the documents. In *Joao Francis Quadros V SDV Transami Kenya Ltd* [2005] eKLR the court directed that the documents sought to be produced by the Plaintiff be produced by the maker.
16. The Respondent contended that after the award was issued, the Labour office conducted follow-up demands and threatened to refer the matter to this Honourable Court, even though the County Labour office is not a party to the case.



16. The Respondent relied on the Judicial Hints on Civil Procedure 2nd Edition, (Nairobi) Law Africa 2011 at page 101 of the book, where Retired Kuloba J authoritatively states as follows:

“The law of costs as it is understood by courts in Kenya, is this, that where a Plaintiff comes to enforce a legal right and there has been no misconduct on his part-no omission or neglect, and no vexatious or oppressive conduct is attributed to him, which would induce the court to deprive him his costs- the court has no discretion and cannot take away the Plaintiff’s right to costs. If the Defendant, however innocently, has infringed a legal right of the Plaintiff is entitled to enforce his legal right and in the absence of any reason such as misconduct, is entitled to the costs of the suit as a matter of course.”

16. In conclusion, the Respondent urged this Honourable Court to dismiss the application with costs.

Analysis and determination

16. The court has analyzed and considered the application, grounds of opposition together with the submissions, the issues of determination are as follows:

- i. Whether this Honourable Court can adopt an award from the County Labour office;
- ii. If (i) above, is in the affirmative, whether the Applicant is entitled to the costs of the application.

16. This Honourable Court reiterates Rule 69 of the Employment and Labour Relations Court (Procedure) Rules 2024 which has been cited in the earlier part of this ruling that provides for adoption of awards through the alternative dispute resolution mechanism.

16. In the instant case, the Applicant went to the County Labour Office for assistance to get her dues from the Respondent and the Labour Office issued the Respondent with a demand notice to attend the conciliation and he failed to attend. The Respondent also failed to produce records of employment as provided in Section 10 of the *Employment Act*. The County Labour office calculated the dues for the Applicant at Kshs.126,598/= and Respondent was informed of the same through a letter dated 13th June 2022.

16. To date he has never challenged the award or settled the same.

16. His main defence is that the applicant has brought the claim against the wrong entity. Yet he does not clarify who was the employer of the claimant. An employee especially of the applicant’s cadre is not expected to know the intricate legal details of their employer and their registration status. That is only the employer who can substantiate. It would be unfair to deny an employee their rights at the guise of the legal status of the employer. The court finds that defence does not hold any weight.

16. The court is persuaded there is legal justification for this court to adopt the award of the labour officer as an award of the honourable court as provided in the already cited Section 69 of the *Employment and Labour Relations Court (Procedure) Rules* 2024. The application dated 15th October 2024 is therefore granted.

16. Costs of the application furthermore are granted to the applicant.

Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAKURU THIS 28TH DAY OF FEBRUARY, 2025.

ANNA NGIBUINI MWAURE



JUDGE

***Order**

In view of the declaration of measures restricting Court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open Court. In permitting this course, this Court has been guided by Article 159(2)(d) of the [Constitution](#) which requires the Court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of the [Constitution](#) and the provisions of Section 1B of the Procedure Act (Chapter 21 of the Laws of Kenya) which impose on this Court the duty of the Court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

A signed copy will be availed to each party upon payment of Court fees.

ANNA NGIBUINI MWAURE

JUDGE

