



Vala v Inspire Pharmaceuticals Limited & 2 others (Employment and Labour Relations Cause E088 of 2023) [2024] KEELRC 406 (KLR) (29 February 2024) (Ruling)

Neutral citation: [2024] KEELRC 406 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS CAUSE E088 OF 2023
BOM MANANI, J
FEBRUARY 29, 2024**

BETWEEN

HODA VARASTEH VALA CLAIMANT

AND

INSPIRE PHARMACEUTICALS LIMITED 1ST RESPONDENT

VALID MOHAMAD 2ND RESPONDENT

MOHAMOUD ABDALRAHAN 3RD RESPONDENT

RULING

1. The Claimant is an Iranian national residing in Germany. She has sued the three Respondents asserting that they entered into a contract of employment with her but failed to honour the terms of the said contract.
2. It is the Claimant's contention that although the initial intention of the parties was that the contract between them be reduced into writing, the Respondents failed to facilitate this exercise. However, she avers that the terms of their engagement were as per the draft consultancy agreement that appears at pages 4 to 10 of her trial bundle.
3. The Claimant asserts that the Respondents were to procure a work permit for her. In addition, they were to secure her a medical cover, an office in a quiet environment and shoulder her relocation expenses to Kenya. However, they allegedly failed to do so.
4. The Claimant accuses the Respondents of arbitrarily terminating the employment relation between them and her on 17th May 2022. She contends that the Respondents did not issue her with notice to terminate the contract. In the premises, she has filed these proceedings seeking the various reliefs that are set out in the Memorandum of Claim.
5. The Respondents entered appearance in the matter. However, they are yet to file their defense.



6. Upon entering appearance, the 2nd and 3rd Respondents filed the instant application seeking to have the claim against them struck out. It is their contention that the labour relation in question was between the Claimant and the 1st Respondent. It is their further contention that they only participated in the matter in their capacity as directors of the 1st Respondent. They deny that they engaged the Claimant in their personal capacities.
7. The two Respondents contend that the Claimant's suit against them is a veiled attempt to irregularly lift the 1st Respondent's corporate veil. They argue that as directors and shareholders of the 1st Respondent, they do not shoulder personal responsibility for the 1st Respondent's liabilities.

Analysis

8. In the Memorandum of Claim, the Claimant contends that she was employed by the three Respondents. From the preliminary record before me, it is not obvious that the 2nd and 3rd Respondents were acting in their capacities as directors of the 1st Respondent when they engaged the Claimant about her alleged employment.
9. The preliminary record shows that the parties did not reduce their contract into writing. Therefore, the capacity in which they were transacting is not obvious.
10. The instant application proceeds on the assumption that the parties agree that the 2nd and 3rd Respondents engaged the Claimant in their capacity as directors of the 1st Respondent. However, the preliminary record does not support this assumption. The matter requires further interrogation.
11. It is also noted that the Claimant avers that she is a foreign national. She also speaks to the fact that the Respondents were to get her a work permit but failed to do so. Therefore and based on the preliminary record, it is not certain that the parties had an enforceable contract, if at all.
12. All these issues require evidence to ascertain. Therefore, I do not consider the instant application as properly premised particularly in view of the fact that the Respondents are yet to file a Statement of Defense to articulate their position on the dispute.

Determination

13. Although the issues that the 2nd and 3rd Respondents raise in their application dated 1st March 2023 are weighty and critical, they are premised on suppositions that require further interrogation at a full trial.
14. In the premises, the application cannot be allowed at this stage.
15. Accordingly it is dismissed.
16. Costs of the application will abide the results of the main suit.

DATED, SIGNED AND DELIVERED ON THE 29TH DAY OF FEBRUARY, 2024

B. O. M. MANANI

JUDGE

In the presence of:

.....for the Claimant

.....for the Respondents

Order



In light of the directions issued on 12th July 2022 by her Ladyship, the Chief Justice with respect to online court proceedings, this decision has been delivered to the parties online with their consent, the parties having waived compliance with Rule 28 (3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

B. O. M MANANI

