



**Ansari v Capcom Limited & another (Cause E134 of 2023)
[2024] KEELRC 1416 (KLR) (25 April 2024) (Ruling)**

Neutral citation: [2024] KEELRC 1416 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
CAUSE E134 OF 2023**

**M MBARŪ, J
APRIL 25, 2024**

BETWEEN

MOHAMED ARSHAD ANSARI CLAIMANT

AND

CAPCOM LIMITED 1ST RESPONDENT

REHANA RAMZAN SUHAYL ESMAILJEE 2ND RESPONDENT

RULING

1. The respondents filed an application dated 16 February 2024 under the provisions of Rule 17 of the *Employment and Labour Relations Court (Procedure) Rules*, 2016 and Order 1 Rule 10(2) of the [Civil Procedure Rules](#) seeking orders that;
 1. Spent.
 2. The name of the 2nd respondent be struck out as a party from this suit for being improperly joined to this suit.
 3. This suit be dismissed against the 2nd respondent for being an abuse of the process of this court.
 4. The claimant has not provided sufficient grounds to warrant the piercing of the corporate veil without the leave of this court.
 5. Costs of this application be provided for.
2. The application is supported by the Supporting Affidavit of the 2nd respondent on the grounds that the claimant was employed by the 1st respondent as a senior technical manager until 1st November 2022 when he resigned. The 1st respondent is a juridical person under the [Companies Act](#) who is capable of being sued in its name. the 2nd respondent is a natural person and the administrator of the Estate of one of the directors of the 1st respondent.



3. In the Supporting Affidavit, the 2nd respondent aver that she is only conversant with the claimant in the capacity of an administrator of the estate of a director of the 1st respondent. This is a separate entity and a joinder in the suit is done without leave to lift the corporate veil of the company. Such exists to protect parties who act in the interests of the corporation. The joinder of the 2nd respondent is in abuse of court process and the application herein should be allowed. There will be great prejudice if proceedings are taken against the 2nd respondent.
4. In reply, the claimant filed his Replying Affidavit and aver that the 2nd respondent is the widow to the late Sahyl Esmailjee who was the majority shareholder in the 1st respondent company. Upon his demise, the 2nd respondent took over management after forcing out two other directors. The 2nd respondent then started frustrating the claimant to terminate his employment.
5. The claimant aver that the 2nd respondent drafted and signed his termination letter dated 8 November 2022 without consultation with other directors or shareholders and then filed a malicious complaint against him at Tononoka Police Station where the police forcefully and unlawfully confiscated his motor vehicle registration No.KBS 574E that had been given to him by the company in lieu of his dues.
6. The 2nd respondent is the sole and controlling owner of the 1st respondent and a necessary party in these proceedings to explain to the court why there was unlawful termination of employment. The application seeking to have her removed from these proceedings is without merit and should be dismissed with costs.
7. Both parties attended court for oral submissions.

Determination

8. In the Supporting Affidavit dated 16 February 2024, the 2nd respondent has described herself as the administrator of one of the directors of the 1st respondent, Suhel Kakirali Nurdin Esmailjee (Deceased) and holds 65% of the 1st respondent's shareholding. As the administrator, the 2nd respondent has the right to act in the best interests of the deceased's Estate, a director of the 1st respondent.
9. Indeed, the 1st is a corporate body, a legal personality under its name. it can be sue and sued.
10. Under Rule 12 of the Employment and Labour Relations Court (Procedure) Rules, 2016 a claim lodged against a corporate body such as the 1st respondent can well be addressed by the secretary, director or any other principal officer of the corporate body. This is permissible to allow for proceedings without undue regard to technicalities. The principle objective is as outlined under Section 3 of the *Employment and Labour Relations Court Act*, 2011. The court is called to administer justice and secure rights within employment relationships.
11. These principles are not far removed from what is obtained under the *Civil Procedure Act* and the rules thereto. Indeed Order 1 of the *Civil Procedure Rules* provides that;
 9. Misjoinder and non-joinder [Order 1, rule 9.]

No suit shall be defeated by reason of the misjoinder or non-joinder of parties, and the Court may in every suit deal with the matter in controversy so far as regards the rights and interests of the parties actually before it.
12. In the case of *Gladys Nduku Nthuki v Letshego Kenya Limited; Mueni Charles Maingi (Intended Plaintiff)* [2022] eKLR the court appreciated that Order 1 Rule 9 provides that a suit may not be dismissed for misjoinder or non-joinder of parties to protect a claimant against dismissal for the suit for misjoinder or non-joinder of parties.



13. This position is affirmed in the case of *Zephir Holdings Ltd vs Mimosa Plantations Ltd, Jeremiah Maztagaro and Ezekiel Misango Mutisya* (2014) eKLR, where he held that;

A proper party is one who is impleaded in the suit and qualifies the thresholds of a plaintiff or defendant under Order 1 rule 1 and 2 respectively, or as a third party or as an interested party and whose presence is necessary or relevant for the determination of the real matter in dispute or to enable the court effectually and completely adjudicate upon and settle all questions involved in the suit. And the court has a wide discretion to even order suo moto for a party to be impleaded whose presence may be necessary to enable the court effectually and completely adjudicate upon and settle all questions involved in the suit. Accordingly, a suit cannot be defeated for mis-joinder or non-joinder of parties.

14. Also, under Order 1 Rule 10(2) of the *Civil Procedure Rules*, the joinder of a respondent must adhere to the following principles;

1. There must be a necessary party.
2. It must be a proper party.
3. In the case of the defendant there must be a relief flowing from that defendant to the claimant
4. The ultimate order or decree cannot be enforced without his presence in the matter.
5. the presence is necessary to enable the Court effectively and completely adjudicate upon and settle all questions involved in the suit.

15. These principles are outlined in the case of *Departed Asians Property Custodian Board v Jaffer Brothers Ltd* [1999] 1 EA 55 it was held as follows:

A clear distinction is called for between joining a party who ought to have been joined as a defendant and one whose presence before the Court is necessary in order to enable the court effectually and completely adjudicate upon and settle all questions involve in the suit. A party may be joined in a suit, not because there is a cause of action against it, but because that party's presence is necessary in order to enable the court effectually and completely adjudicate upon and settle all the questions involve in the cause or matter...For a person to be joined on the ground that his presence in the suit is necessary for effectual and complete settlement of all questions in the suit one of two things has to be shown. ...

16. In *Civicon Limited v Kivuwatt Limited and 2 Others* [2015] eKLR the court held that;

... any party reasonably affected by the pending litigation is a necessary and proper party, and should be enjoined...from the foregoing, it may be concluded that being a discretionary order, the court may allow the joinder of a party as a defendant in a suit based on the general principles set out in Order I rule 10 (2) bearing in mind the unique circumstances of each case with regard to the necessity of the party in the determination of the subject matter of the suit, any direct prejudice likely to be suffered by the party and the practicability of the execution of the order sought in the suit, in the event that the plaintiff should succeed. We may add that all that a party needs to do is to demonstrate sufficient interest in the suit, and the interest need not be the kind that must succeed at the end of the trial

17. Hence, unless a party is far removed from the issue in dispute, the court will retain such party to assist in the proceedings to enable the court to effectually and completely adjudicate upon and settle



all questions involved in the suit. This I find to be a good basis to keep the 2nd respondent as the administrator of the Estate of the majority shareholder of the 1st respondent as a party in these proceedings.

18. The counter to any misjoinder is that at the end of the suit, if unsuccessful, costs should be awarded. At this stage, upon a preliminary review of the facts as stated and the Affidavit of the 2nd respondent, there is a close connection with the 1st respondent that is sufficient to keep her in these proceedings.
19. The matter that there is no leave obtained to justify the lifting of the corporate veil noted, as cited above, under Rule 12 of the *Employment and Labour Relations Court (Procedure) Rules*, 2016 being an administrator of the Estate of the majority shareholder is sufficient to justify the joinder of the 2nd respondent.
20. Accordingly, the application dated 16 February 2024 is without merit and is hereby dismissed. Costs to abide the outcome of the claim. Hearing directions to be issued.

DELIVERED IN OPEN COURT AT MOMBASA THIS 25TH DAY OF APRIL 2024.

M. MBARŪ

JUDGE

In the presence of:

Court Assistant: Nasra

..... and

