



**Kimani v Bellmac Consulting LLP & another (Cause E069 of 2024)
[2024] KEELRC 907 (KLR) (25 April 2024) (Ruling)**

Neutral citation: [2024] KEELRC 907 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E069 OF 2024**

**L NDOLO, J
APRIL 25, 2024**

BETWEEN

JAMES NJENGA KIMANI CLAIMANT

AND

BELLMAC CONSULTING LLP 1ST RESPONDENT

CM ADVOCATES LLP 2ND RESPONDENT

RULING

1. By a Statement of Claim dated 22nd January 2023, the Claimant sued the 1st and 2nd Respondents, alleging unlawful termination of employment.
2. Subsequently, the Respondents moved the Court by way of Notice of Motion dated 21st February 2024, seeking to have the claim against the 2nd Respondent struck out. The Respondents further sought an order striking out the entire Statement of Claim.
3. The Motion is supported by an affidavit sworn by Cyrus Maina and is based on the grounds that:
 - a. The Respondents are distinct and separate limited liability partnerships;
 - b. On being registered, a limited liability partnership becomes a body corporate, with perpetual succession and a legal personality, separate from that of its partners;
 - c. The suit against the 2nd Respondent discloses no cause of action;
 - d. The Claimant has no contract with the 2nd Respondent, has not worked for it and has not sought any relief from it;
 - e. CM Advocates LLP, as admitted by the Claimant, is an outsourced payroll provider, under a separate agreement with Bellmac Consulting LLP;



- f. It is normal for a business to delegate its payroll to a third party, in a payroll outsourcing arrangement. In addition to running payroll, providers help with tax reporting, regulatory compliance and data security;
 - g. The Claimant was never terminated on 21st December 2023 as alleged; he was offered a mutual separation agreement which he counteroffered;
 - h. There is nothing unlawful about an offer for a mutual termination;
 - i. As seen from his email of 21st December 2023 at 1733 Hours, the Claimant settled ‘for a mutual separation, communicate on a meeting date.’ At 1810 Hours, Human Resource settled for the next day at 0830 Hours;
 - j. The Claimant admits and concedes to the fact that through a meeting held with the 1st Respondent’s Human Resource Specialist, on 22nd December 2023, they agreed to reach an amicable separation agreement;
 - k. That evening, the Claimant dumped his tools of trade namely; a laptop and its accessories, stationery and a ballpoint pen, on the Human Resource Specialist’s desk;
 - l. The Claimant, who claims to have been terminated on 22nd December 2023, attended for a short stint on 10th January 2024, when he turned up, signed the employees’ attendance sheet, then went away at about 11.00 am, without signing out;
 - m. Despite not turning up, the Claimant still maintained an employee status with the 1st Respondent;
 - n. Following the Claimant’s absence without leave, he was on 26th January 2024, invited for a disciplinary hearing on 1st February 2024 at 2.30 pm;
 - o. The meeting noted that despite due notice, the Claimant did not attend the disciplinary hearing, as he claimed that he had already filed suit;
 - p. The panel unanimously agreed that the Claimant’s failure to attend the disciplinary hearing amounted to a waiver of his right to present a defence. The panel found no mitigating factors and recommended his summary dismissal;
 - q. All this while, the Claimant was working elsewhere and pushing the 1st Respondent to grant him a recommendation letter;
 - r. It is in the interest of justice that the 2nd Respondent be struck out as a party in this suit.
4. The Claimant opposes the application by his replying affidavit sworn on 26th February 2024. He accuses the Respondents of material non- disclosure and misrepresentation.
5. The Claimant further accuses the Respondents of bullying him into accepting a mutual separation agreement.
6. The Claimant states that the 2nd Respondent is a limited liability partnership with Cyrus Nderitu Maina and Annabell Muthoni Wainaina registered as partners and Jane Mugo Njeri, Dinah Mureithi Njeri and Purity Mwangi Njeri as managers.
7. The Claimant denies that the 2nd Respondent is merely a service provider for the 1st Respondent. He states that the 2nd Respondent exercises administrative and technical control over the 1st Respondent, its employees and resources.



8. The Claimant further states that the 2nd Respondent has incorporated nine (9) affiliates, offering various services within the 2nd Respondent's premises and utilising its technology and human resources. He lists these affiliates as; Bellmac Consulting LLP, CFOD Hub, HR Fleek, Netshera International, Barizi Data Privacy Services, Ace Litigator, Dial a Lawyer, Barizi Communications and Property Boutique.
9. The Claimant depones that upon employment, he was required to commit to observe the 2nd Respondent's Code of Conduct and Human Resources Policy and Procedures Manual, by signing a form acknowledging that he had read and understood these documents.
10. He adds that the 2nd Respondent maintains a time-in and time-out signing sheet, which is signed by all employees of the 1st and 2nd Respondents.
11. The Claimant points out that whereas Cyrus Nderitu Maina is registered as a partner/manager of the 1st Respondent, he is not listed in the 1st Respondent's website as a manager or part of the team. He adds that Anne Otunga is listed as Chief Executive Officer while Fortunatus Otieno is listed as HR Specialist.
12. The Claimant further states that on the 2nd Respondent's website, Cyrus Nderitu Maina is listed as Managing Partner, Anne Otunga as HR Manager and Fortunatus Otieno as HR Specialist.
13. The Claimant asserts that the 1st and 2nd Respondents are one and the same. He states that the 2nd Respondent maintains exclusive control of employee information and database, including issuance of payslips and leave management.
14. A supplementary affidavit was sworn on behalf of the Respondents by Fortunatus Otieno on 13th March 2024.
15. Otieno, who describes himself as a Human Resource Specialist at the 1st Respondent depones that the Claimant failed to show up for work after which he hurriedly filed the present claim, to forestall impending disciplinary proceedings.
16. By their application, the Respondents seek a summary determination of the Claimant's claim. On the one hand, they claim that the 2nd Respondent is improperly joined in the proceedings while on the other, they state that the entire claim discloses no reasonable cause of action.
17. Starting with the issue of joinder of the 2nd Respondent, the Respondents assert that they are both limited liability partnerships, with separate and distinct legal personality and status.
18. The question to ask is whether the 2nd Respondent is a proper and necessary party in these proceedings. As held in *Zehir Holdings Limited v Mimoso Plantations Limited & 2 others* [2014] eKLR a proper party is one whose presence is necessary or relevant for full determination and settlement of all the issues in dispute.
19. The Claimant states and the Respondents did not deny that the 1st and 2nd Respondents operate from the same business premises, that there is a common cloaking system for employees of both entities and that employees of the 1st Respondent, including the Claimant, were required to subscribe to the 2nd Respondent's Code of Conduct and Human Resources Policy and Procedures Manual.
20. Further, the Respondents themselves disclosed that there is an existing payroll outsourcing arrangement between them.



21. The employment relationship is not always a straightforward affair and where a layer of relationships emerges, the Court must interrogate and determine where liability lies. This is such one case and for this reason, I find and hold that the 2nd Respondent is a necessary party in these proceedings.
22. Regarding the second limb of the application, by which the Respondents seek an order to strike out the entire claim, the only thing to say is that such a summary procedure does not exist in our law. What the Respondents need to do is to file a defence to the Claimant's claim.
23. In the end, the Respondents' application dated 21st February 2024 fails and is dismissed with costs to the Claimant.
24. Orders accordingly.

DELIVERED VIRTUALLY AT NAIROBI THIS 25TH DAY APRIL 2024

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JUDGE

Appearance:

Mr. Omulloh for the Claimant

Mr. Waigwa for the Respondents

