



Nguti v Hallmark Advertising & Marketing Limited & 2 others (Cause E476 of 2023) [2024] KEELRC 2666 (KLR) (30 October 2024) (Ruling)

Neutral citation: [2024] KEELRC 2666 (KLR)

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E476 OF 2023
DKN MARETE, J
OCTOBER 30, 2024

BETWEEN

WILLIAM KAMANDA NGUTI CLAIMANT

AND

HALLMARK ADVERTISING & MARKETING LIMITED & 2 OTHERS
& 2 OTHERS & 2 OTHERS & 2 OTHERS & 2 OTHERS & 2
OTHERS RESPONDENT

RULING

1. This is an application by way of preliminary objection dated 19th October, 2023. It comes out as follows;
 1. That the claim against the 2nd and 3rd Respondents is bad in law, misconceived and therefore incompetent and the same ought to be dismissed and the names of the said Respondents struck off these proceedings.
 2. That the Claimant was employed by the 1st Respondent, a company duly incorporated in the Republic of Kenya which is a separate and distinct legal entity, separate from the 2nd Respondent who is the Human Resource Manager of the 1st Respondent and the 3rd Respondent who is a non-executive Director of the 1st Respondent
2. Accordingly, the 2nd and 3rd Respondents prays that their names be struck off these proceedings and the claim against them be dismissed with costs.
3. The Claimant/Respondent opposes the application vide a Replying Affidavit on the Preliminary Objection sworn on 25th October, 2023 where he argues that issues of joinder of parties in a suit are indeed, issues of fact and not law. This makes the preliminary objection as presented incompetent and of no legal basis. It would require a hearing of the issues raised in the claim to actually bring out the respective roles and capacities in the infringement of a claimant's rights as an employee.



4. The Respondent/Objector did not directly address the preliminary objection. Instead, the furnished written submission is on a Notice of Motion dated 19th October, 2023. This motion is not apparent on the face of the record.
5. I attune with sentiments of the Claimant/Respondent. It is not opportune to dismiss the claim or even interfere with joinder of parties at this level. This is because the issues complained of in the objection cannot be established on the face of the claim. They require a factual analysis of the issues and involvement on the parties to come out straight.
6. I am therefore inclined to dismiss the preliminary objection with orders that each party bears their cost of the same.

DELIVERED, DATED AND SIGNED THIS 30TH DAY OF OCTOBER 2024.

D. K. NJAGI MARETE

JUDGE

Appearances:

Mr. Mtange instructed by P.K Mtange & Company Advocate for the Objector.

Mr. Waweru instructed by Morgan Omusundi Law firm Advocated for the Respondent.

