



Amule v Kenya Breweries Limited (A Subsidiary of East African Breweries Limited) & 2 others (Cause E742 of 2023) [2024] KEELRC 13302 (KLR) (28 November 2024) (Ruling)

Neutral citation: [2024] KEELRC 13302 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E742 OF 2023
S RADIDO, J
NOVEMBER 28, 2024**

BETWEEN

JULIUS AMULE CLAIMANT

AND

**KENYA BREWERIES LIMITED (A SUBSIDIARY OF EAST AFRICAN
BREWERIES LIMITED) 1ST RESPONDENT
Q-SOURCING LIMITED 2ND RESPONDENT
SHEER LOGIC MANAGEMENT CONSULTANT LIMITED .. 3RD RESPONDENT**

RULING

1. Julius Amule (the Claimant) sued Kenya Breweries Ltd, Q-Sourcing Ltd and Sheer Logic Management Consultant Ltd (the Respondents) through the firm of Michieka Omwenga Mwenda LLP Advocates, alleging constitutional rights violations, unfair termination of employment and breach of contract.
2. Upon service, Q-Sourcing Ltd filed a Notice of Preliminary Objection on 19 October 2023, contending that:
 - i. The Claim has been prepared by an unqualified person. Section 34 of the Advocates Act, Cap 16 Laws of Kenya bars unqualified person from taking instructions and/or drawing any documents relating to any other legal proceedings.
3. The Court gave directions on the Preliminary Objection on 1 October 2024 and 28 October 2024 and in this respect, the 2nd Respondent filed its submissions on 4 November 2024.
4. In the submissions, the 2nd Respondent asserted that the Memorandum of Claim had been drawn and signed by one Brian Mwenda, from the law firm of Michieka Omwenga Mwenda LLP, an unqualified person to act as an advocate.



5. The 2nd Respondent also asserted that the said Brian Mwenda had been charged before the Magistrates Court in October 2023 with 6 counts including forging a certificate of admission as an advocate and identity theft.
6. The Respondent submitted that sections 9 and 34 of the Advocates Act set out the parameters for qualified/unqualified persons.
7. The Respondent drew the Court's attention to the Supreme Court decision of National Bank of Kenya Ltd v Anaj Warehousing Ltd (2015) eKLR, and Philip Mukui Wasike v James Lusweti Mukwe, IEBC & Silas Rotich (2013) KEHC 2233 (KLR) where it was held:

There is no evidence that the pleadings in this petition were not drawn and signed by the impeached advocate. Without such evidence, and there being no other advocate who represented the petitioner from the firm of Gachiri Kariuki & Company Advocates, it is reasonable to conclude that the pleadings were drawn by the impeached advocate. The pleadings were drawn in contravention of Section 34 of the Advocates Act. This fact makes the pleadings bad in law and incapable of forming the basis of prosecution of the petition either by the petitioner personally or through any other representative...

8. The 2nd Respondent approached the Court through a Notice of Preliminary Objection.
9. What constitutes a Preliminary Objection was set out in Mukisa Biscuit Manufacturing Co Ltd v West End Distributors Ltd (1969) EA 696 as follows:

....A Preliminary Objection consists of a point of law which has been pleaded, or which arises by clear implication out of pleadings and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the Jurisdiction of the court or a plea of limitation, or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration.

.....

A Preliminary Objection is in the nature of what used to be a demurrer. It raises a pure point of law which is usually on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of Judicial discretion...

10. The 2nd Respondents' Notice of Preliminary Objection raises points of facts which require proof and an examination of evidence. The Respondent was required to introduce evidence from the body responsible for admission and registration of advocates. The Respondent also called upon the Court to look into records from the Magistrates Criminal Court.
11. These evidentiary material was not before the Court and by asking the Court to consider them, the Respondent removed his Notice of Preliminary Objection from what a preliminary objection is as known in law.
12. The Court finds that the 2nd Respondents' Notice of Preliminary Objection required an examination of facts, which facts were not before the Court, thus rendering the Notice of Preliminary Objection not only incompetent but without merit.



Orders

13. In light of the above, the Notice of Preliminary Objection dated 17 October 2023, is dismissed with costs.

DELIVERED VIRTUALLY, DATED AND SIGNED IN KISUMU ON THIS 28TH DAY OF NOVEMBER 2024.

RADIDO STEPHEN, MCI Arb

JUDGE

Appearances

For Claimant Michieka Omwenga Mwenda LLP

For 1st Respondent Iseme, Kamau & Maema Advocates

For 2nd Respondent Alakonya & Associates Advocates

For 3rd Respondent AWK Law Advocates LLP

Court Assistant Wangu

