



**Kadenge v Leopard Beach Hotel (Cause 315 of 2015)
[2023] KEELRC 1360 (KLR) (2 June 2023) (Ruling)**

Neutral citation: [2023] KEELRC 1360 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
CAUSE 315 OF 2015**

**AK NZEI, J
JUNE 2, 2023**

BETWEEN

PHILIP KAHINDI KADENGE CLAIMANT

AND

LEOPARD BEACH HOTEL RESPONDENT

RULING

1. The application before me is the Respondent's Chamber Summons dated 24th October, 2022. The application is expressed to be brought under order 1 rule 4 and order 39 rule 9 of the civil procedure rules and section 3A of the *Civil Procedure Act*. The Respondent/Applicant seeks orders:-
 - a. that the Respondent/Applicant has no capacity to be sued in its name.
 - b. that the Respondent/Applicant herein be struck out from this suit.
 - c. that costs of the application be awarded to the Respondent/Applicant.
2. The Application sets out on its face the grounds upon which it is brought, which are replicated in the supporting affidavit of Nzamdin Mwanaisha sworn on 24/10/2022. It is deponed in the said supporting affidavit:-
 - a. that the deponent is a Human Resource Manager at Aegis (k) Limited T/A Leopard Beach Resort & Spa.
 - b. that the Claimant's suit against Leopard Beach Hotel is a non-stata, incompetent and unsustainable as the Respondent/Applicant, being a business name, lacks capacity to be sued in its own name.
 - c. that it is only fair, just and equitable that the application be allowed.



3. Annexed to the said supporting affidavit is a copy of a Certificate of Registration of a Change of Particulars issued on 28/2/2004 under section 14(2) of the *Registration of Business Names Act* (Cap 499 Laws of Kenya); whereby Aegis (k) Limited is registered as carrying on business in the name of Leopard Beach Hotel.
4. The application is opposed by the Respondent vide a replying affidavit shown to be of Philip Kahindi but sworn by Samuel Odhiambo EleakiM on 16/11/2022. It is deponed in the said affidavit:-
 - a. that the application is an attempt by the Respondent not to give evidence after the Claimant has testified.
 - b. that the Respondent/Applicant has previously, vide an application dated 25th October, 2021, attempted to have the suit struck off, and that the said application was dismissed by this Court on 28/4/2022 and a subsequent preliminary objection was withdrawn.
 - c. that documents filed herein by both the Claimant and the Respondent have letter heads of Leopard Beach Hotel.
 - d. that the Claimant's letters of employment and dismissal have no indication that Aegis (k) Limited trades as Leopard Beach Hotel, but bear the name of the Respondent/Applicant herein.
 - e. that it is not fatal for the Claimant/Respondent to have sued the Respondent/Applicant as he has done, and that the Respondent/Applicant should not be allowed to hide behind a name after having employed the Claimant/Respondent.
 - f. that in its (filed) witness statement, the Respondent/Applicant admitted having employed and terminated the Claimant's services.
 - g. that the application should be dismissed with costs.
5. Both parties filed written submissions for and against the application pursuant to the Court's directions in that regard, which I have considered.
6. The single issue for determination in the application herein is whether the Respondent/Applicant has the legal capacity and/or locus standi to sue and to be sued. That is, is the Respondent a legal entity capable of suing and being sued in its own name?
7. The Respondent/Applicant exhibited a certificate (No. 57343) issued under section 14(2) of the *Registration of Business Names Act* (cap 499) Laws of Kenya demonstrating that Leopard Beach Hotel is a business name in which Aegis (k) Limited carries on business. The validity and/or authenticity of the said certificate, shown to have been given on 27/2/2004, has not been challenged by the Claimant/Respondent.
8. It was deponed on behalf of the Claimant/Respondent that the Respondent/Applicant is, by admission, capable of being sued.
9. The Respondent/Applicant referred to *Halsbury's Laws of England* (4th Edition; Volume 37; paragraph 268) which refers to order 81 rule 9 of *Civil Procedure Rules* of England, and which mirrors Kenya's order 30 rule 9, whereby it states:

“An individual carrying on business within the jurisdiction in a name other than his own name may be sued in such name and style as if it were the name of the firm.”



And to footnote 3 thereto where it is stated:

“If he sues, however, he should do so in his own name, describing himself as “trading as”.

10. The Respondent/Applicant further referred to the case of *Lakhman Ramji vs. Shirji Tessa & Sons* [1965] E.A; where Rud, J at page 128 stated:-

“The legal position is quite clear, a sole proprietor of a business cannot sue in the name of that business if that name is not his own. He should not even sue in his own name trading in the business name. he should sue in his own name simpliciter and then in the body of the plaint he can say he carries on business in the name of whatever his business name happens to be and is the sole proprietor of that business.”

11. Section 2(1) of the [Registration of Business Names Act](#) provides that:-

“Business name means the name or style under which any business is carried on whether in partnership or otherwise.”

12. A business name is just that, a name or style in which a business is carried on. That name or style is not a juristic person and/or a persona juridica who can sue or be sued. The Court in [Maurice Ooko Otiemo Vs. Mater Misericordiae Hospital](#) [2004] eKLR stated that the law required that a suit be brought against a legal entity, that is an individual, a limited liability company, the Attorney General on behalf of Government Departments, certain parastatals and corporations.

13. Without belaboring the point here, it is my finding that a suit cannot be brought against a business name. It can only be brought against the person, legal or natural, trading in that name. It behoved the Claimant to exercise due diligence and to carry out relevant searches before instituting the suit herein. Ours is an adversarial judicial system and due diligence must be exercised by any party intending to file a valid suit in Court, as the party against whom the suit is brought will, most probably, use each and every available legal means to bring the suit down.

14. I find merit in the Chamber Summons dated 24/10/2022. The same is allowed, and the name of Leopard Beach Hotel, the Respondent herein, is hereby struck off from the proceedings herein; with no orders as to costs.

15. The suit herein was filed on 27/5/2015, over eight years ago. This is an employment suit to which section 90 of the [Employment Act](#) applies. Redemption of the suit herein through amendment of the statement of claim and introduction of the proper Respondent in the suit is not a legal possibility because, as held in *Reuben Shihodi Ashikanga -vs- Hofman Livinh & Another* – NBI HCC No. 5180 of 1989 (Ringera, J as he then was), the effect of joining a new defendant by an amendment was in itself bringing a suit against that defendant, which was time barred.

16. The suit herein cannot be sustained without a defendant and/or Respondent, and the same is hereby struck off with no order as to costs.

DATED, SIGNED AND DELIVERED AT MOMBASA THIS 2ND JUNE 2023

AGNES KITIKU NZEI

JUDGE

ORDER



This Ruling has been delivered via Microsoft Teams Online Platform. A signed copy will be availed to each party upon payment of the applicable Court fees.

AGNES KITIKU NZEI

JUDGE

Appearance:

..... for Claimant

..... for Respondent

