



**Mutisya v Arrow Motors Group East Africa Limited & 2 others (Cause E407 of 2022) [2023] KEELRC 1747 (KLR) (14 July 2023) (Ruling)**

Neutral citation: [2023] KEELRC 1747 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E407 OF 2022  
NJ ABUODHA, J  
JULY 14, 2023**

**BETWEEN**

**ELIZABETH NGINA MUTISYA ..... CLAIMANT**

**AND**

**ARROW MOTORS GROUP EAST AFRICA LIMITED ..... 1<sup>ST</sup> RESPONDENT**

**AMGEA AUTOMOTIVE DIVISION LIMITED ..... 2<sup>ND</sup> RESPONDENT**

**AAKIF VIRANI ..... 3<sup>RD</sup> RESPONDENT**

**RULING**

1. The 1<sup>st</sup> and the 3<sup>rd</sup> respondent herein raised a preliminary objection on the ground that this court does not have jurisdiction to determine the dispute herein under section 12 of the *Employment and Labour Relations Court Act* as there was never any employer-employee relationship between the claimant and the 1<sup>st</sup> and 3<sup>rd</sup> respondent.
2. According to the applicant, nowhere in the claimant's pleadings has she demonstrated an employment nexus between her and the 1<sup>st</sup> and 3<sup>rd</sup> respondent herein. The claimant produced a letter of appointment indicating that 1<sup>st</sup> respondent was her employer hence she could not have been possibly employed by three different employers to undertake the same work. In relation to the 3<sup>rd</sup> respondent, the applicant contended that the only reason he had been dragged into the suit was because a manager of the claimant's alleged employers. There was no allegation that the said respondent was her employer. The applicant therefore contended that the mere fact that the 3<sup>rd</sup> respondent was a manager of the alleged employers did not create an employer-employee relationship between the claimant and the 3<sup>rd</sup> respondent.
3. The respondent on the other hand contended that the issue raised by the applicant cannot be a preliminary objection because the question of whether on is an employee or not is not a question of



law but rather a question of fact that must be ascertained. This according to the respondent could only be done after the full trial.

4. The court has reviewed and considered the pleadings as filed, the documents in support by the claimant particularly the letter of appointment and noted that it is evidently clear that the claimant was an employee of Arrow Motors E.A. ( the 1<sup>st</sup> respondent herein). The 2<sup>nd</sup> respondent has been mentioned in the letter of appointment as the main company with the 1<sup>st</sup> respondent as its automotive division. The 3<sup>rd</sup> respondent has been described as the managing director of the 1<sup>st</sup> and 2<sup>nd</sup> respondent who was in charge of the claimant's employment. Whereas it was plausible to argue that it was not clear who between the 1<sup>st</sup> and 2<sup>nd</sup> respondent was the actual employer of the claimant, it is however clear that the 3<sup>rd</sup> respondent was the managing director of both respondents hence an agent of a disclosed principal. Nothing has been alleged that he did which was outside his authorized responsibilities that would make him personally liable. To this extent the preliminary objection succeeds to the extent that the 3<sup>rd</sup> respondent is struck off from the proceedings. The issue of whether who between the 1<sup>st</sup> or 2<sup>nd</sup> respondent was the claimant's employer remains not clear and hence factual and can only be resolved after the trial.
5. The preliminary objection therefore succeeds to the extent only.
6. It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI ON THIS 14<sup>TH</sup> DAY OF JULY, 2023**

**ABUODHA J. N.**

**JUDGE**

**In the presence of:-**

.....for the Appellant

.....for the Respondent

