



**Ahmed v Malik (Sued as Chairman of Sir Ali Muslim Club) & 3 others (Cause E063 of 2022) [2023] KEELRC 2727 (KLR) (2 November 2023) (Ruling)**

Neutral citation: [2023] KEELRC 2727 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E063 OF 2022  
L NDOLO, J  
NOVEMBER 2, 2023**

**BETWEEN**

**REHMAN ALI AHMED ..... CLAIMANT**

**AND**

**SAHER MALIK (SUED AS CHAIRMAN OF SIR ALI MUSLIM CLUB) ..... 1<sup>ST</sup> RESPONDENT**

**NAUSHAD HAKADA (SUED AS TREASURER OF SIR ALI MUSLIM CLUB) ..... 2<sup>ND</sup> RESPONDENT**

**AYUB KHAN (SUED AS SECRETARY OF SIR ALI MUSLIM CLUB) ..... 3<sup>RD</sup> RESPONDENT**

**SIR ALI MUSLIM CLUB ..... 4<sup>TH</sup> RESPONDENT**

**RULING**

1. By a ruling delivered on 16<sup>th</sup> March 2023, I overruled the Claimant’s Preliminary Objection challenging the Respondents’ Counterclaim on the ground that the verifying affidavit sworn by the 1<sup>st</sup> Respondent was defective. In that ruling, I found that the Respondents are joint parties in this suit.
2. By a strange twist, the Respondents raised their own Preliminary Objection by notice dated 17<sup>th</sup> July 2023 stating that:
  - a. The claim is bad in law as the 4<sup>th</sup> Respondent, being a Society registered under the *Societies Act* (Cap 108, Laws of Kenya) is not a legal person and cannot be sued in its name but only through its officials;
  - b. The claim seeks relief personally against the 1<sup>st</sup> to 3<sup>rd</sup> Respondents and it does not disclose any reasonable cause of action against them personally.



3. The Respondents therefore seek orders striking out the claim against the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents.
4. The Respondents' argument is two-fold; first, that the 4<sup>th</sup> Respondent, being a society registered under the *Societies Act*, cannot be sued in its own name and second, that the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents, being officials of the 4<sup>th</sup> Respondent cannot be sued in their personal capacity.
5. With much respect, the Respondents' argument is misplaced because from the pleadings filed by the Claimant, it is evident that the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents have been sued in their capacity as officials of the 4<sup>th</sup> Respondent.
6. Moreover, the Claimant's letter of appointment dated 24<sup>th</sup> July 2007 was issued on the letter head of the 4<sup>th</sup> Respondent and signed by the Chairman and Hon. Secretary. Having created an employment contract with the Claimant, the Respondents cannot be allowed to hide behind the curtain of institutional form to defeat their obligations under the contract.
7. In *Kenya Hotels and Allied Workers Union v Diani Sea Resort t/a Carslake Nominee Limited* [2015] eKLR Rika J held as follows:

“Employees cannot be closed out from pursuing their Claims on the ground that they have given the Court the wrong description, of the business and legal structures which constitute their Employers. Employees hardly know what these capacities are, and what the Employers' business and legal structures are.....Employees would be hampered in correcting employment wrongs, if they are expected to sift through these multiple layers before filing their claims.”
8. In its decision in *James Kala Ngolya v Registered Trustees of Nairobi Club* [2022] eKLR this Court held that a claim by an employee cannot be defeated by the mere fact that the employer has not been properly described.
9. Ultimately, I find the Respondents' Preliminary Objection not well taken and proceed to overrule it with costs in the cause.
10. Orders accordingly.

**DELIVERED VIRTUALLY AT NAIROBI THIS 2<sup>ND</sup> DAY OF NOVEMBER 2023**

**LINNET NDOLO**

**JUDGE**

