



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA

AT MOMBASA

CAUSE NO. E095 OF 2021

AMALGAMATED UNION OF KENYA METAL WORKERS.....CLAIMANT

- VERSUS -

RIZWAN METAL CRAFT.....RESPONDENT

(Before Hon. Justice Byram Ongaya on Friday 25th February, 2022)

RULING

For the respondent an application by way of a notice of motion was filed on 15.12.2021 through Nyaanga & Mugisha Advocates. The application was under Rule 17 of the Employment and Labour Relations Court (Procedure) Rules and all other enabling provisions of the law. The applicant prayed for orders:

- a) That the suit herein be struck out.
- b) That costs of the application be provided for.

The application is based on the annexed affidavit of Riaz Ull Haq. The grounds in support of the application are as follows:

- a) In paragraph 1.d of the memorandum of claim the respondent pleads that the claimant is a company but no company exists by that name. The respondent as named is a registered business operating as a sole proprietorship.
- b) In ELRC No. 469 of 2018 at Mombasa between the same parties the Court decided that no company existed by the respondent's named in the suit.
- c) The suit is therefore fatally defective.

The claimant opposed the application by filing on 13.01.2022 the replying affidavit of Ms. Rose Auma Omamo.

Oral and written submissions were made for the parties. The evidence is that the respondent as named is a registered business name and as submitted for the applicant it is a sole proprietorship. The Court has considered the provisions of Article 159 of the Constitution of Kenya, 2010 and returns that the claimant should be permitted to amend the memorandum of claim to reflect the proper respondent as "**Riazullhaq Ali Mohamed Trading as Rizwan Metal Craft.**" The claimant will meet the costs of the application. While making those findings the Court has also considered that the claimant in the instant case is acting in person.

In conclusion, the application dated 14.12.2021 and filed on 15.12.2021 is hereby determined with orders:

- 1) Leave is hereby granted for the parties to amend pleadings to reflect the respondent as "**Riazullhaq Ali Mohamed Trading as Rizwan Metal Craft.**"
- 2) The claimant to serve the amended memorandum of claim together with summons to enter appearance by 04.03.2022 and the respondent to file and serve a response thereto by mention date on 22.03.2022 for pre-trial directions and further orders.
- 3) The claimant to pay costs of the application in any event.

SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT MOMBASA THIS FRIDAY 25TH FEBRUARY,

2022.

BYRAM ONGAYA

JUDGE