



REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS COURT OF KENYA

AT NYERI

CAUSE NO.E006 OF 2020

(Before D.K.N.Marete)

KENYA UNION OF COMMERCIAL, FOOD AND ALLIED WORKERS..CLAIMANT/RESPONDENT

VERSUS

GIKANDA FARMERS CO-OPERATIVE SOCIETY LIMITED.....RESPONDENT/APPLICANT

AND

NDAROINI COFFEE GROWERS PLC.....INTENDED THIRD PARTY

R U L I N G

This is an application dated 9th March, 2021 and comes out thus;

- a. That leave be granted for the defendant to take out a Third Party Notice against Ndaroini Coffee Growers PLC the intended third party.
- b. That upon hearing and determination of this application a Third Party Notice be issued and service upon Ndaroini Coffee Growers PLC the intended Third Party.
- c. That the costs of this application be in the cause.

It is grounded as follows;

- i. That the claim filed herein against the respondent is based on a declaration of redundancy against ten (10) employees by the Respondent.
- ii. That by an agreement dated 29th January 2020 between the Respondent/Applicant and the Intended Third Party, it was agreed "that Ndaroini Coffee Growers PLC will pay gratuities for employees who were rendered redundant due to Ndaroini factory split including expenses for the pending cases in the labour office once the case is determined."
- iii. That the Intended Party is therefore a necessary party to be enjoined into these proceedings for a just and conclusive determination.

The Claimant in a Replying Affidavit dated 9th April, 2021 denies the application and submits that she is a stranger to the entire matter in dispute. She puts it thus;

- That the claim against the Respondents was for unlawful redundancy of ten (10) employees by the Respondent.
- That there is no direct employer-employee relationship between the intended third party and the grievants.
- That the Respondent has no direct employer/employee relationship with the grievants.
- That the Respondent indeed did the redundancy to employees in the docket.
- That the said agreement between the Respondent and the Intended Third Party is an in-house business which should not be dragged in this matter since the Intended third party had no Recognition Agreement with the Claimant and they are just but strangers in this matter.

- That according to the said agreement paragraph No.11 it reads “that all the amount owed as stated in this document are payable up front before signing the agreement” meaning the Respondent was paid all the money the Intended Third Party owned them including the gratuities of the employees before signing the agreement and therefore the agreement is not binding to the matter before this court since it is between two different parties.
- That the contract between the grievants and the Respondent did not change at the time of split or at the time of termination and therefore the respondent is responsible for their action and they should be admit liability of the whole claim without introducing strangers in this matter.

The Respondent in her undated written submissions and in reiteration of their case come out thus;

BASIS OF THE APPLICATION

Ndaroini coffee factory having split and formed itself Ndaroini Coffee Growers PLC and the redundancy having been declared, an agreement was entered into by Gikanda farmers Co-operative Society Limited and Ndaroini Coffee Growers PLC dated 29th January 2020 which was annexed with the application Clause 2 provided as follows;

“That Ndaroini Coffee Growers PLC will pay gratuities for employees who were rendered redundant due to Ndaroini split including expenses for the pending cases in the labour office once the case is determined.”

Further, the application is founded on three grounds namely;

- i. That the claim herein is based on a declaration of redundancy of the claimants by the respondent.
- ii That the intended third party has agreed to liability of such redundancy.
- iii. That the intended third party is therefore a necessary party to be enjoined into these proceedings for a just and conclusive determination.

She further submits as follows in reliance of Order 1 Rule 15 (1) of the Civil Procedure Rule under which this application is brought defines the parameters under which such a prayer to enjoin a third party as follows;

- a. Where the defendant would be entitled to contribution or indemnity like in this case the agreement between the respondent and intended third party.
- b. Where the contribution or indemnity is connected to the original subject matter as in this case the claim being based on the declaration of redundancy.
- c. That the question in issue being substantially the same should be tried and determined together instead of entertaining multiple claims.

The Claimant also submits in reiteration of her case in tandem with the reply. She continues to rubbish the agreement dated 29th January, 2020 and add that this is coming in too late in the day.

It is in the interests of justice that this application sees the light of the day. This being an application for joinder, no party would be overtly prejudiced or at all.

I am therefore inclined to allow the application with orders that each party bears their costs of the same. This is also with a rider and order that the joinder be instituted within 30 days of this ruling of court.

DATED AND DELIVERED AT NYERI THIS 23RD DAY OF MARCH, 2022.

D.K.NJAGI MARETE

JUDGE

Appearances

1. Miss Macharia for the Claimant Union.
2. Mr.Karingithi instructed by Maina Karingithi & Company Advocates for the Respondents.