



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR

RELATIONS COURT

AT NAIROBI

CAUSE NUMBER 849 OF 2017

BETWEEN

MICHAEL ONYANGO OKETCH CLAIMANT

VERSUS

ATHI RIVER MINING LIMITEDRESPONDENT

RULING

1. The Claimant filed an Application dated 29th March 2021, seeking to enjoin National Cement Company Limited as the 2nd Respondent herein.
2. He seeks leave also, to amend his Statement of Claim to include the National Cement Company Limited.
3. The Respondent is opposed to the Application and filed a Notice of Preliminary Objection dated 8th December 2021, based on Section 560 of the Insolvency Act.
4. It is not disputed that the current Respondent was placed under Administration with effect from 17th August 2018. The Respondent therefore holds that the Claimant can only proceed with the Claim upon obtaining the leave of the Administrators or leave of the Court.
5. The Claimant on his part argues that the National Cement Company Limited has acquired the business of the collapsed Respondent. The assets and employees of the Respondent have been retained by the National Cement Company Limited. It would therefore be appropriate to enjoin the new business owner.

The Court Finds: -

6. The Application dated 29th March 2021 filed by the Claimant, is addressed to National Cement Company Limited, which the Claimant states, has acquired the assets and employees of the current Respondent.
7. The Court understands this to mean that there is a successor employer, against whom the Claimant wishes to proceed.
8. The Application does not raise questions of insolvency or administration of the current Respondent. It is not an Application between the collapsed business and the Claimant, but between the Claimant and the alleged successor employer.
9. If there is a new employer, the Court does not think the Claimant should be barred from pursuing his remedies against the new employer, on the ground that his previous employer is under administration. He should be given a chance to show that there is a new business owner, and that the new business owner has assumed the assets, liabilities and employees of the collapsed business. If there is a new owner, it is even doubtful if administration is still in place. The Claimant will be in a position to explain this to the Court in his application.
10. There is no reason at all, for an adjudged bankrupt, to stand in the way of an employee, who feels that his Claim can best be prosecuted against a successor employer.

IT IS ORDERED: -

a. The Preliminary Objection is declined.

b. The Application dated 29th March 2021 shall be served upon the National Cement Company Limited.

c. The National Company Cement Limited shall file and serve its response to the Application within 7 days of service, and thereafter, the Application to be scheduled for hearing at the registry.

Dated, signed and released to the Parties electronically, at Chaka, under the Ministry of Health and Judiciary Covid-19 Guidelines, this 22nd day of April 2022.

JAMES RIKA

JUDGE