



Ngari v Tea Holding (Cause 2329 of 2017) [2022] KEELRC 3806 (KLR) (4 August 2022) (Ruling)

Neutral citation: [2022] KEELRC 3806 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 2329 OF 2017
AN MWAURE, J
AUGUST 4, 2022**

BETWEEN

JAMLIC KARIUKI NGARI CLAIMANT

AND

TEA HOLDING RESPONDENT

RULING

1. The claimant has made an application dated December 14, 2021 by way of a notice of motion praying that an order be made that Florence Wairimu Mbuguabeing a director or owner of business name Tea Holding to satisfy the order and decretal sum of Kshs 814,337/30 plus interest at 12% from January 31, 2018 when ruling was delivered.
2. That the respondent Florence Wairimu Mbugua to appear in person in court during mention for notice to show cause.
3. Costs to be provided by the respondent.

Claimant's Case

4. The claimant says the respondent is unregistered but as business name and so is difficult to execute the order against it.
5. He says that the Florence Wairimu Mbugua should be called upon to satisfy the ruling and order of Kshs 814,337/30 within 14 days or else execution to issue.
6. The respondent appointed an advocate Messrs Otieno & Co Advocates on June 20, 2019.
The respondent was purportedly served with the application as per affidavit deponed on March 10, 2022 by one Harrison Muia. He never gave the names of the lady he purported to have served the application. So it is not clear who he served the application to and the lady failed to acknowledge the application.



Decision

7. The court is finding the application is hard to decipher. First it is not clear why the claimant who purportedly worked for the respondent from August, 2012 until September 30, 2017 and yet he never knew the details of his employer.

So they filed suit against a respondent who is unregistered and ruling was delivered on January 31, 2018. Then this application to amend the memorandum of claim was filed on February 18, 2022.

8. The amendment cannot be allowed because there is no evidence to connect Florence Wairimu to the Tea Holding the respondent. The claimant does not have evidence to prove who Florence Wairimu is to the Tea holding.

It is not clear if the Tea Holding is a company or a business name. Clearly the claimant did not do his homework well and the court is not able to grant his prayers in the absence of evidence.

9. Also the prayer for amendment is being made way after three years since the cause of action took place. That would mean the case is time barred and introducing a new respondent will be in contrary to section 90 of the Employment Act which refers to the period within which a claim must be filed under the Employment Act 2007.

10. The court finds the application by the claimant is not merited for the foregoing reasons and so dismisses the same. There are no orders as to the costs as the respondent did not even put in a response.

Orders accordingly.

DELIVERED, DATED AND SIGNED IN NAIROBI THIS 4TH DAY OF AUGUST, 2022.

ANNA NGIBUINI MWAURE

JUDGE

ORDER

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on March 15, 2020 and subsequent directions of April 21, 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with order 21 rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court has been guided by article 159(2) (d) of the Constitution which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under article 48 of the Constitution and the provisions of section 1B of the Civil Procedure Act (Chapter 21 of the Laws of Kenya) which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

A signed copy will be availed to each party upon payment of court fees.

ANNA NGIBUINI MWAURE

JUDGE

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