



REPUBLIC OF KENYA



KENYA LAW
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Nzioki; Kenya Institute of Management & another (Respondent) (Cause 144 of 2020) [2022] KEELRC 4077 (KLR) (29 September 2022) (Ruling)

Neutral citation: [2022] KEELRC 4077 (KLR)

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 144 OF 2020
J RIKA, J
SEPTEMBER 29, 2022

IN THE MATTER OF
AUGUSTINE KITUKU NZIOKI CLAIMANT
AND
KENYA INSTITUTE OF MANAGEMENT RESPONDENT
MURIITHI NDEGWA RESPONDENT

RULING

1. The 2nd respondent is the CEO of the 1st respondent.
2. The claimant seeks against the 2nd respondent an order of permanent injunction restraining the 2nd respondent from making defamatory statements against the claimant; an order for apology to the claimant from the 2nd respondent; general and exemplary damages; declaration that termination of the claimant's contract amounted to constructive dismissal and was unfair and unlawful; payment of terminal benefits and compensation; costs; interest; and any other suitable relief.
3. The 2nd respondent filed a notice of preliminary objection dated February 28, 2022. He states that the claim against him is for defamation; the claimant was never an employee of the 2nd respondent; the court has no jurisdiction to issue the prayers against the 2nd respondent; and the claim is incompetent and should be struck out with costs.
4. Parties agreed to have the objection considered and determined based on their submissions. They confirmed filing and service of the submissions at the last appearance in court, on July 6, 2022.
5. The 2nd respondent submits that under section 12 of the *Employment and Labour Relations Court Act*, jurisdiction of this court is restricted to disputes involving employers and employees. The 2nd respondent was not in an employer-employee relationship with the claimant. The subject matter of defamation is not within the jurisdiction of this court.



6. The claimant submits that defamation is fact-based, and cannot be disposed of preliminarily. He relies on *Mukisa Biscuits v West End Distributors Limited* 1969 [EA] 696. Section 12 of the [E&LRC](#) bestows on the court jurisdiction to hear and determine disputes arising out of the employment relationship. The defamatory actions by the 2nd respondent against the claimant, arose within the ambit of the employment relationship.

The Court Finds: -

7. The alleged defamation of the claimant by the 2nd respondent happened in the course of an employment investigatory and disciplinary process. The claimant alleges that the 2nd respondent made allegations at the workplace, that the claimant was sexually harassing his female colleagues. The allegations were made within the workplace. They were made in the context of the employment relationship. The subject matter work related defamation, and the persons involved an employee and his CEO are within the jurisdiction of this court, under section 12 of the [E&LRC act](#).
8. The definition of the term 'employer' under section 2 of the [Employment Act](#), includes agent, foreman, manager or factor of an employer. The 2nd respondent can shoulder employment liability within this context. He can be deemed to be an employer.
9. To determine if he was an employer; if he defamed the claimant at the workplace; and whether he should bear any liability, calls for evidence. He cannot be discharged from the proceedings preliminarily. The court is persuaded that it has jurisdiction, and that the 2nd respondent is *prima facie*, correctly joined to the proceedings.

It is ordered: -

- a. The preliminary objection is declined.
- b. Costs in the cause.

DATED, SIGNED AND DELIVERED AND RELEASED TO THE PARTIES ELECTRONICALLY AT NAIROBI, UNDER THE MINISTRY OF HEALTH AND JUDICIARY COVID-19 GUIDELINES, THIS 29TH DAY OF SEPTEMBER, 2022.

JAMES RIKA
JUDGE

