



**Wamuyu v Humprey & Company LLP & 2 others (Cause 490 of 2017)
[2022] KEELRC 13487 (KLR) (24 November 2022) (Ruling)**

Neutral citation: [2022] KEELRC 13487 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 490 OF 2017
AN MWAURE, J
NOVEMBER 24, 2022**

BETWEEN

LILIAN WAMUYU CLAIMANT

AND

HUMPREY & COMPANY LLP 1ST RESPONDENT

**CORPORATE CONSULTING INTERNATIONAL (K) LIMITED) 2ND
RESPONDENT**

KIRAITU MURUNGI 3RD RESPONDENT

RULING

1. The 3rd respondent has filed an application by way of chamber summons dated May 25, 2021 whereby he made prayers that the aforesaid 3rd respondent herein be struck out of the suit.
2. The application is supported by the supporting affidavit of Eddie Omondi an advocate of the High Court of Kenya whose affidavit of May 25, 2022 is annexed thereto.
3. The deponent avers that the 3rd respondent is a senior partner with the 1st respondent but states the 1st respondent law firm is a limited liability partnership which can sue and be sued in its own name. He says the same is a separate and distinct entity from its partners.
4. She says further the 3rd respondent has never been a director or beneficial owner of the 2nd respondent and in any case the 2nd respondent is a limited liability company that is separate and distinct from its director with its own capacity to sue and to be sued.
5. The deponent says there is no cause of action against the 3rd respondent from the pleadings and so respondent will serve no purpose in this dispute.
6. The 3rd respondent prays that their prayers as per the said application be granted.



7. The claimant Lillian Wamuyu in her replying affidavit says she is aware and has been advised by the advocate on record that as much as the 1st respondent can sue and be sued in its own name but when it comes down to the provisions of the nature of liability in a limited liability partnership then it shall be in accordance to the partnership agreement which is yet to be availed to court.
8. She says the 3rd respondent should not be struck from the suit as at all material times relevant to the pleadings of this suit he associated himself with the 1st respondent reference being made to the 1st and 3rd respondent's response to the statement of claim.
9. The deponent states there is no prejudice that will be suffered by the 3rd respondent and further the issues raised can be canvassed in the main suit.

1st& 3rd Respondents Submissions

10. The 1st and 3rd respondent submits that Order 1 rule 10(2) of Civil Procedure Rules it provided:-

“The court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the court to be just, order that the name of any party improperly joined whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon the settle all questions involved in the suit, be added.”
11. They also submit that under section 6(2) of the Limited liability Partnership Act No 42 of 2011 provides that a limited liability partnership becomes a body corporate with perpetual succession with a legal personality separate from that of its partners once it is registered.
12. They therefore rely on several authorities among them Kenya Breweries Limited & 3 others v Symon Wairobi Gatuma (2017) eKLR and Kolaba Enterprises Ltd v Shamsudin Hussein Varuam & another (2014) eKLR to quote just a few. These authorities provide that a body corporate is a *persona juridica* with a separate, independent identity in law distinct from its shareholders, directors and agents unless there are factors warranting lifting the veil.
13. The 1st & 3rd respondent urge the court to find no injustice will be occasioned if 3rd respondent is struck of as a party to the suit.

Claimants submissions

14. The claimant in its submissions admits 1st respondent is a legal personality separate and distinct from its partners but says the 3rd respondent was cited as a respondent because he was involved directly with the management of the 1st and 2nd respondents.
15. The claimant is relying on the case of Departed Arians Property Custodian Board v Jaffer Brothers Ltd Supreme Court of Uganda (1999) IEA 55 where the court held:-

“A clear distinction is called for between joining a party who ought to have been joined as a defendant and one whose presence before the court is necessary in order to enable the court effectually and completely adjudicate upon and settle all questions involved in the suit..... A party may be joined in a suit, not because there is a cause of action against it, but because the party's presence is necessary in order to enable the court effectually and completely adjudicate upon and settle all the questions involved in the cause or matter.”



16. The claimant submits “that the 3rd respondent has failed to prove he does not need to be a party to this suit and also he does not show any prejudice that he will suffer by being a party to this suit. The claimant therefore submits that for fair trial and justice to be reached the 3rd respondent ought to remain a party to this claim.

Determination

17. The court has considered critically the pleadings and the authorities cited by the respective parties as well as the law. The courts are guided by corporate law and in particular that directors and in this case the partners are generally not liable for contracts that bind their company and registered organisation are legal entity in their own rights.
18. The age old *Salomon & Co Ltd v Salomon* (1887) AC 22 is known where court held that a company is person altogether different from its subscribers and directors.
19. Section 7(1) of the *Limited Liability Partnership Act* No 42 of 2011 provide that a Limited liability Partnership is in its name capable of suing and being sued. Section 6(2) of the same Act provide that a partnership once registered becomes a body corporate with perpetual succession with legal personality separate for its own partners.”
20. Humphrey & Co LLP is registered as a Limited Liability Partnership as Number LLP/2015/32 and is dated April 10, 2015. The same is therefore registered and therefore has its own legal personality.
21. The respondent states the reason they have cited Hon Kiraitu Murungi the 3rd respondent as a party to the suit is because he directly conducted the day to day management of the organisation. That explanation does not convince the court that the 3rd respondent should necessarily be cited as a part of the suit because of the role he played in the day to day activities of the organisation.
22. The partnership irrespective of who was playing which role remained a separate and distinct legal entity and that is quite clear. The court finds that without even belaboring the point too much there is no useful role that will be served by the 3rd respondent being a part of the suit considering there are legal personalities that are capable of suing and being sued and being held liable.
23. The court however must comment on the slothful manner the parties are prosecuting the suit. This is a 2017 suit and is only in 2022 that the 3rd respondent is making this application.
24. The other point is that this is also a matter that would have been dealt with at the main suit without wasting more time with applications that could have been resolved for once and all during the determination of the main suit.
25. That notwithstanding the court finds the 3rd respondent’s application dated May 25, 2022 is merited and is allowed and so the 3rd respondent Kiraitu Muringi is struck off from the suit.
26. It is only fair the costs remain in the cause. The parties also to urgently set the case for hearing without unnecessary delay considering this is a 2017 cause.

Orders accordingly.

DELIVERED, DATED AND SIGNED IN NAIROBI THIS 24TH NOVEMBER, 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 had 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.

ANNA NGIBUINI MWAURE

JUDGE

