



Kenya Building, Construction, Timber and Furniture Industries Employees Union v Slumberland Kenya Limited (Cause E573 of 2022) [2022] KEELRC 13250 (KLR) (17 November 2022) (Ruling)

Neutral citation: [2022] KEELRC 13250 (KLR)

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E573 OF 2022
L NDOLO, J
NOVEMBER 17, 2022

BETWEEN
KENYA BUILDING, CONSTRUCTION, TIMBER AND FURNITURE
INDUSTRIES EMPLOYEES UNION CLAIMANT
AND
SLUMBERLAND KENYA LIMITED RESPONDENT

RULING

1. This ruling addresses the claimant’s notice of motion dated August 18, 2022 and the respondent’s notice of preliminary objection dated September 19, 2022.
2. By its motion, the claimant seeks the following orders:
 - a) An order restraining the directors of the respondent from leaving Kenya and/or directing them to deposit their passports with the court;
 - b) An order directing the respondent to cooperate with the claimant in determining the actual terminal dues owing to its 74 employees who are members of the claimant, with a view to paying the said dues.
3. The motion is supported by an affidavit sworn by the claimant’s General Secretary, Francis K Murage and is based on the following grounds:
 - a) That the respondent’s directors have closed down the company’s premises and ordered all employees out advising them to look for employment elsewhere;
 - b) That the said directors have secured travel visas to migrate to the United Kingdom and intend to flee from the country on or about August 20, 2022;



- c) That the respondent has not paid its employees their terminal dues despite some of them having served the respondent for a period exceeding 30 years;
 - d) That if the directors of the respondent are allowed to leave the country without settling the terminal dues of its employees, the said employees will suffer huge and irreparable losses;
 - e) That it will be in the best interest of justice to grant the application.
4. In his affidavit in support of the motion, the claimant's general secretary, Francis K Murage depones that on August 5, 2022, one of the respondent's directors, Jay Mediratta told the employees to leave the company's premises as the company was closing down.
 5. Murage further depones that the employees were only paid their wages for July 2022 after staging a peaceful sit in and subsequent intervention by police officers from the Industrial Area Police Station.
 6. In its notice of preliminary objection, the respondent states that:
 - a) The claimant does not appreciate the well settled legal proposition that every company is a separate legal personality with an identity distinct from that of directors, shareholders and parent companies if any;
 - b) The claimant's application is fatally defective in substance and form for the reasons that:
 - i) The claimant presumes that companies are synonymously inseparable from its directors and/or shareholders contrary to the basic foundation of company law;
 - ii) The claimant does not appreciate that the respondent has a statutory limited liability;
 - iii) The application does not disclose any sufficient grounds, directly or indirectly to merit lifting and/or piercing of the respondent's corporate veil;
 - iv) The claimant does not seek leave of the court to lift and/or pierce the respondent's corporate veil before seeking reliefs going beyond the respondent straight to its directors.
 - c) The application does not contain or disclose any material evidence in support of the averments made in the application and the supporting affidavit, contrary to section 107(1) of the [Evidence Act](#).
 7. In their written submissions in support of their respective positions, the parties proceeded as if what is before the court is an application for joinder of the respondent's directors or lifting of the corporate veil. A reading of the pleadings filed in court does not reveal any such matter. In fact, the directors against whom the claimant intends to proceed are not party to these proceedings.
 8. In its submissions, the claimant relied heavily on the decision by my brother Rika J in [Daniel Mutisya Masesi v Romy Madan & another \[2013\] eKLR](#) where it was held that the definition of the term 'employer' in the [Employment Act](#) is broad enough to include directors of a corporate employer. My reading of this decision reveals that what was in issue was the joinder of a director in the proceedings. This is not what is before me and the decision, though persuasive in appropriate proceedings, is not relevant to the matter before me.
 9. On its part, the respondent cited a number of decisions regarding situations where the corporate veil of a limited liability company may be lifted to allow an aggrieved party to proceed against the directors. Because the issue of lifting of the corporate veil may well come before me, I will at this stage, resist the temptation to address the decisions cited by the respondent.



10. On the whole, I find that the claimant has failed to lay a basis for the prayers sought in its notice of motion dated August 18, 2022.
11. The motion is therefore declined with costs in the cause.
12. Orders accordingly.

DELIVERED VIRTUALLY AT NAIROBI THIS 17TH DAY OF NOVEMBER 2022

LINNET NDOLO

JUDGE

Appearance

Miss Chege for the claimant

Mr Nyaribo for the respondent

