



**Katiwa v ARK Construction Company; Chandravansh Construction
(Intended Third Party) (Employment and Labour Relations Cause
2245 of 2017) [2022] KEELRC 13562 (KLR) (15 December 2022) (Ruling)**

Neutral citation: [2022] KEELRC 13562 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS CAUSE 2245 OF 2017
L NDOLO, J
DECEMBER 15, 2022**

BETWEEN

JOHN KATIWA CLAIMANT

AND

ARK CONSTRUCTION COMPANY RESPONDENT

AND

CHANDRAVANSH CONSTRUCTION INTENDED THIRD PARTY

RULING

1. By its ex parte Chamber Summons dated May 4, 2022, the Respondent sought and was granted leave to issue a third party notice against Chandravansh Construction of PO Box 5502-00506.
2. The third party notice of even date, seeks joinder of Chandravansh Construction as a third party in these proceedings on the following grounds:
 - a. That on September 15, 2015, the Respondent engaged the intended third party as a subcontractor in the Purple Haze Apartment Development Project via a subcontract agreement executed on the same date;
 - b. That as per the agreement, it was the responsibility of the intended third party to engage its own employees, pay their salaries, take responsibility for statutory deductions and provide for insurance cover;
 - c. That on November 13, 2017, the Claimant filed a suit against the Respondent, alleging wrongful and unfair termination of employment and claiming the sum of Kshs 315,840;



- d. That the Respondent, being a stranger to the claim and unaware of any employer-employee relationships and terminations between the intended third party and its employees, informed the intended third party of the claim, but the intended third party failed, refused and/or neglected to respond to the Respondent's inquiries as to whether the Claimant was an employee of the intended third party or provide any information that could enable the Respondent to sufficiently defend the suit;
 - e. That the intended third party is obliged to indemnify the Respondent against all of the liability incurred and/or to be incurred in defence of the suit instituted by the Claimant against the Respondent.
3. Emerging jurisprudence on the issue before the Court is to the effect that pleas on third party notices ought to be approached liberally rather than strictly. In *Interactive Advertising Limited & another v Equity Bank Limited & 2 others* [2016] eKLR it was restated that the only condition to be satisfied is that the subject between the third party and the defendant conforms to the original cause of action.
 4. The Respondent has exhibited a subcontract executed between itself and the intended third party whose subject is the project where the Claimant is said to have been employed.
 5. I am therefore satisfied that a case for joinder of Chandravansh Construction as a third party has been made. The Claimant and the Respondent are directed to serve their pleadings on the third party within the next fourteen (14) days from the date of this ruling. The third party will have 14 days after service to file its own pleadings.
 6. The costs of the application will be in the cause.
 7. Orders accordingly.

DELIVERED VIRTUALLY AT NAIROBI THIS 15TH DAY OF DECEMBER 2022

LINNET NDOLO

JUDGE

Appearance:

No appearance for the Claimant

Mr. Kabugu for the Respondent

No appearance for the third party

