



REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS

COURT OF KENYA AT NAIROBI

MISCELLANEOUS NO. E119 OF 2021

DENNIS ANYOKA MOTURI & CO. ADVOCATES.....APPLICANT

VERSUS

GARDAWORLD SECURITY SERVICES.....RESPONDENT

RULING

1. The firm M/s Gardaworld (K) Limited/Applicant filed a Notice of Motion Application dated 30<sup>th</sup> August 2021 seeking to be heard for Orders:

1) THAT the Bill of Costs dated 1<sup>st</sup> July 2021 is contrary to the express provisions of Rule 52 of the Advocates (Remuneration) Order and the same should be struck out with costs to Gardaworld (K) Limited.

2) That in the addition and or in the alternative to prayer 1 above, the Honourable Court do order that the name of GARDAWORLD SECURITY SERVICES LIMITED and by extension GARDAWORLD (K) LIMITED be struck out from the proceedings and issue a declaration that GARDAWORLD SECURITY SERVICES LIMITED and or by extension GARDAWORLD (K) LIMITED are not proper or necessary parties to the Bill of Costs dated 1<sup>st</sup> July 2021.

3) THAT the costs of the Bill of Costs dated 1<sup>st</sup> July 2021 and the Application herein be awarded to GARDAWORLD (K) LIMITED/ APPLICANT.

2. The Application is premised on the grounds that the Applicant Advocates filed an Advocate-Party Bill of Costs dated 1<sup>st</sup> July 2021 seeking *inter alia*, costs awarded to Agnes Wacu Gatoto who had filed a Petition before the Employment & Labour Relations Court in **Cause No. 135 of 2018: Agnes Wacu Gatoto v Kenya Kazi Security Services Limited**. That the Advocate firm has by implication admitted that it did not file the Petition aforesaid and that the Petition was not filed against the Respondent in the suit. That the Respondent is therefore a non-entity as it is not duly registered under any Laws of Kenya and thus not capable of suing or being sued and that Gardaworld (K) Limited confirms it is a minor shareholder of Kenya Kazi Services Limited which is a separate and distinct legal entity from the Kazi Kenya Security Services Limited in the **ELRC No. 135 of 2018** case above. M/s Gardaworld (K) Ltd thus asserts that in the circumstances, the Advocate, the Respondent and by extension Gardaworld (K) Limited are NOT proper and/or necessary parties to the Bill herein.

3. The Application is supported by an affidavit sworn by a Director of Gardaworld (K) Limited, Nicholas Charles Arnold who depones that neither the Applicant advocate nor the Respondent was party to the **ELRC No. 135 of 2018** case in relation to which the said Bill of Costs was issued. That though the Bill was instituted as against Gardaworld Security Services Limited, the same was served on a Company which Gardaworld (K) Limited is a minor shareholder and that they were forced to enter appearance in the suit under protest, out of abundance of caution. He further avers that if costs were awarded to the Petitioner in the said case, then only the Petitioner, that is Agnes Wacu Gatoto can file a Party and Party Bill of Costs and that consequently, the Advocate has filed a Bill of Costs that is not supported in law. That it is in the interest of justice that the Application herein is allowed as prayed in order to avert a miscarriage of justice and that since Gardaworld (K) Limited has incurred great costs in the matter, the suit should be dismissed and costs awarded to it.

4. In response, the Applicant in the Miscellaneous Application herein filed a Replying Affidavit sworn on 25<sup>th</sup> October 2021 by Dennis Anyoka Moturi. He depones that he filed the Bill of Cost Application on honest presumption that KK Security Limited is now Gardaworld Company Limited because what was initially known as The KK Security Limited is now referred to as "KK Security, A Gardaworld Company". That he has learnt that the Respondent sued herein is merely a shareholder in the KK Security Limited, the legal and rightful Respondent and contends that the entire bill of costs cannot be dismissed by reason of misjoinder of parties, as under Order 1 Rule 9 of the Civil Procedure Rules, 2010. He further refers to Order 1 Rule 10(2) which provides that 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 and settle all questions involved in the suit, be added. It is his averment that the said Order for amendment of the Respondent is allowed as the Respondent does not stand to be prejudiced in any manner.

5. The application by Gardaworld (K) Limited reveals the misapprehension of the Advocates Remuneration Order by the Applicant herein. The bill of costs that caused this motion to be filed offends the provisions of Rule 52 of the Advocates Remuneration Order. The party and party costs are claimable by a party and not his or her advocate and as such the bill of costs dated 1<sup>st</sup> July 2021 between the Applicant and the Respondent is defective and void *ab initio*. The Applicant had no business filing the said bill which he concedes ought not to have been even filed as against the Respondent or Gardaworld (K) Limited who is a mere shareholder in the party that appeared in the matter subject of **ELRC Cause No. 135 of 2018 – Agnes Wacu Gatoto v Kenya Kazi Security Services Limited**. The result of the foregoing is that the application by Gardaworld (K) Limited is granted and the bill of costs dated 1<sup>st</sup> July 2021 is hereby struck out with costs to Gardaworld (K)

Limited.

It is so ordered.

**DATED AND DELIVERED AT NAIROBI THIS 9TH DAY OF NOVEMBER 2021**

**NZIOKI WA MAKAU**

**JUDGE**