



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA**

**CAUSE NO 422 OF 2017**

**MWAMBIRE MWAYELE NDUNDI.....CLAIMANT**

**VS**

**MOHAMED HASSAN T/A**

**SAARY NAHDY LOGISTICS.....RESPONDENT**

**AND**

**SAARY NAHDY LOGISTICS.....OBJECTOR**

**RULING**

1. By a Notice of Motion dated 23<sup>rd</sup> October 2019, the Objector Saary Nahdy Logistics seeks orders to expunge its name from these proceedings.
2. The application, which is supported by an affidavit sworn by Swaleh Omar, is based on the following grounds:
  - a) That there is no cause of action against Saary Nahdy Logistics;
  - b) That the Directors of Saary Nahdy Logistics are known as per the record of entries of the Registrar of Business Names and they are not party to these proceedings;
  - c) That as at the close of pleadings in respect of the Claimant's and Respondent's case, the Directors of Saary Nahdy Logistics had not been sued;
  - d) That the Respondent herein Mohamed Hassan is not a Managing Director of Saary Nahdy Logistics and has never been an employee of the said entity;
  - e) That Saary Nahdy Logistics is a business entity dealing solely in sale and importation of motor vehicle spare parts and is absolutely not in the transport sector of either long distance haulage or short distance movement of trucks as to require the services by employment of a turnboy/operation department;
  - f) That in the interest of justice the name of Saary Nahdy Logistics ought to be removed from these proceedings;
  - g) That neither the Claimant nor the Respondent shall suffer any prejudice in the event the orders sought are granted.
3. The Claimant filed a Replying Affidavit on 24<sup>th</sup> January 2020 stating that the Objector's application is an afterthought and an abuse of the court process.
4. The Claimant depones that he was employed by Saary Nahdy Logistics initially as a turn boy and later as Operations Manager. He avers that in the course of his employment, he used to report to a Mr. Mohamed Hussein whom he believed was a Director of Saary Nahdy Logistics.

5. The Claimant further depones that on 13<sup>th</sup> March 2017, he reported to work but Mohamed Hussein terminated his employment. On 21<sup>st</sup> April 2017, the Claimant reported the matter at the Labour Office where Mohamed Hussein was summoned but he declined to attend the meeting.
6. The Claimant adds that on 26<sup>th</sup> May 2017, he filed his claim subsequent to which Mohamed Hussein filed a defence on 25<sup>th</sup> February 2019 admitting that the Claimant worked for Saary Nahdy Logistics.
7. The Claimant maintains that the Objector has filed the application in bad faith with a view to frustrating the Claimant's case.
8. The Claimant states that he will suffer great prejudice if the application is allowed.
9. The Claimant pleads that in case the Court allows the Objector's application he be granted leave to amend his claim to include the registered proprietors of Saary Nahdy Logistics as they appear in the Business Registration Certificate annexed to Swaleh Omar's affidavit.
10. The single issue for determination in this application is whether the Objector, Saary Nahdy Logistics has been properly sued.
11. The Objector bases its application on a Certificate of Registration showing Mohammed Suleiman Idha and Swaleh Omar as proprietors of Saary Nahdy Logistics.
12. In opposing the application, the Claimant relies on a provisional National Social Security Fund statement of account showing Saary Nahdy Logistics as his employer. The Claimant also relies on a Response dated 25<sup>th</sup> February 2019 filed by Mohamed Hassan T/A Saary Nahdy Logistics, in which the Claimant's employment by the Respondent is admitted,
13. From the pleadings and supporting documents on record, it seems to me that the Claimant's employment by Saary Nahdy Logistics is not contested. Indeed, the issue raised in the current application has to do with the proprietors of Saary Nahdy Logistics. The application does not raise any issue regarding the Claimant's employment by Saary Nahdy Logistics.
14. It would therefore, in my view, be a great injustice to strike out the Claimant's claim against Saary Nahdy Logistics when the employment relationship is admitted.
15. For this reason, the application dated 23<sup>rd</sup> October 2019 is disallowed with costs to the Claimant.
16. The Claimant is at liberty to file a formal application to amend his claim to enjoin the correct proprietors of Saary Nahdy Logistics.
17. Orders accordingly.

**DATED SIGNED AND DELIVERED AT MACHAKOS THIS 9<sup>TH</sup> DAY OF APRIL 2020**

**LINNET NDOLO**

**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 15<sup>th</sup> March 2020, this ruling has been delivered to the parties

electronically, with their consent. The parties 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, the Court is guided by Article 159(2)(d) of the Constitution of Kenya which commands the Court to render substantive justice without undue regard to technicalities, Article 40 of the Constitution which guarantees access to justice, and Section 18 of the Civil Procedure Act which imposes a duty to employ suitable technology to facilitate just, expeditious, proportionate and affordable resolution of civil disputes. Further, in view of the ensuing disruption of the court diary, this ruling has been delivered during the court recess.

**LINNET NDOLO**

**JUDGE**

**Appearance:**

Mr. Tolo for the Claimant

Miss Okata for the Respondent

Mr. Egunza for the Objector