



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT NAIROBI
CAUSE NO. 1113 OF 2013

(Before Hon. Lady Justice Maureen Onyango)

**KENYA UNION OF DOMESTIC, HOTELS, EDUCATIONAL
INSTITUTIONS AND HOSPITAL WORKERS (KUDHEIHA WORKERS).....CLAIMANT**

VERSUS

THE REGISTERED TRUSTED OF EAST AFRICAN RAMGARHIA

BOARD T/A GURU NANAK RAMGRHIA SIKH HOSPITAL.....RESPONDENT

RULING

By a notice of preliminary objection dated 21st November 2018, the respondent raised a preliminary objection to wit that the wrong party has been sued and hence the claim is nonsuited and should be dismissed with costs. In the submissions dated 17th December 2018 and filed on 18th December 2018 in support of the preliminary objection the respondent states that Guru Nanak Hospital is a fully fledged institution that can sue and be sued. That East African Ramgarhia Board is a separate and independent body and the Registered Trustees of East African Ramgarhia Board does not trade as Guru Nanak Ramgarhia Sikh Hospital, that the identity of the person sued is wrong.

It is further submitted that all the grievants were employed on short terms contracts by Guru Nanak Ramgarhia Sikh Hospital.

The claimant opposed the preliminary objection and in its submissions dated 10th March 2020 submits that the preliminary objection is an afterthought on the part of the respondent and an attempt to circumvent dispensation of justice through technicality. That the same has been raised after 5 years of active litigation and falls short of the threshold of a preliminary objection. That the respondent has not adduced evidence or, a certificate of registration to prove that the two entities are separate or were separate at the time of filing this suit in 2013.

That in **Mukisa Biscuit Manufacturing Company Limited v West End Distributors Limited (1969) E.A** the court held that the essence of preliminary objections –

“A point of law which has been pleaded, or which arises in the course of pleadings and which, if argued as a preliminary point, may dispose of the suit.”

That Sir Charles Newbold elaborated that –

“A preliminary objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion. The improper raising of points by way of preliminary objection does nothing but unnecessarily increase costs and, on occasion, confuse the issues. The Court considers that this improper practice should stop.”

It is submitted that the point of law raised by the respondent requires proof and calls for veracity of the evidence adduced before the court. The claimant submits that Guru Nanak Hospital is indispensable from the Registered Trustees of Ramgarhia East Africa Board as the former is a health institution operating directly under the latter.

The claimant further submits that Article 159(2)(d) requires courts to administer justice without undue regard to procedural technicalities. Further that equity aids the vigilant and not the indolent, that it would be a miscarriage of justice and against the spirit and letter of the

constitution to dismiss the claim based on an afterthought technicality. That the pleadings can be amended to retain Guru Nanak Hospital as the only respondent and thus correct the error, if any.

The claimant urges the court to dismiss the preliminary objection.

Determination

A preliminary objection was defined by Sir Charles Newbold in **Mukisa Biscuits Manufacturing Co. Ltd v West End Distributors Ltd (1969) EA 696** as –

“A preliminary objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion.”

There is no defence on record though on the record there is mention of a defence having been filed the day before parties appeared before the court on 1st April 2014. What I have seen on record is a memorandum of appearance dated 11th October 2013 and filed on the same date together within grounds of opposition and a replying affidavit of Frederick Nyambedha sworn on 23rd October 2013 (sic).

On the preliminary objection, there is no evidence of the averments in the preliminary objection that Guru Nanak Hospital and the Registered Trustees Africa Ramagarhia Board are independent entities and that the Board does not trade as Guru Nanak Ramgarhia Sikh Hospital. v

I thus find that this is not a suitable suit for a preliminary objection as defined in **Mukisa Biscuit** case. The result is that the same is dismissed with costs.

DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 12TH DAY OF JUNE 2020

MAUREEN ONYANGO

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 15th March 2020 and subsequent directions of 21st April 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 has 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.

MAUREEN ONYANGO

JUDGE