



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR
RELATIONS COURT AT MOMBASA
CAUSE NUMBER 4 OF 2020

BETWEEN

VICTORIA MUTHOKI MUIA.....CLAIMANT

VERSUS

1. MAKUPA TRANSIT SHADE LIMITED

2. BOSS FREIGHT TERMINAL CFS LIMITED.....RESPONDENTS

Rika J

Court Assistant: Andrew Mwabanga

C. Masinde & Company Advocates for the Claimant

A. O. Hamza & Company Advocates for the Respondents

RULING

1. The 2nd Respondent, through an Application filed on 22nd September, 2020 prays the Court:
 - a) To dismiss and/or strike out the Claimant's Claim, as it discloses no reasonable cause of action against the 2nd Respondent.
 - b) To dismiss and/or strike out the Claimant's Claim as it is frivolous vexatious and is otherwise an abuse of the Court process, as it discloses no cause of action against the 2nd Respondent.
2. The Application does not seem to be supported by any Affidavit. The Grounds on the face of the Application are largely a replica of the prayers. Additionally, the 2nd Respondent states that there is no correlation between the cause of action and the 2nd Respondent; Claimant's documents clearly show she was employed by the 1st Respondent; the 1st Respondent has conceded it employed the Claimant; the Claimant has not established she worked for the 2nd Respondent; and the Claim is vexatious.
3. The Application is opposed through a Replying Affidavit sworn by Claimant's Counsel, Clemence Masinde, on 30th September, 2020.
4. She states, the Application is made in bad faith; issues raised by the Applicant can only be decided on merit; the 2nd Respondent is engaging in delaying tactics; and, documents exhibited by the Claimant disclose both Respondents were her Employer. The Claimant prays the Court to dismiss the Application.

The Court Finds: -

5. Clause 1 in the letter of offer issued to the Claimant by the 1st Respondent, dated 7th April, 2017, states that the 1st Respondent, "may also

assign you to perform duties wholly or in part, to any of its associated companies.”

6. At paragraph 4 of the Statement of Claim, the Claimant pleads that she worked for both Respondents.

7. Certificate of Achievement, Team Building 2018, dated 3rd November, 2018, was issued to the Claimant in the names of both Respondents. It is signed by one common Chief Executive Officer.

8. Business Card issued to the Claimant by the Respondents, designating her as Customer Relations Officer bears the names of the 2 Respondents. They are indicated to belong to The Tal Group.

9. There is *prima facie* evidence, that the 2 Respondents employed the Claimant. The Claimant in any event, is not expected to establish, at the time of filing the Claim, that she was employed by the 2nd Respondent. Establishment of who her Employer was, can only be through evidence.

IT IS ORDERED: -

a. The Application by the 2nd Respondent filed on 22nd September, 2020 has no merit and is declined.

b. No order on the costs.

Dated and delivered at Mombasa this 6th day of November, 2020

James Rika

Judge