



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA

CAUSE NO 86 OF 2019

JOSEPH JUMAA KAZUNGU.....CLAIMANT

VS

THE DEPUTY VICE CHANCELLOR MOI UNIVERSITY, ELDORET.....1ST RESPONDENT

THE DIRECTOR, MOI UNIVERSITY COAST CAMPUS.....2ND RESPONDENT

THE DEPUTY VICE CHANCELLOR FINANCE, ELDORET.....3RD RESPONDENT

RULING

1. This ruling relates to the Respondents' Preliminary Objection raised by notice dated 4th March 2020 and filed in court on 9th March 2020.
2. The gist of the Objection is that the Respondents are wrongly sued in this matter. It is based on the following grounds:
 - a) The suit herein offends Section 15(1)(a) of the Universities Act No 42 of 2012, which provides that Moi University is a body corporate capable of suing and being sued, in its own name;
 - b) Moi University, having been a public university before commencement of the Universities Act No 42 of 2012, is deemed by dint of Section 72 to be a university established under the Act, after having obtained a charter in accordance with the provisions of the Act and as such the provisions of the Universities Act No 42 of 2012 apply to it;
 - c) By dint of Section 20(1)(a), Moi University, upon being granted a charter became a body corporate with wide powers, including employment of staff;
 - d) Consequently, the import of the foregoing provisions of law is that to the extent that the crux of the Claimant's claim is to enforce rights, apparently accruing from an employer-employee relationship, the proper party to be joined and against whom the orders sought can be enforced is Moi University, as a juridical person and not the individuals named as 1st-3rd Respondents, as they also happen to be employees with no capacity to be sued on behalf of Moi University, their employer;
 - e) Therefore, the suit as framed, and to the extent that the grievances are against Moi University but has enjoined individuals, it is null and void *ab initio* and there does not exist a suit at all against Moi University;
 - f) The joinder of the Respondents in these proceedings, in light of the fact that they are not the custodians of the University's recruitment procedure, is a nullity in law that is fatally incurable.
3. In reaction to the Preliminary Objection, the Claimant filed written submissions on 1st July 2020.
4. As defined in the celebrated case of *Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd (1969)* a Preliminary Objection is one which raises a pure point of law and is argued on the assumption that all facts as pleaded are not in dispute.
5. The pleadings filed by the parties raise many issues of fact that are contested. Significantly, the role played by the Respondents in the alleged engagement of the Claimant is a key issue, meriting examination and determination, at a full trial.
6. In the result, I find and hold that the Respondent's Objection does not meet the threshold of a Preliminary Objection as defined in law.
7. The Objection is therefore overruled with costs in the cause.

8. Orders accordingly.

DATED SIGNED AND DELIVERED AT MOMBASA THIS 10TH DAY DECEMBER 2020

LINNET NDOLO

JUDGE

ORDER

In view of restrictions in physical court operations occasioned by the COVID-19 Pandemic, this ruling has been delivered via Microsoft Teams Online Platform. A signed copy will be availed to each party upon payment of court fees.

LINNET NDOLO

JUDGE

Appearance:

Mr. Aminga for the Claimant

Miss Kaguri for the Respondent