



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAKURU

CAUSE NO.502 OF 2014

PATRICK KIARIE KUNG'U.....CLAIMANT

VERSUS

J.M. NDORO T/A BARAKA FARMS.....RESPONDENT

RULING

The ruling herein relates to objections filed by the respondent in the amended Response to Claim filed on 24th March, 2017 on the grounds set out at paragraphs 3 and 4;

The respondent denies the description that she is the administrator of the estate of Arthur Njuguna Ndoro and contends that as a beneficiary she cannot defend a suit on behalf of the estate.

The respondent therefore objects to her enjoinder of this suit and shall at first instance raise preliminary Objections, notice of which is hereby given to have the suit struck out for wrongful enjoinder and that that the same is misconceived, incompetent and bad in law.

The respondent therefore submitted under Rule 14(5) of the Employment and Labour Relations Court (Procedure) Rules, 2016, where the claimant filed suit against Joyce Ndoro who is not the administrator or beneficiary of the estate of the late John Ndoro, now deceased, such is in error and the suit cannot stand. Joyce Ndoro is not the legal representative of the deceased estate and the claim premised on is fatally defective.

The claimant in response asserts that the fact of enjoinder of a party is a suit is not a proper point of law subject to the suit being dismissed. Enjoinder can be addressed by hearing the claimant on the relationship of the parties as employment is defined under section 2 of the Employment Act and Labour Institutions Act and where Joyce Ndoro is an heir to the estate of the deceased John Ndoro, she is a proper party herein. The respondent has not explained to the court the legal personality of the respondent. in Cause No.811 of 2012 **Lucy Nyandia Mwangi versus Mathenge & Muchemi Advocates & another [2015] eKLR** the court held that an employee should not be burdened for unmasking the employer and in any event the issues raised by the respondent are not pure and proper matters of law which should form a good basis for a preliminary objection.

Parties are to raise any preliminary objections on purely points of law at any stage of the matter and at the earliest opportune moment for the court to address and direct as appropriate.

The question of the party sued as respondent is a matter regulated in law and by the Rules of the court. to enjoin a party as a respondent and who is required to respond to the claimant under Rule 13 therefore becomes an important preliminary point of law and in accordance with the Rules. The court must determine such a matter at its earliest to ensure before it are proper parties.

In the Statement of Claim, the claimant has defined the respondent as follows;

The respondent is a female adult of sound mind herein sued as the heir/Administrator/beneficiary to the Estate of A.N. Njuguna Ndoro and a resident of Bahati within the expansive Nakuru County, his address of service

...

At paragraph of the claim the claimant's case is that employment with the respondent commenced in the year 1987 until 11th March, 2014 when there was termination of employment by the respondent. the claimant has attached Letter of Appointment issued on 7th February, 1987 by *Baraka Farms*.

The claimant has also attached various work records with regard to employment by *Baraka Farms*.

Under section 2 of the Employment Act, 2007 and Labour Relations Act, 2007 and Labour Institutions Act, 2007 an employer is defined as;

“employer” means any person, public body, firm, corporation or company who or which has entered into a contract of service to employ any individual and includes the agent, foreman, manager or factor of such person, public body, firm, corporation or company which has similar.

Rule 2 of the Employment and Labour Relations Court (Procedure) Rules, 2016 defines a respondent as follows;

“respondent” means a person against whom a suit has been instituted in the Court or who replies to any proceedings in Court;

Such respondent is required under Rule 1 of the Court Rules to file a response to any claim made against such party setting out the following;

(2) A respondent’s statement of response shall contain-

(a) the respondent’s name and address for purpose of service;

(b) a reply on the issues raised in the statement of claim;

(c) any admission of any statement of facts set out in the statement of claim as the respondent admits, and a denial of any statements made in the suit that the respondent does not admit;

(d) any additional statements of fact which the respondent may wish to make in support of its reply;

(e) any defence or grounds upon which the respondent may wish to rely;

(f) any principle, policy, convention, law, industrial relations or management practice to be relied upon;

The proper respondent must therefore be enjoined to proceedings to be able to address a response to any claim made as set out above, Rule 13(2).

Where the claimant was employed by *Baraka Farms* with legal representation as herein, to file claim against the respondent as herein, J.M. Ngoro t/a *Baraka Farms* and in a capacity that such respondent is an heir, administrator, beneficiary to the Estate of A.N. Njuguna Ngoro is a misjoinder as employment was not by such party as J.M. Ngoro t/a *Baraka Farms* but *Baraka Farms*.

The claimant has relied on the provisions of section 2 of the Employment Act, Labour Relations Act and Labour Institutions Act of 2007 in the definition of ‘employment’ but such definition cannot cure the fact of filing suit against the wrong ‘respondent’ as defined in law and by the Rules.

The court reading of the decision in **Lucy Nyandia Mwangi versus Mathenge & Muchemi Advocates & another** is that such matter was premised on different facts as against this case and therefore foundationally different. Whereas the claimant herein has enjoined J.M. Ngoro t/a *Baraka Farms* in the cited case, there were limited letters of administration issued and therefore a proper party was in attendance in such proceedings.

Objections therefore raised by the respondent herein are found with merit, the suit against the respondent as set out is fatally defective and is hereby struck out. Costs to the respondent.

Delivered at Nakuru this 31st day of January, 2019.

M. MBARU

JUDGE

In the presence of: