



**REPUBLIC OF KENYA**

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

**CAUSE NO 467 OF 2018**

**KENYA SHIPPING CLEARING AND FREIGHT**

**LOGISTICS AND VALUERS UNION.....CLAIMANT**

**VS**

**BOLLORE TRANSPORT & LOGISTICS (K) LTD.....1<sup>ST</sup> RESPONDENT**

**CAREER DIRECTIONS LTD.....2<sup>ND</sup> RESPONDENT**

**SHEER LOGIC MANAGEMENT CONSULTANTS LTD....3<sup>RD</sup> RESPONDENT**

**RULING**

1. This ruling relates to three applications filed by the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents all seeking orders to disembark from these proceedings.
2. The 1<sup>st</sup> Respondent's application dated 23<sup>rd</sup> August 2018 is based on the following grounds:
  - a) That vide a Memorandum of Claim dated 18<sup>th</sup> July 2018, the Claimant has instituted a claim against the Respondents herein;
  - b) That the Claimant claims redundancy payment from the 1<sup>st</sup> Respondent for breach of outsourcing contract entered into between the 1<sup>st</sup> and 2<sup>nd</sup> Respondents;
  - c) That the outsourcing contract entered into between the 1<sup>st</sup> and 2<sup>nd</sup> Respondents was exclusively between those parties and not the Claimant herein. The Claimant was not a party to the aforesaid contract;
  - d) That in the above mentioned contract the responsibility of payment of wages of the employees/workers when due remained with the 2<sup>nd</sup> Respondent who was the employer;
  - e) That the 1<sup>st</sup> Respondent has been improperly and immaturely enjoined in this suit as it had no direct link with the Claimant and/or its members;
  - f) That from the pleadings, it is very clear that the members of the Claimant were employees of the 2<sup>nd</sup> Respondent and not the 1<sup>st</sup> Respondent;
  - g) That it is in the best interest of justice that the 1<sup>st</sup> Respondent's name be struck out and/or the suit against the 1<sup>st</sup> Respondent be dismissed with costs.
3. In a supporting affidavit sworn by the 1<sup>st</sup> Respondent's Human Resource Manager, Jane Wairimu it is deponed that according to an outsourcing contract between the 1<sup>st</sup> and 2<sup>nd</sup> Respondents executed on 1<sup>st</sup> August 2017, the workers employed by the 2<sup>nd</sup> Respondent were to work for the 1<sup>st</sup> Respondent on the instructions of the 2<sup>nd</sup> Respondent. Wairimu states that the workers remained employees of the 2<sup>nd</sup> Respondent.
4. Wairimu depones that in any outsourcing contract, the responsibility of payment of wages of the employees/workers remains with the employer, in this case, the 2<sup>nd</sup> Respondent. The 1<sup>st</sup> Respondent maintains that it is incapable of enforcing any rights existing between the 2<sup>nd</sup> Respondent and its employees.

5. Wairimu further depones that the outsourcing contract between the 1<sup>st</sup> and 2<sup>nd</sup> Respondents had been renewed and/or extended to the year 2019 and the allegations of breach of contract are therefore unfounded.

6. The 2<sup>nd</sup> Respondent's application is dated 4<sup>th</sup> October 2018 and is based on the following grounds:

- a) In June 2018, the 1<sup>st</sup> Respondent did vary its outsourcing agreement with the 2<sup>nd</sup> Respondent and brought in Sheer Logic Management Consultant Limited, the 3<sup>rd</sup> Respondent herein to handle the Mombasa container terminal;
- b) As such, the 2<sup>nd</sup> Respondent is no longer responsible for the Mombasa container terminal operated by the 1<sup>st</sup> Respondent hence has no relationship whatsoever with the Claimant and its members to warrant being a party to the suit;
- c) The parties herein stand to suffer no damages and/or losses if the 2<sup>nd</sup> Respondent is struck off as a party to this suit as the Claimant does not make any valid claim against them.

7. In a supporting affidavit sworn by Rodgers Wafula, it is deponed that on 1<sup>st</sup> August 2016, the 1<sup>st</sup> and 2<sup>nd</sup> Respondents entered into an agreement in which the 1<sup>st</sup> Respondent outsourced employees from the 2<sup>nd</sup> Respondent, with the 2<sup>nd</sup> Respondent then employing persons and seconding them to the 1<sup>st</sup> Respondent.

8. Wafula further depones that the 2<sup>nd</sup> Respondent issued one year employment contracts ending on 31<sup>st</sup> July 2017, to the Claimant's members. The contracts were renewed for a further one year to lapse on 31<sup>st</sup> July 2018.

9. Wafula adds that in June 2018, the 1<sup>st</sup> Respondent varied its agreement with the 2<sup>nd</sup> Respondent and brought in Sheer Logic Management Consultant Limited, the 3<sup>rd</sup> Respondent herein to handle the Mombasa container terminal.

10. The 2<sup>nd</sup> Respondent therefore maintains that it was no longer responsible for the Mombasa container terminal operated by the 1<sup>st</sup> Respondent and as such, the 2<sup>nd</sup> Respondent did not renew employment contracts for the Claimant's members.

11. The 3<sup>rd</sup> Respondent's application dated 15<sup>th</sup> November 2018 is based on the following grounds:

- a) The Claimant's Memorandum of Claim discloses no reasonable cause of action as between the Claimant and the 3<sup>rd</sup> Respondent;
- b) The claim is scandalous, frivolous and/or vexatious;
- c) It may prejudice, embarrass or delay the fair trial of the cause;
- d) It is otherwise an abuse of the court process.

12. In a supporting affidavit sworn by the 3<sup>rd</sup> Respondent's Acting Human Resource Manager, Reinhard Ranji it is deponed that with effect from 1<sup>st</sup> June 2017, the 3<sup>rd</sup> Respondent was contracted by the 1<sup>st</sup> Respondent to provide agreed labour supply services.

13. Pursuant to the aforesaid contract between the 3<sup>rd</sup> Respondent and the 1<sup>st</sup> Respondent, the 3<sup>rd</sup> Respondent contracted its employees with effect from 1<sup>st</sup> July 2018 for purposes of supplying labour services to the 1<sup>st</sup> Respondent.

14. Ranji further depones that the 3<sup>rd</sup> Respondent is under no obligation, legal or otherwise, to any of its employees in respect of any period prior to the said employee's employment by the 3<sup>rd</sup> Respondent.

15. Additionally, Ranji states that the Claimant Union is neither a party nor privy to any of the 3<sup>rd</sup> Respondent's contracts of employment with its employees. The Claimant therefore has no legal or other right to query and/or otherwise interfere with the 3<sup>rd</sup> Respondent's employment contracts with the latter's employees.

16. My consideration of the multiple applications filed by the Respondents together with the supporting affidavits and submissions reveal the following:

- a) That there exists an outsourcing agreement between the 1<sup>st</sup> Respondent and 2<sup>nd</sup> Respondent and a separate one between the 1<sup>st</sup> Respondent and the 3<sup>rd</sup> Respondent;
- b) That both outsourcing agreements have a direct impact on the Claimant's members who have variously been deployed to work for the 1<sup>st</sup> Respondent;
- c) That the said outsourcing agreements have generated several rights and obligations for all parties in the suit herein;
- d) That there are sharp disagreements among the Respondents on the extent and import of the said rights and obligations.

17. For the Court to determine the impact of the outsourcing agreements on accrued and subsisting rights of the Claimant's members, it will be necessary to take evidence in a full trial. I have therefore arrived at the conclusion that to allow any of the Respondents to disembark from the proceedings herein would give rise to a miscarriage of justice.

18. For this reason, the Respondents applications dated 23<sup>rd</sup> August 2018, 4<sup>th</sup> October 2018 and 15<sup>th</sup> November 2018 are declined.

19. The costs of the applications will be in the cause.

20. Orders accordingly.

**DATED SIGNED AND DELIVERED AT MOMBASA THIS 24<sup>TH</sup> DAY OF JANUARY 2019**

**LINNET NDOLO**

**JUDGE**

Appearance:

Mr. Wawire for the Claimant

Mr. Adhoch for the 1<sup>st</sup> Respondent

Mr. Omondi for the 2<sup>nd</sup> Respondent

Mr. Kibanya for the 3<sup>rd</sup> Respondent