



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA

CAUSE NO 654 OF 2017

KHALID SALIM OMARE.....1ST CLAIMANT

OMAR NGWANE JILLO.....2ND CLAIMANT

HAMISI S. NGARE.....3RD CLAIMANT

SIRAJ ALI SHAME.....4TH CLAIMANT

MUSA YUSUF KATANA.....5TH CLAIMANT

JILO ATHMAN OMAR.....6TH CLAIMANT

VERSUS

SWALEH AWADH SWALEH.....1ST RESPONDENT

NOOR ISLAMIC LIBRARY TRUST.....2ND RESPONDENT

RULING

1. By Chamber Summons dated 24th November 2017 and filed in court on 29th November 2017, the 1st Respondent, Swaleh Awadh Swaleh seeks orders to strike out the claim herein as against him. The application is based on the following grounds:

- a) That the Statement of Claim does not disclose any reasonable cause of action as against the 1st Respondent;
- b) That the entire suit against the 1st Respondent is scandalous, frivolous and/or vexatious;
- c) That the 2nd Respondent is a separate legal entity capable of being sued in its own name;
- d) That there existed no employment relationship, legal or otherwise, between the Claimants and the 1st Respondent;
- e) That the Statement of Claim as drafted as against the 1st Respondent is vague, unclear and ambiguous.

2. The Claimants filed Grounds of Opposition on 8th February 2018 stating that:

- a) The application is an abuse of the court process and is specifically designed to delay the hearing of the main suit;
- b) The 1st Respondent is the main trustee of the 2nd Respondent and is the one through whom the 2nd Respondent acted when employing and dealing with the Claimants;
- c) There exists a relationship between the 1st Respondent and the Claimants in that it is the 1st Respondent with whom the Claimants were employed by the 2nd Respondent and the 1st Respondent as a trustee of the 2nd respondent was in charge of the day to day running of the 2nd Respondent.

3. By consent of the parties, the application was dispensed with by way of written submissions.

4. The single issue for determination in this application is whether the 1st Respondent has been properly joined in these proceedings. In the submissions filed on behalf of the Respondents, reference was made to Section 3(2) and (3) of the Trustees (Perpetual Succession) Act which provides that upon incorporation, trustees become a body corporate, by the name specified on the certificate of incorporation, with capacity to sue and be sued in the corporate name.

5. By a supplementary affidavit sworn on 14th February 2018, the 1st Respondent produced a Certificate of Incorporation under Noor Islamic Library Foundation Registered Trustees, the 2nd Respondent herein. It is instructive to note that the 1st Respondent is named as one among five trustees.

6. The Court was unable to find any reason as to why the Claimants chose to single out the 1st Respondent from all the other trustees for joinder in these proceedings. As a result, the 1st Respondent's application dated 24th November 2017 is allowed. Consequently, the 1st Respondent's name is struck off from these proceedings.

7. Each party will bear their own costs in the application.

8. Orders accordingly.

DATED SIGNED AND DELIVERED AT MOMBASA THIS 7TH DAY OF MARCH 2019

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JUDGE

Appearance:

Mr. Aminga for the Claimants

Mr. Khalid for the Respondents