



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT KISUMU

ELRC PETITON NO. 70 OF 2018.

(Before Hon. Justice Mathews N. Nduma)

FRANCIS NDAVI & 527 OTHERS.....PETITIONER

VERSUS

PUT SARAJEVO GENERAL ENGINEERING COMPANY....RESPONDENT

RULING

1. Notice of Preliminary Objection was filed by the respondent to the effect that the court lacks jurisdiction to hear and determine this matter.
2. That this is an ordinary cause disguised as a constitutional petition and the jurisdiction of the court has thus not been properly invoked.
3. That the matter is subjudice and contravenes *Section 6 of the Civil Procedure Act* since similar matters are pending in the Chief Magistrate Court at Kangundo namely cause 218, 219, 220, 221, 222, 223, 224, 225, 226, 227 and 264 of 2018.
4. That Verifying Affidavit in support of the petition is totally defective as the deponent therein Collins O.K Oremo does not have authority to swear it.
5. That petitioners lack capacity to seek orders affecting the Respondent's property as they have no interest in the same.
6. That there has been misjoinder of parties in the suit as each petitioner's case is unique.
7. That the proceedings especially the Notice of Motion dated 16th November 2018 is an abuse of the due process of law and the same be dismissed with costs.
8. The petition was responded to by way of a replying Affidavit filed on 1st February 2019. The Notice of motion dated 16th November 2018 has also been responded to by a replying affidavit filed on 1st February 2019 and sworn by the Chairman of the respondent.
9. The petitioners/Applicants joined issues with the respondent in a supplementary affidavit filed on 1st February 2019. Both parties filed submissions on the preliminary objection in which the respondent elaborated the objections raised and set out herein and the petitioners sought to validate the petition and notice of motion as filed stating that the court has jurisdiction to hear and determine the same.

Determination

10. The court having considered the objections raised by the respondent in this matter is of the considered view that none of the objections raised are pure points of law within the meaning given in the Mukisa Biscuits case.
11. For the court to determine whether this is an ordinary claim disguised as a constitutional petition; if indeed the matter is subjudice; whether Collins O.K. Oremo has authority to swear affidavit in support of the petition or whether there has been misjoinder of parties, the court has to go into issues of facts and not pure points of law only.
12. Accordingly, the issues raised as preliminary objections shall be dealt with in the Notice of Motion Application and in the petition itself. The court finds accordingly and reserves the matters raised for determination as stated above.

Ruling Dated, Signed and delivered this 2nd day of May, 2019

Mathews N. Nduma

Judge

Appearances

Mr. Magelo for Respondent

Mr. Awino for Petitioners

Chrispo: Court clerk