



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT MOMBASA

CAUSE NO 900 OF 2017

CAROLYNE MBOKU.....CLAIMANT

VS

STEPHEN NJOROGE GIKERA.....1ST RESPONDENT

PUNIT DIPAKUMAR VADGAMA.....2ND RESPONDENT

EMMA OCHIENG'.....3RD RESPONDENT

ALL T/A GIKERA & VADGAMA ADVOCATES

RULING

1. This ruling relates to the 3rd Respondent's Notice of Motion dated 6th March 2019, seeking orders to strike her out from the claim herein. The application, which is supported by the 3rd Respondent's affidavit is based on the following grounds:

- a) That the 3rd Respondent does not appear in the Registration Certificate of Gikera & Vadgama Advocates;
- b) That the 3rd Respondent is not an equity partner in the firm of Gikera & Vadgama Advocates;
- c) That the 3rd Respondent is a salaried employee in the firm of Gikera & Vadgama Advocates;
- d) That the 3rd Respondent is not in any way bound by the acts and/or omissions committed on behalf of the firm;
- e) That the 3rd Respondent is not liable in any way for debts and/or obligations of the firm of Gikera & Vadgama Advocates;
- f) That the 3rd Respondent cannot be sued for acts and/or omissions committed by and/or on behalf of the firm of Gikera & Vadgama Advocates;
- g) That the 3rd Respondent is not a proper party to the suit herein;
- h) That the Claimant will not suffer prejudice if the application is allowed as prayed;
- i) That it would be just and expedient that the application is allowed.

2. The Claimant's response is found in her replying affidavit sworn on 18th March 2019. She depones that she was employed as an Advocate in the firm of Gikera & Vadgama Advocates sometime in July 2015 and that the 3rd Respondent, who was in charge of the Mombasa Office, was her immediate boss.

3. The Claimant further depones that on 12th May 2017, the 3rd Respondent was made a partner in the firm and that the information was announced to all the staff and guests who had attended a cocktail in the office to celebrate the partnership and expansion of the Mombasa Office.

4. The Claimant maintains that the 3rd Respondent is a partner in the firm and was her employer for all intents and purposes and is therefore rightfully sued. She adds that the current application is brought to obstruct and delay her claim.

5. The single issue for determination in this application is whether the 3rd Respondent, Emma Ochieng' has been properly sued. In support of her application, Ochieng' states that she is a salaried employee in the firm of Gikera & Vadgama Advocates and not an equity partner in the said firm.

6. In response, the Claimant states that Ochieng' was in fact a partner in charge of the Mombasa Office and was her immediate boss.

7. In pursuing her application, the 3rd Respondent relied on a Certificate of Registration issued to the 1st and 2nd Respondents on 31st May 2013. Evidently, the 3rd Respondent's name is not on the Certificate of Registration. This does not however rule out the possibility of her admission into partnership post registration.

8. The 3rd Respondent did not object to the averment by the Claimant that the 3rd Respondent was the partner in charge of the Mombasa Office and that she was the Claimant's immediate boss.

9. It was also not lost on the Court that it was in fact the 3rd Respondent who signed the Claimant's termination letter. Ordinarily, termination letters are issued by the Human Resource Department or by someone in senior management. In the opinion of the Court, termination of the employment of an Advocate could not have been effected by a mere salaried employee.

10. Moreover, Section 2 of the Employment Act, 2007 defines an employer to include agent, foreman, manager or factor of such person. Given the role played by the 3rd Respondent in the termination of the Claimant's employment, the Court finds and holds that the 3rd Respondent is a necessary party in these proceedings.

11. For the foregoing reasons, the application dated 6th March 2019 is disallowed with costs in the cause.

12. It is so ordered.

DATED SIGNED AND DELIVERED AT MOMBASA THIS 26TH DAY OF SEPTEMBER 2019

LINNET NDOLO

JUDGE

Appearance:

Mr. Mbuya for the Claimant

Mr. Ngaine for the Respondents