

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR
RELATIONS COURT AT MOMBASA
CAUSE NUMBER 856 OF 2015

BETWEEN

ELIZABETH NDUKU.....CLAIMANT

VERSUS

THE MOTHER SUPERIOR, MARY IMMACULATE SISTERS.....RESPONDENT

AND

MARY IMMACULATE COTTAGE HOSPITAL.....OBJECTOR

RULING

1. Judgment was delivered in favour of the Claimant against the Respondent, on 13th December 2016. The Respondent was ordered to pay to the Claimant, terminal dues and compensation for unfair termination, at Kshs. 384,500.
2. The Claimant has applied for execution of decree issued in the Judgment. An Objection dated 23rd August 2017 has been filed by Mary Immaculate Cottage Hospital. The Objector states it is the rightful Owner of attached properties. The Objector did not know about the Claim, and is not a Party to the Claim.
3. The Claimant filed a Replying Affidavit sworn by herself on 11th September 2017. She states it is not contested that she was employed by the Objector Hospital as Clinical Officer. The Objector is owned by the Respondent. The Objection is intended to delay the Claimant from enjoying the outcome of her Claim.

The Court Finds:-

4. The Objector is an Institution owned, and managed, by the Respondent. This Institution employed the Claimant as a Clinical Officer.
5. The Objector and the Respondent both fit the description of the term ‘Employer’ under Section 2 of the Employment Act 2007. ‘Employer’ includes an agent, foreman, manager or factor of a person, public body or company who has entered into a contract of service to employ any individual. The Objector is a vehicle through which the Respondent carries on hospital business. It is not contested that the Respondent is owner and manager of the Objector. Non-joinder of one, or the other limb of the same enterprise, in a Claim brought by an Employee, should not bar recovery of the proceeds of Judgment made in favour of the Employee, from the business which is common to the Objector and the Respondent. The Claimant worked for the business, and should not be unnecessarily delayed in enjoying her terminal dues and compensatory award. ***The Objection is rejected with costs to the Claimant.***

Dated and delivered at Mombasa this 15th day of February 2018.

James Rika

Judge