



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**  
**AT MOMBASA**  
**CAUSE NO. 587 OF 2017**

**BETWEEN**

**KENNEDY ONYANGO AKADO..... CLAIMANT**

**VERSUS**

**1. BOLLORE AFRICA LOGISTICS (K) LTD**

**2. SHEER LOGIC MANAGEMENT CONSULTANTS LTD.....RESPONDENTS**

*Rika J.*

*Court Assistant: Benjamin Kombe*

*Matete Mwelese & Company Advocates for the Claimant*

*Ameli Inyangu & Partners Advocates for the 1<sup>st</sup> Respondent*

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**RULING**

1. The 1<sup>st</sup> Respondent filed an Application dated 29<sup>th</sup> August 2017. Supported by an Affidavit sworn by the Human Resource Manager, Jane Wairimu, on 21<sup>st</sup> August 2017, the Application seeks to have the following orders:-

- a. Claim herein is struck out.
- b. Alternatively, the 1<sup>st</sup> Respondent's name is struck out from the Claim.
- c. 1<sup>st</sup> Respondent is granted costs.
- d. Any other, or further orders.

2. The Claimant filed his Replying Affidavit sworn on 7<sup>th</sup> November 2017, on 9<sup>th</sup> November 2017.

3. On 6<sup>th</sup> February 2018, Parties agreed to have the Application considered and determined on the strength of their Affidavits, Documents and Submissions. They confirmed filing of their Submissions yesterday, 8<sup>th</sup> March 2018.

4. The 1<sup>st</sup> Respondent's position is that it did not employ the Claimant. The 1<sup>st</sup> Respondent contracted the 2<sup>nd</sup> Respondent through a contract executed on 1<sup>st</sup> July 2016, to provide labour when necessary, to the 1<sup>st</sup> Respondent. The Claimant was an Employee of the 2<sup>nd</sup> Respondent. The 1<sup>st</sup> Respondent is improperly sued.

5. The Claimant admits the Respondents have an agreement for provision of labour as stated by the 1<sup>st</sup> Respondent at paragraph 4 above. The Claimant however, started working for the 1<sup>st</sup> Respondent, before execution of the outsourcing agreement. He had worked for 7 years for the

1<sup>st</sup> Respondent, before he was placed under the 2<sup>nd</sup> Respondent.

**The Court Finds**

6. There is *prima facie* evidence that the Claimant was an Employee of the 1<sup>st</sup> Respondent, even before the 1<sup>st</sup> Respondent brought in the 2<sup>nd</sup> Respondent to the workplace.

7. There are pay slips issued to the Claimant in the name of the 1<sup>st</sup> Respondent, predating the outsourcing agreement.

8. The 1<sup>st</sup> Respondent has properly been named as a Co-Respondent. There is material to suggest Respondents were Co-Employers. The pay slips indicate Bollere Africa Logistics (K) Limited, as a Department of Sheer Logic Management Consultants Limited. It is necessary that the 1<sup>st</sup> Respondent is retained in the proceedings, so that the relationship between the Respondents and the Claimant, and the relationships between the Respondents, can be established. If it is shown upon trial that the 1<sup>st</sup> Respondent was not an Employer, and has improperly been sued, the 1<sup>st</sup> Respondent will have the remedy of costs against the Claimant.

IT IS ORDERED:-

*a. 1<sup>st</sup> Respondent's Application dated 29<sup>th</sup> August 2017 is rejected with no order on the costs.*

*b. Parties to comply with Rule 15 of the Court Rules, and set down the main dispute for hearing.*

**Dated and delivered at Mombasa this 9<sup>th</sup> day of March 2018.**

**James Rika**

**Judge**