



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF NAIROBI**  
**CAUSE NO. 2463 OF 2016**

(Originally Nairobi High Court Civil Case No. 462 of 2007)

**PETER O. BALA**

**MICHAEL LEONARD GICHUHI**

**JUSTIN MUTETI**

**DOUGLAS KYANGANGA**

**SHADRACK MOSE**

**JARED NYAMWEYA**

**JOHN JUHA**

**CATHERINE SEKA ETEMES**

**JUDY KHAYO**

**SAMUEL ADENGE OWERA**

**MORRIS GEORGE INDETHER**

**JULIUS O. ORARO**

**JECTONE ODHIAMBO**

**GEOFFREY KENYATTA**

**CLAIMANTS**

v

**GITARI T. NJERU (Receiver Manager)**

**TOURIST PARADISE INVESTMENTS LTD**

**RESPONDENT**

**JUDGMENT**

1. The 14 Claimants commenced legal proceedings against the Respondent in the High Court on 31 May 2007 alleging unlawful termination of employment on operational grounds (redundancy) on or around 5 July 2001.
2. As consequence of the unlawfulness, the Claimants sought payment of terminal dues (notice pay, severance pay and bonus).
3. In its *Defence*, the Respondent contended that he was a stranger to the employment contracts of the Claimants; that any alleged termination(s) were lawful and in strict compliance with the law, and that the Claimants were not owed any terminal benefits.
4. The Claimants joined Issue with the Defence in a *Reply to Defence* filed on 6 July 2007.

5. On 28 February 2008, the Claimants filed an *Amended Plaintiff* in which it admitted that there had been a previous suit which had been withdrawn.
6. On 17 March 2000, the Claimants filed some proposed 15 Issues as arising for determination and a list of Documents on 7 April 2008.
7. Odhiambo M.T. Adala Advocate filed a *Notice of Change of Advocate* to come on record for the Respondent on 12 June 2008.
8. On 2 May 2014 some 40 persons filed an application to be enjoined into the Suit as Plaintiffs.
9. On 21 November 2016, the High Court transferred the suit to this Court on jurisdictional grounds, and on 20 June 2017, the Court gave directions to facilitate the hearing of the Cause and hearing was scheduled for 21 November 2017.
10. When the parties appeared in Court on 21 November 2017, the Cause was taken out of the hearing list because it was reported the advocate handling the brief on behalf of the Claimants was bereaved.
11. The Court rescheduled the hearing to 5 April 2018 (the rescheduling was done in the presence of Ms. Bonyo for the Claimants and Mr. Adala for the Respondents).
12. When the Cause was called out for hearing on 5 April 2018, the Respondent and his advocate were absent, but because the date had been fixed in the presence of both the advocates for the parties, the Court allowed the hearing to proceed.
13. Only one Claimant Jacktone Odhiambo Ongaro testified and submissions were filed on 20 April 2018.
14. The Court has considered the pleadings, evidence and submissions and identified the questions for determination as, *whether a cause can be maintained against a dissolved company, whether there was unlawful termination of employment and appropriate remedies.*
15. The Court has raised the question of *competency* of the Cause because there is on record a Gazette Notice issued on 11 June 2010 by the Registrar of Companies to the effect that *Tourist Paradise Investments Ltd* had been dissolved.
16. The Court also noted that one of the parties had filed a High Court decree issued on 14 May 2010 vacating the appointment of the Respondent as a Receiver Manager of *Tourist Paradise Investments Ltd*.
17. The Claimant did not address these 2 legal questions during testimony or in the submissions, but in the view of the Court they go to the heart of the validity/competency of the cause(s) of action presented.

#### **Competency of legal action against dissolved company**

18. As already noted, there is on record a Gazette Notice by the Registrar of Companies to the effect that *Tourist Paradise Investment Ltd* had been dissolved.
19. The dissolution occurred when the company was under receivership. The question therefore begs what was the legal implication of the dissolution.
20. The question has been addressed by Courts here and in comparative jurisdictions.
21. In the Canadian case of *Swale Investments v. National Bank of Greece (Canada)* (1997) O.J. No. 4997, the court considered the legal standing of a dissolved corporation and stated

In my view, the plaintiff corporation, having been dissolved and not having been revived, has no legal existence. Section 241(5) merely provides that the corporation, upon revival, has all the rights and privileges and liabilities it would have had if it had not been dissolved. This does not mean that upon revival its legal position is restored

22. In *Reliable Life Insurance v. Ingle et al*, 2009 CanLII 28225 (On SC), the court opined that

I am satisfied that while a dissolved corporation may be sued "as if it had not been dissolved", it does not have the ability to defend itself unless and until it is revived.

23. And finally in *Wolf Offshore Transport Ltd. v. Sulzer Canada Inc.*(1992) N.J. No. 82, the Court had this to say

The company could not contract when it was dissolved. The company could not commence an action when it was dissolved. A dissolved company is akin to a deceased person. It has no capacity to do anything. It is nothing. A person which is non-existent could hardly be said to do anything. If it had a right prior to dissolution, it would have that right on being revived unless statute barred.

24. In *Kenya Power & Lighting Company Limited v Benzene Holdings Limited t/a Wyco Paints* (2016) eKLR, the Court of Appeal after reviewing authorities stated

It has been held consistently by the courts over the years that a company that has been dissolved cannot maintain an action and conversely that no action can be brought against it simply because it does not exist in the eyes of the law. This principle was emphasized as long ago as 1923 by Bankes L.J in *Banque Internationale De Commerce* (supra), which was subsequently in 1959 cited with approval by **Templeton, J** of then Supreme Court of Kenya in *Fort Hall Bakery Supply Co. v Fredrick Muigai Wangoe (1959) EA 474*, who said:

*The party seeking to maintain the action is in the eye of our law no party at all but a mere name only, with no legal existence.....*

*A non-existent person cannot sue, and once the court is made aware that the plaintiff is non-existent, and therefore incapable of maintaining the action, it cannot allow the action to proceed.....*

*Since a non- existent plaintiff can neither pay nor receive costs there can be no order as to costs.*

25. It cannot be disputed that *Tourist Paradise Investments Ltd* cease to exist on 11 June 2010. Therefore, no proceedings can be maintained against it.

26. In my view, the Receiver Manager could not have legally survived the dissolution.

27. And if the Receiver Manager survived the dissolution, there was a Court order vacating his appointment.

28. There is no indication in the file whether any other person was appointed as Receiver Manager.

29. The foregoing is enough to lead this Court to find that the instant Cause cannot be maintained and must be struck out.

30. No order as to costs.

**Delivered, dated and dated in open Court in Nairobi on this 11<sup>th</sup> day of May 2018.**

**Radido Stephen**

**Judge**

**Appearances**

For Claimants Ms. Oloo instructed by Obura Mbeche & Co. Advocates

For Respondent Odhiambo M.T. Adala & Co. Advocates

Court Assistant Lindsey