

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO. 2052 OF 2017

(Before Hon. Justice Hellen S. Wasilwa on 20th June, 2018)

SUSAN NYAKIO GICHARA.....CLAIMANT

VERSUS

TROPIQUA GROUP LIMITED.....1ST RESPONDENT

MIKE KARANJA.....2ND RESPONDENT

RULING

1. The Application before me is the Notice of Motion Application dated 14.2.107 filed by the Respondent herein Mike Karanja and brought under Rule 14 and 17 of the Employment and Labour Relations Court (Procedure) Rules 2016 and Section 12 (3) and 13 of Employment & Labour Relations Court Act and all other enabling provisions of law where the Applicant seeks to be struck of from these proceedings.
2. The Application is based on the grounds that the 2nd Respondent herein is wrongly/improperly enjoined in this suit and that the employment contract is between the Claimant and the 1st Respondent as per the contract dated 28th April 2014. He avers that there are no orders sought against him and **the joinder** is therefore frivolous, vexatious and an abuse of Court process. He submits that no prejudice will be suffered by the Claimant if his name is struck out from these proceedings at this stage.
3. The Application is supported by the supporting affidavit of the Applicant herein sworn on 13.2.2018 where he depones on the facts as per the grounds above.
4. The Claimant/Respondent opposed the Application and filed her Replying Affidavit on 21.2.2018. She avers that though the 1st Respondent employed her vide a contract of service dated 28.4.2014, the 2nd Respondent is one who has operated the business and he paid her salaries and even forced her to sign some letters as per Appendix SNG 1
5. I have considered the averments of both parties. I note that though 1st Respondent employed the Claimant as per the contract of service, however from the documents attached by the Claimant, the 2nd Respondent started dealing with Claimant as his employee and paid her the salary. As per the Kenya Revenue Authority (KRA) withholding Certificate, the tax withheld was held by Michael Robert Karanja the 2nd Respondent herein.
6. The issue of who really employed the Claimant cannot therefore be resolved in this application without calling of further evidence. I therefore find the application without merit and I dismiss it. I direct the main case to proceed for hearing.

Dated and delivered in open Court this 20th day of June, 2018.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

Miss Sossy holding brief for Chege for Respondent – Present

Claimant – Absent