



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF

KENYA AT NAIROBI

CAUSE 1670 OF 2014

PETER OKECH OKOTH.....CLAIMANT

VERSUS

AL-MEEZAN –EXHIBITION LTD.....1ST RESPONDENT

KHELJI MUHAMMAD IDRIS.....2ND RESPONDENT

ABDIAZIZI YUSSUF.....3RD RESPONDENT

RULING

1. By a motion dated 12th June, 2017 the 3rd respondent sought to be removed from the suit on the grounds that there existed no employer-employee relationship between the claimant and himself. According to the applicant, he acquired the premises which were business premises and were closed without any tenants or workers.

2. The claimant opposed the application and filed a replying affidavit in which he deponed on the main that he was employed in June, 2006 by the 1st respondent under proprietorship of the 2nd respondent as a cleaner. On the 8th August, the 3rd respondent locked the premises at 10.00 a.m. and advised him that the closure was for renovation. On 9th he reported to work and was told to come back on 20th August, 2014. When he reported on 20th he was informed that he had been dismissed and when he asked for his terminal dues and benefits the 3rd respondent informed him he did not owe him anything.

3. The 3rd respondent has stated that he bought the premises which at the time of the purchase were closed and there were no tenants and workers. The claimant on the other hand has stated that the premises were owned by the 2nd respondent who presumably sold the same to the 3rd respondent. These are factual positions which can only be determined at the full trial. The court would need to ascertain the veracity or otherwise of the 3rd respondent's assertion that the premises were closed and had no tenants and workers at the time of the purchase. The court would further want to know the terms of transfer of the undertaking from the 2nd to 3rd respondent.

4. In the circumstances, the court will not order a misjoinder of the 3rd respondent to the suit. The application is therefore found without merit and is hereby dismissed with costs.

5. It is so ordered.

Dated at Nairobi this 9th day of August, 2018

Abuodha J. N.

Judge

Delivered this 9th day of August, 2018

Abuodha J. N.

Judge

In the presence of:-

.....for the Claimant

.....for the Respondent.