

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF

KENYA AT NAIROBI

CAUSE 139 OF 2013

HABIBA KADHEY.....CLAIMANT

VERSUS

INTERNATIONAL RESCUE COMMITTEE.....RESPONDENT

RULING

1. An objection was raised by the respondent to the effect that the claimant having been employed by New York based organization to work in Juba and not in Kenya, cannot legally institute a suit in Kenya’s courts and specifically ELRC at Nairobi which does not have jurisdiction to entertain the suit.

2. In opposition to the objection, claimant has contended that the respondent having entered unconditional memorandum of appearance willingly submitted to the jurisdiction of the court. In support of the submission counsel relied on the case of **Kariti & Co Vs South British Insurance Co Ltd [1998] KLR**. The claimant further submitted that she was a Kenyan, was interviewed for the position of finance controller in Kenya, inducted for the job here in Kenya and her termination letter was drawn by the respondent’s office in Nairobi Kenya and issued to her in Kenya.

3. The response to the objection by the claimant raises serious questions of fact and law which cannot be resolved by way of a preliminary objection. The relationship between IRC Kenya and IRC New York-USA would require to be decided to indeed show that the two are separate and distinct organizations from each other. The fact that IRC-Kenya issued the claimant with her termination letter raises fundamental question of law of contract to wit; whether a party not privy to a contract can terminate the same.

4. In this circumstance, the court will disallow the objection and direct that the matter proceeds to trial on merits.

5. It is ordered.

Dated at Nairobi this 28th day of September, 2018

Abuodha Jorum Nelson

Judge

Delivered this 28th day of September, 2018

Abuodha Jorum Nelson

Judge

In the presence of:-

.....for the Claimant and

.....for the Respondent.