

REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS COURT OF KENYA

AT NYERI

CAUSE NO. 272 OF 2016

KUDHEIHA WORKERS.....PETITIONER

AND

OPERATIONS DIRECTOR MR PATRICK

MUNENE WHITE RHINO HOTEL.....RESPONDENT

RULING

1. The Respondent filed a motion seeking the amended memorandum of claim herein be struck out on the basis that the Claimant is non-suited against the Respondent as there is no capacity to sue the Operations Director. It is asserted that there no privity of contract between the operations director and the persons allegedly recruited as the Claimant's members. The Respondent asserts that the Claimant had on two previous occasion to amend its memorandum of claim to bring the correct party to court and the Claimant had failed to do so on both occasions. The Respondent therefore seeks that the suit be struck out.

2. The Claimant is opposed and asserts that the correct party is before the court as the Claimant has been dealing with the operations director of White Rhino and the Respondent is therefore properly sued. The Claimant argues that it has sought to trace the company from the trade marks registered and upon searches at the Companies Registry at Nairobi the company is not registered. The Claimant thus asserts that the Respondent is the appropriate defendant herein.

3. The Court has in the past few months given the Claimant an option to amend the claim so as to bring the correct party to court. The enterprise known as White Rhino Hotel is a trade name for a company the Claimant is apparently keen on representing the employees thereof. The Claimant has sued the operations director and as such is bringing before court an individual who is not the corporate entity the Claimant has a grouse with. The doctrine of separate legal entity espoused in the case of **Salomon v Salomon & Co Ltd [1897] AC 22** is in focus here. The Respondent sued is a manager or director of the Respondent but is distinct from the corporate persona the company bears. In as much as the Claimant has been unable to trace the correct entity to sue, the proper course would be to establish the identity of the appropriate entity to sue before mounting a suit such as the one before court. I find merit in the motion seeking to strike out the amended memorandum of claim. The suit is struck out and I order that each party bears their own costs.

It is so ordered.

Dated and delivered at Nyeri this 31st day of October 2018

Nzioki wa Makau

JUDGE