



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT NAIROBI**

**CAUSE NO. 1292 OF 2012**

**(Before Hon. Justice Hellen S. Wasilwa on 2<sup>nd</sup> October, 2018)**

**JANE IRERI.....CLAIMANT**

**VERSUS**

**THE UNIVERSITY COUNCIL,**

**MULTI MEDIA UNIVERSITY COLLEGE.....RESPONDENT**

**RULING**

1. The Application before the Court is dated 18/4/2018 and filed in this Court by the Respondent/Applicants herein. The Application is Preliminary Objection raised by the Applicants on the following grounds:-

***1. That the Respondent described herein is a non-juristic person, not capable of being sued in its own capacity.***

***2. The claim as drafted in the Amended Statement of claim offends Section 20 of the Universities Act as read together with Section 3 of the Multi Media University Charter 2013.***

2. The Respondent/Applicant submitted that Multi Media University is a body corporate and the only juristic person under Section contemplated under Section 20 of University Charter.

3. The Applicant submits that the Claimant has sued University Council of Multi Media University College which body does not have a legal personality capable of being sued as it's only a management organ established under Section 19 of Multi Media University Charter.

4. They cited **Maurice Ooko Otieno vs Mater Hospital** where the Court was very candid on this issue. They aver that this issue is not a mere technicality that can be cured with an amendment as Civil Procedure Act envisages that the description of the Parties must be very clear and that this is a substantive issue.

5. They submitted that the envisaged amendment to the Statement of Claim does not cure this issue. They seek that the Preliminary Objection be allowed.

6. The Claimant/Respondent opposed the Preliminary Objection. The Claimant submitted that a Preliminary Objection cannot lie where facts need to be ascertained. They referred to **Mukhisa Biscuit vs West End** case, the case that deals with this issue.

7. They have also submitted that the Application should have proceeded under Order 2 of Civil Procedure Rules rule 15, which deals with striking out of pleadings.

8. The Respondents also submit that the Preliminary Objection relates to joinder on description of the Parties. They aver that the correct person at the time as Claimant was Multi Media University. This is because the Claimant started as a Constituent College of Jomo Kenyatta University of Agriculture and Technology (JKUAT). In 2013, it was granted a chapter to become a fully-fledged university issued under the Universities Act 2012 as per Legal Notice 155 at page 3.

9. They also submitted that a mistake of description of Parties is a mistake of joinder and does not invalidate the suit.

10. The Respondent/Claimant cited **Republic vs The Principle Secretary, Ministry of Defence Ex-Parte George Kariuki Waithaka,**

**Nairobi High Court Misc Application No. 276 of 2015.**

11. I have considered the submissions of both parties. I do agree that the issue of a Preliminary Objection is as established in **Mukhisa Biscuits vs West End Distributors (1965) E.A page 701**, the judgment of Sir Charles Newbold, where he stated as:-

*“A Preliminary Objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion.....”*

12. In the current case, the issue of the description of the Respondent would indeed need further facts to establish the real Respondent that ought to be sued if the current one is not the current one.

13. Also as held by the Court of Appeal in **Republic vs Principle Secretary, Ministry of Defence** (supra):-

*“suffice it to say that a defect in form of the title or heading of an appeal, or a misjoinder or no-joinder of parties are irregularities that do not go to the substance of the appeal and are curable by amendment... is the terms of title to the appeal as adopted by the Attorney General in this matter deflection or irregular. We think not, as we find that it substantiates complies with the guidelines set out by this Court”.*

14. As held by the Court of Appeal the issue of misdescription of the Respondent herein cannot lead to miscarriage of justice. This is a matter that can be corrected through an amendment.

15. I therefore find that this Preliminary Objection must fail on 2 grounds that the mistake raised does not lead to a miscarriage of justice if at all and secondly that the issue would only be corrected by analysis of further facts which defeats the law as established in **Mukhisa Biscuit case**.

16. Costs of this Preliminary Objection to the Claimants.

Dated and delivered in open Court this **2<sup>nd</sup> day of October, 2018.**

**HON. LADY JUSTICE HELLEN WASILWA**

**JUDGE**

**In the presence of:**

Magau holding brief for Dr. Kuria for the Claimant/Applicant – Present

Respondents – Absent