



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT NAIROBI**

**CAUSE NO. 1650 OF 2016**

**NICHOLAS NJENGA MWANGI.....CLAIMANT**

**V**

**ADVENT VALUERS LIMITED.....RESPONDENT**

**RULING**

1. For determination is an application dated 30 April 2018 by the Respondent seeking orders

1. This Honourable Court be pleased to grant leave to serve a third party notice upon Virgin Estate Limited of P.O. Box 46246-00200 Nairobi in the Republic of Kenya a company duly incorporated in the aforesaid Republic.

2. Costs for this application be provided for.

2. Although served, the Claimant did not respond to the application or attend the Court when submissions were made on 10 July 2018.

3. The grounds advanced by the Respondent in support of the application were that it had entered into a Management Agreement with the proposed third party and that under the Agreement, it had the authority to hire and control employees on behalf of the proposed third party.

4. According to the Respondent, it was an agent of the proposed third party and that in this respect it paid the Claimant's salaries from funds in an account belonging to the proposed third party before the relationship was terminated on 29 June 2016.

5. The Respondent attached a copy of the Management Agreement to the application.

6. The Court has perused the Agreement and more so clauses 2.3.1, 2.3.2, 3.1 and 4.4.

7. It is apparent that the proposed third party was providing the funds for paying the employees' wages but at the same time, it appears that the Respondent was the employer.

8. In consideration of the above cited clauses and the definition of employer in section 2 of the Employment Act, 2007, the Court will allow the application and further direct that

(a) Third party notice to be served within 15 day, failure to which the leave lapses.

(b) Third party is at liberty to file any appropriate responses within 21 days of service of Third party notice.

(c) Witness Statements and documents to be filed exchanged within 21 days of service of Third Party notice

(d) Agreed Issues be filed within 45 days after filing of third party response.

**Delivered, dated and signed in Nairobi on this 2<sup>nd</sup> day of November 2018.**

**Radido Stephen**

**Judge**

**Appearances**

For Claimant Macharia Nderitu & Co. Advocates

For Respondent Ms. Feksi instructed by Anthony Burugu & Co. Advocates

Court Assistant Lindsey