



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO 1964 OF 2016

WAGO ROBA MOLU.....CLAIMANT

VERSUS

PERSONAL SYSTEMS COMPUTER LIMITED.....RESPONDENT

RULING

1. This ruling relates to the Respondent's application brought by Notice of Motion dated 3rd November 2016 seeking orders to strike out the Claimant's claim dated 19th September 2016.

2. The application which is supported by the affidavit of the Respondent's Director, Mahmood Osman Khambiye sworn on 3rd November 2016 is based on the following grounds:

- a) That the Claimant has never been employed by the Respondent and therefore the Respondent is not a proper party in this suit;
- b) That the suit instituted against the Respondent discloses no reasonable cause of action in law to warrant the claims made against the Respondent;
- c) That the Respondent has no contractual obligation to the Claimant;
- d) That the suit herein is scandalous, frivolous and vexatious;
- e) That the suit is an abuse of the court process;
- f) That it would fair and just for the suit to be struck out with costs.

3. In the supporting affidavit sworn by the Respondent's Director, Mahmood Osman Khambiye on 3rd November 2016 he depones that the Respondent having been incorporated in the year 2007, could not have employed the Claimant in the year 2000 as pleaded.

4. Khambiye further depones that the Respondent undertakes its business in Regal Plaza where security services are provided by Security Seven Limited. He denies that the Respondent ever engaged the services of the Claimant as a watchman or guard.

5. It is also deponed that the Employment Identification Card produced by the Claimant is a forgery intended to coin an employment relationship between the Claimant and the Respondent which does not exist.

6. The Claimant's response is contained in his replying affidavit filed on 26th January 2017. He depones that he was employed as a guard on 19th February 2000.

7. The Claimant states that the issues raised in the application can only be ventilated through a full hearing and not by way of an application.

8. The Respondent's application is premised on its averment that it was incorporated in the year 2007 and could not therefore have employed the Claimant in the year 2000 as stated in the Memorandum of Claim. The Respondent also states that the Staff Identification Card produced by the Claimant is a forgery.

9. The date of the Respondent's incorporation is evidenced by a certificate of incorporation issued on 8th June 2007. While this may have an impact on the effective date of employment it cannot serve as conclusive evidence that there was no employment relationship between the Claimant and the Respondent.

10. Additionally, the fact that the security services at the premises where the Respondent was domiciled were provided by a contracted security firm does not mean that the Respondent did not retain its own internal security. Moreover, the authenticity of the Staff Identification Card produced by the Claimant can only be determined in a full trial.

11. Ultimately I agree with Counsel for the Claimant that the issues raised in this application can only be determined after taking evidence in a full hearing.

The Respondent's application dated 19th September 2016 is therefore declined with costs in the cause.

12. It is so ordered.

DATED SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 13TH DAY OF APRIL 2017

LINNET NDOLO

JUDGE

Appearance:

Mr. Waiganjo for the Claimant

Mr. Kogweno for the Respondent