



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO 416 OF 2016

CHARLES GITAU MANDE.....CLAIMANT

VERSUS

EMBASSY OF THE KINGDOM OF BELGIUM IN NAIROBI...RESPONDENT

RULING

1. This ruling flows from the Respondent's application brought by Notice of Motion dated 28th November 2016 seeking orders to strike out the Claimant's claim.
2. The application which is supported by the affidavit of the Ambassador of the Embassy of the Kingdom of Belgium in Nairobi, De Bilderling Roxane sworn on 28th November 2016, is based on the following grounds;
 - a. The named Respondent is a diplomatic mission of the Kingdom of Belgium. It is not a body corporate that is capable of suing or being sued or even entering into contracts;
 - b. The named Respondent enjoys diplomatic immunity under Section 4(1) and Article 31 of the First Schedule of the Privileges and Immunities Act, Cap 179 Laws of Kenya;
 - c. The proper Respondent ought to be the Kingdom of Belgium which enjoys jurisdictional immunity under the general principles of customary international law;
 - d. The named Respondent and the proper Respondent have not in any way waived their immunity;
 - e. The Court lacks jurisdiction to entertain the Respondent's claim under the general principles of customary international law as domesticated under Article 2(5) of the Constitution of Kenya, 2010.
3. The Claimant's response is contained in his affidavit sworn on 17th February 2017. He depones that his contract of employment was signed by the Ambassador of the Embassy of the Kingdom of Belgium in Nairobi.
4. The Claimant states that a suit against an Embassy should not fail merely because it ought to have been filed against the Government of the sending state.
5. On the issue of immunity the Claimant submits that Section 4(1) and Article 31 of the First Schedule of the Privileges and Immunities Act do not operate as a blanket cover against enforcement of private employment rights.

6. The Respondent's application raises two (2) issues:

a. First, the proper party to be sued;

b. Second, the impact of Section 4(1) and Article 31 of the First Schedule of the Privileges and Immunities Act.

7. To my mind, these are not straightforward issues. Foreign Embassies and Missions are a special category of employers operating under specific legal and administrative arrangements. The Court would need to examine the specific arrangements in this case in order to determine whether the proper party has been sued.

8. Regarding the issue of immunity, the Court will need to delve into the nature and extent of the immunity enjoyed by the Embassy of the Kingdom of Belgium in Nairobi.

9. In my view these are not questions that can be adequately answered in an interlocutory application such as the one before me, which in essence is a preliminary objection.

10. For this reason the Respondent's application is declined with costs in the cause.

11. It is so ordered.

DATED SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 5TH DAY OF MAY 2017

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JUDGE

Appearance:

Mr. Kubai for the Claimant

Mr. Omino for the Responden