



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO 463 OF 2016

KENYA UNION OF COMMERCIAL

FOOD AND ALLIED WORKERS.....CLAIMANT

VERSUS

OLEKEJUADO WATER & SEWERAGE CO LTD....1ST RESPONDENT

TANATHI WATER SERVICES BOARD.....2ND RESPONDENT

RULING

1. This ruling arises from the 2nd Respondent's application brought by Chamber Summons dated 6th May 2016, seeking to be struck out of the proceedings herein.
2. The application which is supported by the affidavit of the 2nd Respondent's Water Service Providers Manager, Jane Sein is based on the following grounds:
 - a. The 2nd Respondent's duty as the Licensor of the 1st Respondent is limited to determining standards for the provision of water services to consumers and ensuring compliance;
 - b. The 1st Respondent is an independent company duly registered under the Companies Act. It has its own management and board of directors and can hire and fire its employees;
 - c. The 2nd Respondent is not mandated to and cannot interfere with the internal affairs and management of the 1st Respondent;
 - d. The 2nd Respondent is not a proper party to these proceedings for the reason that it is not privy to any agreements between the Claimant and the 1st Respondent;
 - e. The dispute herein concerns employees of the 1st Respondent and not the 2nd Respondent;
 - f. For want of privity of contract no action has arisen against the 2nd Respondent;
 - g. The proceedings against the 2nd Respondent are frivolous, vexatious and an abuse of the court process.

3. In response, the Claimant filed a replying affidavit sworn by its Secretary General, Boniface M. Kavuvi on 10th May 2016. He depones that in enjoining the 2nd Respondent the Claimant acted within the law since it is the 2nd Respondent who is the asset owner while the 1st Respondent does not own any assets.

4. Kavuvi adds that as the Licensor of the 1st Respondent, the 2nd Respondent is duty bound under the Water Act to ensure that the 1st Respondent is capable of delivery of services, including payment of salaries and wages within the law.

5. The Employment and Labour Relations Court is established under Article 162(2) of the Constitution as a specialized court to hear and determine disputes relating to employment and labour relations. Its jurisdiction is donated by Section 12 (1) the Employment and Labour Relations Court Act. Section 12 (1) (a) provides as follows:

12(1) The Court shall have exclusive original and appellate jurisdiction to hear and determine all disputes referred to it in accordance with Article 162(2) of the Constitution and the provisions of this Act or any other written law which extends jurisdiction to the Court relating to employment and labour relations including—

a. disputes relating to or arising out of employment between an employer and an employee;

b.;

6. My reading of these provisions is that as far as employment matters are concerned, the Court must in the first instance, establish the existence of an employment relationship between the parties. In the present case, the Claimant has brought action on behalf of its members who are employees of the 1st Respondent.

7. In defending its action to enjoin the 2nd Respondent, the Claimant states two things; first that the 2nd Respondent is the Licensor of the 1st Respondent and second, that the 1st Respondent has no assets of its own.

8. From the evidence on record, the 2nd Respondent plays a supervisory and regulatory role over the 1st Respondent. I do not think however that this can create an employment relationship between the 2nd Respondent and the Claimant's members, much less the lack of financial capacity on the part of the 1st Respondent.

9. In light of the foregoing, the Court finds that there is no employment relationship between the 2nd Respondent and the Claimant's members on whose behalf this suit has been brought. The result is that the 2nd Respondent is improperly joined in these proceedings and is therefore struck out.

10. Each party will bear their own costs.

11. Orders accordingly.

DATED SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 28TH DAY OF JULY 2017

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JUDGE

Appearance:

Mr. Atela (Union Representative) for the Claimant Miss Mwinzi for the Respondents