



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT NAIROBI
CAUSE NO. 1212 OF 2014

(Before Hon. Lady Justice Hellen S. Wasilwa on 21st September, 2017)

HELEN MAKONE.....CLAIMANT

VERSUS

MAENDELEO YA WANAWAKE ORGANISAITON (YWO).....1ST RESPONDENT

RUKIA SUBOW.....RESPONDENT

RULING

1. The Preliminary Objection before the Court is dated 15th September, 2015, filed on 18th September 2015, premised on the grounds that:

- 1. That the 2nd Respondent is not a proper party to this suit by virtue of the provisions of Section 12 of the Non-Governmental Organizations Coordination Act No. 19 of 1996.***
- 2. That the Claimant's Claim is incompetent and improperly before Court and should be struck out.***
- 3. That the Claimant's Claim reveals no cause of action, reasonable or otherwise as against the 2nd Respondent.***
- 4. That the Claim is fatally defective for non-compliance with the mandatory provisions of law and/or procedure.***
- 5. That the Claim is otherwise misconceived and/or an abuse of the process of the Court.***

2. The Preliminary Objection was disposed of by way of written submissions. The 2nd Respondent submit that the 1st Respondent is a Non-governmental organization registered under the provisions of Section 12(1) (a) of the Non-Governmental Organizations Coordination Act No. 19 of 1990. That under provisions of Section 12(3) thereof the 1st Respondent is a body corporate with perpetual succession capable of being sued and suing in their own name, entering into contracts and doing or performing all such other things or acts necessary for proper performance of its functions under the Act, which may be lawfully done or performed by a body corporate.

3. That the 2nd Respondent reiterates that all the duties and functions that were carried out by herself were in her capacity as the former chairperson of the 1st Respondent. They rely on the case of **Shirika la Kusaidia Watoto wa Kenya alias Faida Kenya and 2 Others vs Roda Rop and Another Civil Suit No. 155 of 2005(1)** where it was held:

“According to the original plaint as well as the amended plaint, the first plaintiff is described as a non-governmental organization registered under Non-Governmental Organization Coordination Act 1990. Section 12(3) of the Act states as follows:

“A registered Non-Governmental Organization shall by virtue of such registration be a body corporate capable in its name of:

a) Suing and being sued

b) Etc”

4. The above provision has not been challenged by the Plaintiffs. In light of the provisions of the law, only the first Plaintiff should have filed this suit.

5. The second and third plaintiffs had no capacity in joining themselves as Plaintiffs in this suit irrespective of whatever position they held in the Plaintiff organization unless they had their own justiciable claims against the Defendants as well.

6. They submit that the Claimant lacks any reasonable cause of action against the 2nd Respondent. That the 2nd Respondent has been improperly joined as a party as at all material times she was acting in her official capacity on behalf of the 1st Respondent as such cannot be therefore personally enjoined in the suit. They pray for the Preliminary Objection to be upheld.

7. The Claimant has also filed submissions wherein she states that Section 12 of the Non-Governmental Organizations Coordination Act No. 19 of 1996 bars the 2nd Respondent from being sued. That the 2nd Respondent has raised similar arguments in past cases and the Court has rejected them. They cite the case of **Agnes Naliaka Masika Vs Rukia Subor and two others** Industrial Court Cause No. 2174 of 2014 where it was stated:

“The Respondents herein have admitted that they are officials of Maendeleo ya Wanawake as described in the Memorandum of Claim. They therefore fit into the definition of the employer as agents of employer. They have therefore not been misjoined as the claim properly sets out the capacity in which they have been sued... The Court will deal with them in the capacity in which they have been sued.”

8. The Claimant further submits that Grounds 2, 4 and 5 of the Preliminary Objection are ambiguous and cannot be upheld. Further the cause of action against the 2nd Respondent has been clearly set out in paragraphs 5,6,7,8,9,11,12,16,17,18,19,20,21,23 of the Statement of Claim. They therefore pray for the Application to be allowed as prayed.

9. I have considered the submissions of both parties herein. The issue to determine is whether the 1st Respondent has been rightly enjoined in this case as a party. To determine this issue, I refer to Order 1 rule 3 of the Civil Procedure Act which provide as follows:

“All persons may be joined in one suit as defendants against whom any right to relief in respect of or arising out of the same act or transaction or series of acts or transactions is alleged to exist, whether jointly, severally or in the alternative, where, if separate suits were brought against such persons any common question of law or fact would arise”.

10. The above preposition clearly sets down issue of joinder of defendants. The Respondents herein have

submitted that 1st Respondent is wrongly enjoined as the 2nd Respondent can stand alone as the rightful Defendant against whom the Claimant can obtain her reliefs if at all.

11. It is true that the 2nd Respondent can stand alone as a Respondent in this case. However the fact that the 2nd Respondent has capacity to sue or be sued is not a bar to enjoining other parties against whom reliefs may be sought so long as their stake in the matter is explained.

12. Infact Order 1 rule 7 of Civil Procedure Act states as follows:

“Where the plaintiff is in doubt as to the persons from whom he is entitled to obtain redress, he may join two or more defendants in order that the question as to which of the defendants is liable, and to what extent, may be determined as between all parties”.

13. Going by above preposition, it is my finding that the 1st Respondent is not improperly enjoined in this case because the extent of any liability if at all will be determined in the final analysis and if not found calpable no order against the 1st Respondent will be made.

14. I therefore find the Preliminary Objection has no merit and I dismiss it accordingly.

15. Costs in the cause.

Read in open Court this **21st day of September, 2017.**

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

Mukele for 2nd Respondent - Present

No appearance for the Claimant