



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU
CAUSE NO. 380 OF 2016

BRIAN OMINDI SHEM

CLAIMANT

v

RAM FEEDS INDUSTRY

RESPONDENT

RULING

1. Brian Oindi Shem (Claimant) through the firm of M. Korongo & Co. Advocates sued Ram Feeds Industry alleging breach of contract/unfair termination of employment.
2. The Respondent instructed successive firms of Advocates culminating in a Notice of Change of Advocates filed in Court by Ochweri Ngamate & Co. Advocates on 22 June 2017.
3. On the same date, the aforesaid firm filed a motion seeking
 1. ...
 2. **THAT** the Claimants Cause be dismissed with costs to the Respondent as the Respondent is not a legal entity that can be sued.
 3.
4. When the motion was placed before Court on 13 July 2017, the Court directed that it be served upon the Claimant and scheduled the hearing on 21 September 2017.
5. The application was served upon the Claimant and he filed a replying affidavit in opposition on 10 July 2017.
6. When the motion came up as scheduled, the Court confirmed that it would hear the parties, but when it was later called out after going through the cause list, Ms. Kerubo for the Claimant was not in Court.
7. Because Ms. Kerubo had not disclosed to the Court of any other engagements she might have been involved in and her whereabouts were not known, the Court allowed Mr. Bosire to prosecute the application.
8. One of the documents relied upon by the Respondent to urge that it was not a legal entity capable of being sued is a certificate of business name registration issued to one *Frankline Murega Etyang* carrying on business as RAM FEEDS ANIMAL PRODUCTS.
9. In the replying affidavit, the Claimant indicated that he would seek leave to amend the Memorandum

of Claim.

10. Among the documents which the Claimant had filed in Court with the Memorandum of Claim was a job identity card embossed with the name *RAM FEEDS INDUSTRY*.

11. It is apparent that the Claimant sued the entity listed in the job identity card as *the employer*. The Claimant may not be faulted in that regard as section 9 of the Employment Act, 2007 requires an employer to issue a formal contract to an employee disclosing the name and or identity of the employer.

12. In the view of the Court, the misnomer as to the correct person to be sued can be cured by appropriate amendment to bring out the proper Respondent.

13. The law is that amendments are generously allowed at this early stages of proceedings.

14. The Court therefore orders that

(a) the Claimant to file and serve an Amended Memorandum of Claim on or before 10 November 2017.

(b) Respondent be at liberty to file (amended) Response within 21 days of service.

(c) Costs in the Cause.

Delivered, dated and signed in Nakuru on this 6th day of November 2017.

Radido Stephen

Judge

Appearances

For Claimant

M. Korongo & Co. Advocates

For Respondent

Mr. Bosire instructed by Ochweri Ngamate & Co. Advocates

Court Assistants

Nixon/Martin