



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO 1493 OF 2017

SAMUEL UCHE AJEAGBU.....CLAIMANT

VERSUS

EAGLE VET KENYA LIMITED.....1ST RESPONDENT

EZEKIEL ONYANGO.....2ND RESPONDENT

RULING

1. This is an application by the 2nd Respondent, Ezekiel Onyango seeking striking out of the Claimant's claim against him. The application, which is supported by an affidavit sworn by the 2nd Respondent is based on the following grounds:

- a. That the 2nd Respondent who is the 1st Respondent's Managing Director, has never employed the Claimant;
- b. That the Claimant's contract of employment was with the 1st Respondent;
- c. That the suit as framed does not disclose any allegation of a contract of employment between the Claimant and the 2nd Respondent and/or any act that the 2nd Respondent is alleged to have done or failed to do in his personal capacity and/or as an employer of the Claimant.;
- d. That the 1st Respondent only acts through its directors but is a separate legal entity capable of contracting in its own capacity as a legal person and is indeed *sui juris*;
- e. That the interaction between the Claimant and the 2nd Respondent was only in the 2nd Respondent's capacity as the Managing Director of the 1st Respondent;
- f. That there is a clear misjoinder of the 2nd Respondent in this suit as his actions were totally in line with his duties as the Managing Director of the 1st Respondent;
- g. That the Claimant's suit is only meant to vex the 2nd Respondent on account of the Claimant's perceived personal differences between the 2nd Respondent and his co-director, one Anthony Obidulu, who has sworn an affidavit in support of the claim herein;
- h. That it is not legally or otherwise desirable that the 2nd Respondent be sued in his personal capacity on the basis of an employment contract between the Claimant and the 1st Respondent.

2. The Claimant responded to the 2nd Respondent's application by a replying affidavit sworn on 17th October 2017. He depones that the 2nd Respondent, in his capacity as the Managing Director of the 1st Respondent, irregularly issued him with an email notice at about 1803 hours, with an attached letter purporting to terminate his employment with the 1st Respondent.

3. The Claimant claims to have information that prior to the termination of his employment contract, the 2nd Respondent who is the Managing Director and 50% shareholder of the 1st Respondent had filed an insolvency petition against the 1st Respondent thus clearly showing that the 2nd Respondent was not acting in the best interests of the Company.

4. The Claimant further states that upon being served with a court order directing the 1st and 2nd Respondents to pay the Claimant's salary and house allowance for June 2017, the 2nd Respondent purported to terminate the Claimant's employment with the 1st Respondent, via email.

5. The single issue for determination in this application is whether the 2nd Respondent is properly joined in these proceedings. It is not in contest that the Claimant was employed by the 1st Respondent by contract of employment dated 7th December 2015 and signed by the 2nd Respondent in his capacity as the Managing Director.

6. It is also not in dispute that the 2nd Respondent signed the Claimant's termination letter dated 31st July 2017 in the same capacity. In his submissions before the Court, Counsel for the Claimant, Mr. Sabula conceded that the 1st Respondent was a separate legal entity. He however submitted that the Claimant believed that his claim cannot be determined effectively without joinder of the 2nd Respondent.

7. The Court was referred to the decision in ***Kizito M. Lubano v Kemri Board of Management & 6 others [2015] eKLR*** where the twin tests for determining the question of who is a necessary party, established in ***Werrot and Company Ltd & others v Andrew Douglas & others, HCCC No. 2363 of 1998, LLR 2828*** were restated as:

a. There must be a right to some relief against the party in respect of the matter in question;

b. The party must be necessary in order for the court to pass an effective decree.

8. All the Claimant says is that he believes that his claim will not be effectively determined if the 2nd Respondent is absent from the proceedings. He does not however advance facts to support his belief. It seems to me that if the 2nd Respondent committed any wrongs against the Claimant, he did so in his capacity as the Managing Director of the 1st Respondent, with whom the Claimant had an employment relationship.

9. The Court did not find anything done by the 2nd Respondent in his personal capacity. Additionally, the Court finds that the rights and obligations of the 1st Respondent as an employer and the Claimant as an employee, will be well determined without joinder of the 2nd Respondent.

10. Ultimately, I find that the 2nd Respondent is not a necessary party in these proceedings and proceed to strike him off.

11. The costs of the application will be in the cause.

12. Orders accordingly.

DATED SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 8TH DAY OF DECEMBER 2017

LINNET NDOLO

JUDGE

Appearance:

Mr. Sabula for the Claimant

Mr. Ochieng for the 2nd Respondent