



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU

CAUSE NO. 108 OF 2013

VINCENT IDEWACLAIMANT

V

KISLEV LIMITED..... RESPONDENT

JUDGMENT

1. The Claimant acting in person commenced legal proceedings against *Patriotic Guards Services Ltd* on 6 May 2013 alleging that he had been its employee before resigning on 15 June 2010.
2. Patriotic Guards Services Ltd was served but it failed to file a Response and the Cause proceeded as an undefended Cause.
3. In a judgment delivered on 2 July 2013, Ongaya J found for the Claimant. Execution commenced but when the Respondent moved Court under certificate of urgency on 12 September 2013, restraining orders against execution and the setting aside of the *ex parte* judgment were granted.
4. On 15 October 2013, the firm of Gordon Ogola, Kipkoech & Co. Advocates came on record for the Claimant. The firm also filed a replying affidavit to the application to set aside the *ex parte* judgment.
5. On 6 February 2014, Ndeda & Associates filed a Notice of Change of Advocate to come on record for the Claimant.
6. The parties agreed by consent on 24 February 2014 to have the *ex parte* judgment set aside and that a Response be filed before 17 March 2014.
7. On 25 March 2014, the Cause was fixed for hearing on 28 April 2014.
8. On 8 April 2014, the firm of Murimi, Ndumia, Mbago & Muchela Advocates filed an application seeking leave to be allowed to file a Response out of time on behalf of the Respondent.
9. Come 28 April 2014, the parties informed the Court that they had a settlement to record within 3 weeks and the Cause was set for mention on 19 May 2014, but that was not to be. Further mention was fixed for 26 May 2014.
10. However, on 26 May 2014, the parties informed the Court that they were still negotiating and the Court adjourned the Cause to 30 May 2014. There was no settlement and the Claimant sought leave to amend the Memorandum of Claim. The leave was granted with specific timelines to file amended pleadings.
11. The Claimant filed an Amended Memorandum of Claim on 12 June 2014. One aspect of the amendments was to substitute a new Respondent which was listed as *Patriotic Guards Services Ltd currently Kislev Limited*.
12. During an appearance on 13 June 2014 to confirm the amendments, Mrs. Ndeda informed the Court that *Patriotic Guards Services Ltd* had changed name to Kislev Ltd. The Respondent however contended that the amendment had introduced a new party as Respondent.
13. The Court directed that the amended Claim be served and fixed a mention for 21 July 2014 to give further directions.
14. On 21 July 2014, after hearing addresses from the parties, the Court directed that the suit against

- Patriotic Guards Services Ltd* be marked as withdrawn and the parties agree on the costs. Further mention was set for 22 September 2014.
15. As a consequence of the amendments and pursuant to directions by the Court on 15 October 2014, the firm of Murimi, Ndumia, Mbago & Muchela Advocates filed a Memorandum of Appearance on behalf of Kislev Ltd on 27 October 2014, and a Memorandum of Response on 6 November 2014 (leave had been granted on 27 October 2014). The Claimant filed a rejoinder on 17 December 2014.
 16. On 10 November 2014, the Court fixed the Cause for hearing on 18 June 2015 and it proceeded for hearing as scheduled. The hearing resumed on 27 July 2015 when the Respondent closed its case.
 17. The Claimant filed his submissions on 25 August 2015, while the Respondent's submissions were filed 7 August 2015.
 18. The Court has considered the pleadings, evidence and submissions and identified the primary issue for determination as, *whether the Respondent is liable to the Claimant*. Should the answer to the question be positive, only then will the Court examine any liabilities/entitlements due to the Claimant.

Liability of Kislev Limited

Correct Respondent

19. The initial Memorandum of Claim was launched against *Patriotic Guards Services Ltd*.
20. An amended Memorandum of Claim was filed on 12 June 2014, and the Respondent was named as *Patriotic Guard Services Ltd currently Kislev Limited*.
21. On 13 June 2014, the Claimant informed the Court that *Patriotic Guards Services Ltd* had changed its name and hence the Claimant was given the go ahead to amend his pleadings. This was after the then Respondent had raised issue with the amendment.
22. On 21 July 2014 and after hearing addresses from both parties, the Court marked the suit against *Patriotic Guards Services Ltd* as withdrawn.
23. The correct and proper Respondent is therefore *Kislev Limited* and the fact that the parties persisted in citing the Respondent as *Patriotic Guards Services Ltd* currently *Kislev Limited* is of no legal significance. It only served to muddy the pleadings.

Employer/Employee relationship

24. The next step in establishing the liability of the Respondent is to establish if there was an employment (contractual) relationship between the Claimant and Respondent.
25. According to the Claimant, he was employed by *Patriotic Guards Services Ltd* on 2 October 2001 and it changed its name to *Kislev Ltd* on a date which was not disclosed.
26. He stated that he served until 15 June 2010.
27. To demonstrate the relationship, he stated that *Kislev Ltd* issued a Certificate of Service to him.
28. The Respondent on the other hand contended it was incorporated through a certificate of incorporation dated 24 May 2013 and that it never existed previously as *Patriotic Guards Services Ltd*. A certificate of incorporation was produced.
29. Now, showing that *Patriotic Guards Services Ltd* had changed its name to *Kislev Ltd* or to stretch the argument assumed the liabilities of *Patriotic Guards Services Ltd* would have been the simplest of tasks.
30. All that was required was a search to be carried out at the Companies Registry and produce the results.
31. Alternatively, the Claimant could have attempted to lift the corporate veil. No such exercise was even mentioned or attempted.
32. The Claimant was on notice about the puzzle surrounding the identity of his employer and its mutation was a live issue but he did not bother to do just a little bit more.
33. On the material placed before the Court, there is absolutely nothing to suggest that the *Patriotic Guard Services Ltd* changed its name to *Kislev Ltd*, or that *Kislev Ltd* assumed the liabilities of *Patriotic Guards Services Ltd*.

34. The Claimant also did not demonstrate that he was employed at any one time by the Respondent. The Certificate of Service was not produced.
35. The Court can therefore reach only one conclusion and that is that the Claimant has failed to establish an employment relationship with the Respondent or that there was/is any legal nexus between the Respondent and *Patriotic Guards Services Ltd.*
36. With the conclusion, it becomes an academic exercise to examine whether the entitlements sought by the Claimant and which he quantified at nearly Kshs 690,000/- is merited.
37. The suit must therefore be dismissed with costs to the Respondent.

Delivered, dated and signed in Nakuru on this 12th day of February 2016.

Radido Stephen

Judge

Appearances

For Claimant Mrs. Ndeda instructed by Ndeda & Associates

For Respondent Mr. Murimi instructed by Murimi, Ndumia, Mbago & Muchela
Advocates.

Court Assistant Nixon