



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT NAIROBI

CAUSE NUMBER 2109 OF 2014

DANIEL OPONDO OBIMBO.....1ST CLAIMANT

NICHOLAS MUTUA.....2ND CLAIMANT

BISHOP HAYOYO.....3RD CLAIMANT

FESTUS KITALE.....4TH CLAIMANT

HAMED MAJUTO.....5TH CLAIMANT

ERICK OKOTH.....6TH CLAIMANT

VERSUS

ABERCROMBIE & KENT KENYA LTD.....RESPONDENT

RULING

1. The Court was faced with two applications, one by the claimants dated 7th July, 2015 seeking amendment of the claim herein and another dated 3rd June, 2013 seeking the striking out of the suit herein as disclosing no cause of action against the respondent.
2. The respondent contends that it never employed the claimants. According to the respondent the claimants were employees of an entity known as Abercrombie & Kent Mobile Camping Limited a separate legal entity from the respondent capable of being sued in its own name.
3. The claimant on the other hand seeks the joinder of the third party company in the suit as a co-defendant.
4. Striking out pleadings is a very serious order since it technically discontinues an action without going to the merits thereof. It in essence kills a dispute summarily without hearing its cause and available defences. It is therefore an order which ought to be made sparingly and in clearest of all cases. It should be made only in cases where justice cannot be achieved through other means.
5. Further a party wrongly sued or joined in a suit can be removed by way of an amendment even if the amendments may be tantamount to bringing on board a new party. The inconvenience

caused to the party wrongly sued can be adequate assuaged by an award of costs.

6. As stated in cases before and in similar situations, the Court must always lean more towards preserving a claim than killing it unless the claim is hopelessly incompetent to the extent that the cause of action never existed in the first place or the claim is caught up by limitation or issues of jurisdiction.

7. The Court has carefully considered the two competing applications. The Court has further reviewed the claim as filed together with supporting documents. The fixed period contract marked "Po-e" issued by the respondent and the contract of service issued by the intended co-respondent, that follows it were both signed by Messrs Geoffrey C. Mwangi and John Muchiri.

8. This probably explains why the respondent could have been dragged into the present litigation. There appears to have been some close connection or even infusion between the respondent and the intended co-respondent that heavily operated in the minds of the claimants to make them believe the respondent was their employer. Further, the claimants aver that they were employed by the respondent until 2nd July, 2014 when their services were verbally terminated by the respondent on account of redundancy and thereafter issued by short periodic contracts.

9. The foregoing factors considered and taking into account the considerations for striking out pleadings adumbrated above, the Court will dismiss with no order as to costs the application by the respondent seeking the striking out of the claim herein but allow the one for the claimant seeking the amendment of the claim herein. There will be no order on costs as well.

10. It is so ordered.

Dated at Nairobi this 17th day of June 2016

Abuodha Jorum Nelson

Judge

Delivered this 17th day of June 2016

In the presence of:-

.....for the Claimant and

.....for the Respondent.

Abuodha Jorum Nelson

Judge