



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

CAUSE NO. 240 OF 2015

DICKSON ODUOR ODHIAMBO.....1ST CLAIMANT

NELSON CHEVEWE.....2ND CLAIMANT

VERSES

PETER NJENGA KIBE

FORMER DIRECTOR MUKII MAIZE MILLERS

MR. NJOROGE MWAURA

CURRENT DIRECTOR MUKII MAIZE MILLER.....RESPONDENTS

JUDGMENT

1. The 2 Claimants jointly sued the Respondents on 25 August 2015 and the issues in dispute were stated as

1. Unfair termination
2. Redundancy.

2. The Respondents filed a Joint Response on 22 September 2015, and this prompted the Claimants to file a Reply to Response on 13 November 2015.

3. The Cause was heard on 8 March 2016 and 19 July 2016 after which the Claimants filed written submissions on 11 August 2016. The Respondents' submissions were filed on 5 September 2016.

4. The Court has considered the pleadings, evidence and submissions and identifies the issues for determination as, *whether the joinder of Respondents was bad in law; whether Claimants were employed in 2009 or 2012/2013; whether Claimants were underpaid; whether Claimants had outstanding leave at time of separation; whether Claimant were unfairly dismissed and appropriate remedies.*

Joinder of the Respondents

5. The Respondents had in the Response contended that the Cause as presented was incompetent, ambiguous and a gross abuse of the legal process.

6. The 1st Respondent also asserted that he stopped being a Director of Mukii Maize Millers Ltd, a limited

liability company when he transferred the business to Njoroge Mwaura in December 2014.

7. The 2nd Respondent confirmed that he bought Mukii Maize Millers Ltd in December 2014.

8. A limited liability company has a life separate from its directors and unless the corporate veil is lifted, liabilities such as the ones sought here usually lie with the company.

9. The testimony of the 2 Respondents on the legal personality of limited liability company as the legal/proper employer were not controverted or challenged by the Claimants.

10. The Claimants testified that they were employed by Peter Kibe who owned a mill known as Mukii Maize Millers.

11. The Claimants had also named the Respondents as being the former and current directors of Mukii Maize Millers.

12. All through, the Claimants have been represented by legal counsel, and it must have crossed the mind of the counsel that a little bit more research ought to have been conducted to establish the legal employer/which entity ought to have been the proper Respondent which would bear legal liability, if any.

13. The Memorandum of Claim was also poorly drafted and did not indicate who was 1st Respondent and who was 2nd Respondent. The pleading was also needlessly verbose and vague)

14. It is not clear why Peter Njenga Kibe and Njoroge Mwaura were sued in their personal capacities without any hint that the legal person *Mukii Maize Millers*, was no longer in existence.

15. Legal practitioners should not take the art of pleading and need to carry out background legal research as unimportant ventures.

16. Despite the employment law framework liberally defining an 'employer', and attaching liability to persons who can be considered as agents of the employer, including supervisors and managers, in the instant case, no proper background for such liability was established either by way of pleading or testimony.

17. A Court of law and particularly the Labour Court ought not to find an agent or manager of a known limited liability company liable for the employment acts of the company without a firm evidential and legal foundation being placed before it.

18. In the event, the Court is of the view that the present Cause cannot legally survive as it is not only incompetent, but also not backed by sufficient evidence as against the named Respondents, and it ought to be dismissed.

19. With the above conclusion, it would be an academic exercise to venture into an examination of the other identified issues.

Conclusion and Orders

20. The upshot of the foregoing is that the Court dismisses the Memorandum of Claim herein with costs to the Respondents. It is so ordered.

Delivered, dated and signed in Nakuru on this 30th day of September 2016.

Radido Stephen

Judge

Appearances

For Claimants Mrs. Ndeda instructed by Ndeda & Associates

For Respondents Mr. Kairu instructed by Nancy Njoroge & Co. Advocates

Court Assistant Nixon