



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU
CAUSE NO. 293 OF 2015

RAPHAEL OKANGO SIKALO

CLAIMANT

v

LUCY WAIRIMU t/a RED ROSE RESTAURANT

RESPONDENT

RULING

1. The Respondent, in an application filed in Court on 23 September 2016 seeks

a) THAT this Honourable Court be pleased to strike out the Memorandum of Claims dated 8th October, 2015 together with all accompanying documents.

b) THAT costs of this Application be provided for.

2. The motion was served upon the Claimant and an affidavit of service filed in Court on 6 October 2016 deposed that the Claimant's advocate on record accepted and acknowledged service.

3. For unknown reasons, the Claimant's advocate failed to attend Court when the motion was urged.

4. Among the reasons advanced by the Respondent in seeking the striking out of the Cause are that the issues in dispute were settled and the Claimant was paid Kshs 138,500/- (payment vouchers in which the Claimant acknowledged payment were exhibited to the supporting affidavit).

5. The settlement was reached after the Claimant's legal advisors at the time wrote a demand letter and after which negotiations were conducted, and a terminal dues agreement was executed on 1 February 2015 (also exhibited).

6. In terms of the agreement, the Claimant accepted that he had no further claims against Red Rose Café.

7. The Court is satisfied that the parties reached an agreement and that after payment, the Claimant accepted that he would have no further claims against the Respondent in terms of the issues which formed the basis of the advocates demand letter.

8. On this singular ground, the Court is satisfied that the cause of action advanced by the Claimant is an abuse of the court process, scandalous and frivolous in that it is meant to annoy the Respondent.

9. The Respondent also sought to have the Cause struck out on the ground that she was wrongly enjoined

in the suit.

10. As to this ground, the Court observes that there are express statutory provisions that a suit should not be defeated merely on the ground of non-joinder or misjoinder.

11. In conclusion, the Court finds the motion merited and it orders that the Cause herein be struck out with costs to the Respondent.

Delivered, dated and signed in Nakuru on this 18th day of November 2016.

Radido Stephen

Judge

Appearances

For Claimant Maragia Ogaro & Co. Advocates (did not appear at hearing of motion)

For Respondent Ms. Mukira instructed by Elizabeth Wangari & Co. Advocates

Court Assistant Nixon/Daisy