



REPUBLIC OF KENYA
 IN THE EMPLOYMENT AND LABOUR
 RELATIONS COURT AT MOMBASA
 CAUSE NUMBER 371 OF 2015

BETWEEN

- | | |
|------------------------------|---------------------|
| ATHUMANI | 1. JUSTUS KALONGO |
| WILLIAM | 2. NICHOLAS MUSYOKI |
| MZURI | 3. RODGERS MTAWALI |
| TOYA | 4. FIKIRINI BAKARI |
| DAVIES | 5. MATAYO |
| 6. ELIUD MTWANA RAU | |
| 7. ANTHONY CHIVUGA MARANDU | |
| 8. MOSES DAVID ITOME | |
| 9. HARRISON DAVID ITOME | |
| 10. SAMSON KAINDI GONA | CLAIMANTS |

VERSUS

PINEWOOD BEACH RESORT & SPA RESPONDENT

Rika J

Court Assistant: Benjamin Kombe

Nyameta, Mogaka & Magiya Advocates for the Claimants

Federation of Kenya Employers for the Respondent

RULING

1. The Claimants filed their Statement of Claim on the 5th June 2015, through the Law Firm of Odindiko & Company Advocates. They seek to be paid by their former Employer, the Respondent herein, their arrears of salaries for the period April to July 2015.
2. They withdrew instructions from the Law Firm of Odindiko & Company Advocates vide a Notice of Intention to act in person, dated 8th October 2015.
3. The Respondent filed an Application dated 20th April 2016, seeking to strike out the Claim. This is based on the fact that Odindiko Aron Wandera, the Advocate who filed the Claim, did not have a current practicing certificate, at the time he filed the Claim. The Respondent investigated the status of Mr. Wandera from the Law Society of Kenya, and received confirmation that the said Advocate did not hold a current practicing certificate. The confirmatory letter is dated 8th March 2015.
4. The Claimants filed Grounds of Opposition on 3rd June 2016, holding in main, that the Application raises procedural technicalities and is meant to deny the Claimants' their right to be heard.
5. Parties agreed to have the Application considered and determined on the strength of their Submissions, which have been placed on the record.

The Court Finds:-

6. Section 9 of the Advocates Act Cap 16 the Laws of Kenya demands that no person shall be qualified to act as an Advocate unless he has been admitted as an Advocate; his name is for the time being on the roll; and he has a current practicing certificate.
7. Consequently, it has been ruled in a catena of Judicial Authorities that Pleadings drawn, signed and presented by unqualified persons cannot stand and ought to be struck out.
8. It is not disputed that the Claimants' original Advocate did not have a current practicing certificate on filing of the Claim. It is to their credit that the Claimants withdrew instructions, and subsequently engaged their present Advocates. However, their Claim is based on a Statement of Claim filed by an unqualified person, and therefore, void *ab initio*.
9. The Court notes nevertheless, that the Claim is solely on arrears of salaries for a period of 4 months running from April to July 2015. The Employees resigned from their respective positions with the Respondent. This ought to have been an amicable mutual separation. Salaries and wages are protected under part IV of the Employment Act 2007, and must be paid when they fall due. This is a matter than can be resolved using the good offices of the Claimants' Trade Union, their current Advocates, the Federation of Kenya Employers, and the Labour Office. There would be no need to have the Claimants return to Court, if the Labour Office investigates their employment records, confirms if they are owed arrears of salaries, and if owed, those salaries are promptly paid.
10. The Court shall therefore recommend:-
 - a) The Mombasa County Labour Officer to investigate if the Claimants are owed 4 months' salary for the period April –July 2015.
 - b) If owed, the Respondent shall promptly make the payments as required under Part IV of the Employment Act 2007, to bring the dispute to a closure.
11. Otherwise the Claim in its current form cannot be sustained. IT IS ORDERED:-

a) The Statement of Claim filed on the 5th of June 2015 is hereby struck out with no order on the costs.

b) Should the recommendations above fail to yield closure, the Claimants are at liberty to present a fresh Claim, to be processed and heard on accelerated basis.

Dated and delivered at Mombasa this 2nd day of November 2016

James Rika

Judge