



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT AT MOMBASA
CAUSE NUMBER 394 OF 2014

BETWEEN

MICHAEL KIMEU CLAIMANT

VERSUS

1. UDHABITI EDUCATIONAL TRUST, KENYA

2. WOLFGANG PUTZ

3. GABRIELE KAMPENHUBER

4. CAROLINE PUTZRESPONDENTS

RULING

1. The Respondent has raised a preliminary objection on the validity of the Claim. The objection is based on 3 grounds, namely:-

- The cause is bad in law, misconceived and discloses no reasonable cause of action as against the 2nd and 4th Respondents.
- The Honourable Court has no jurisdiction to hear, determine and or otherwise deal with the cause as against the 2nd and 3rd Respondents.
- The cause as against the 2nd and 4th Respondent is scandalous, frivolous or vexatious and /or constitutes an abuse of the process of this Honourable Court.

2. The Parties agreed to have the preliminary objection disposed of by way of written submissions, confirmed to have been filed at the last mention in Court on 9th February 2015, and Ruling reserved for 20th March 2015.

3. The gist of the objection is that the 2nd and 4th Respondents signed the employment contract with the Claimant as Trustees of the 1st Respondent, not in their personal capacities. The 1st Respondent was the Employer to the Claimant. Section 12 of the Industrial Court allows the Court to only hear and determine disputes involving Employers and Employees. The Court does not have jurisdiction to hear this dispute involving the 2nd and 4th Respondents who were merely Trustees.

4. The 1st Respondent is a body corporate with its own legal capacity to sue and be sued. No action can be

sustained against its Trustees. The Court should exercise its discretion and strike out the case against the 2nd and 4th Respondents.

5. The Claimant submits the 2nd and 4th Respondents are properly sued. A Claim cannot be dismissed for misjoinder of Parties. The Court is not denied jurisdiction by misjoinder of Parties. The Trustees are agents of the 1st Respondent, and the Claimant is at liberty to bring them to Court.

The Court Finds:-

6. The Claimant was employed by Udhabeti Educational Trust as its Administrator, in a contract dated 1st August 2011. He signed the contract as did Wolfgang Putz and Gabriele Kampenhuber, who are named as Trustees in the contract, and are 2nd and 3rd Respondents in the Claim. A second agreement dated April 2013 was executed by the Claimant, and Caroline Putz also described as Trustee to the 1st Respondent. The letter terminating the Claimant's contract is dated 4th November 2013, and signed by Wolfgang Putz and Caroline Putz.

7. The definition of the term 'Employer' is uniform in both the Employment Act 2007 and the Industrial Court Act 2011, as well as in a majority of the related Labour Statutes. 'Employer' means any person, public body, firm, corporation or company who or which has entered into contract of service to employ any individual and includes the agent, foreman, manager or factor of such person, public body, firm, corporation or company.

8. This definition is sufficiently broad to include corporate bodies and officers owning or managing such bodies. The Trust, Trustees and even Persons employed by the Trust as Managers, or working as Agents, could fit the description of the term 'Employer.' The definition is made deliberately broad, to ensure Employees have access to industrial justice, and are not hampered by the different legal and business forms, frequently assumed by Employers in their desire to avoid regulatory burdens.

9. Udhabeti, Wolfgang Putz, Gabriele Kampenhuber, or Caroline Putz all fit the description of the term 'Employer ' and are properly brought before the Court.

10. In dispute is termination of a contract of employment, which bears the endorsement of all the Respondents, whether individual or corporate. It is an employment dispute, involving an Employer and Employee, falling within the jurisdictional competence of the Industrial Court of Kenya, under the Constitution of Kenya, the Industrial Court Act and the Employment Act 2007. ***The preliminary objection has no merit and is hereby rejected. Parties shall fix the substantive dispute for hearing.***

Dated and delivered at Mombasa this 20th day of March 2015

James Rika

Judge