



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT OF KENYA

AT NAIROBI

CAUSE NO. 1569 OF 2013

CHARITY NGOTHO 1ST CLAIMANT

DEBORAH NANDERA 2ND CLAIMANT

JOHN NG'ANG'A GUCHU 3RD CLAIMANT

VERSUS

SENSATIONS LIMITEDRESPONDENT

RULING

Mr. Gathu for Claimant/Applicant

Mr. Kingori for Respondent

1. The Claimant filed a notice of motion Application dated 29th October, 2014 on 13th November, 2014 and later filed an amended Notice of Motion dated 10th February, 2015 seeking for orders:-

(i) That leave be granted to the Claimant to amend their Statement of Claim in terms of the attached draft amended Statement of Claim.

(ii) That the Director of Public Prosecutions be enjoined as the 2nd Respondent herein.

(iii) That the draft amended Statement of Claim be deemed as duly filed.

The Application is supported by an Affidavit of Gad Gathu, Advocate for the Claimants who only states that he has instructions to amend the statement of Claim and believes that the intended amendments are necessary for the determination of the issues in the dispute.

2. The Application is opposed vide a Replying Affidavit of Mr.Macharia G. Kingori, the Advocate for the Respondent who states that the Application is incurably defective made in bad faith, in competent, misconceived and has no merit whatsoever. That the same be dismissed as it is an abuse of the court process.

3. That the amendments sought constitute new claims and no reasons have been shown in the Notice of Motion itself or the Supporting Affidavit of Mr Gathu to justify the amendments sought.

4. The court has carefully considered the papers filed in the record and opposing submissions by Advocates for the parties and has arrived at the following conclusion;
5. This is a dispute between three (3) employees and their employer pursuant to termination of employment on 29th October, 2010.
6. The termination followed arrest, charges and prosecution of the Claimants on allegations of theft made by their employer, the Respondent.
7. The Claimants were eventually acquitted of the charges levelled against them and now wish to enjoin the Director of Public Prosecution as a party to the suit.
8. The claim is opposed vide a Statement of Defence filed on 17th February, 2014 and Counter Claim for alleged lost stock by the Respondent in the sum of Kshs 446,194 which loss the Respondent attributes to the Claimants.
9. The Employment and Labour Relations Court (ELRC) exercises jurisdiction provided under **Article 162(2)** of The Constitution of Kenya 2010 as read with **Section 12** of the Employment and Labour Relations Act, 2011 (as amended).
10. In terms thereof, this court has “.....*jurisdiction to hear and determine all disputes referred to it in accordance with **Article 162(2)** of the Constitution and the provisions of this Act or any other written law which extends jurisdiction to the court relating to employment and labour relations*”
11. In terms of **Section 12(2)**, suits may be lodged by or against “*an employee and employer, a trade union, an employers organization, a federation, the Registrar of Trade Unions, Cabinet Secretary or any office established under any written law for such purpose*”
12. It is the Court’s considered view that it has no jurisdiction to handle claims of malicious prosecution against the Director of Public Prosecutions.
13. The Application to join the Director of Public Prosecutions in this suit only on the basis that the office conducted a prosecution based on allegations of an Employer is misconceived and an abuse of the court process.
14. The suit is properly filed against the employer and the employer is the only person who has power to provide the remedy sought.
15. The Director of Public Prosecutions is not a necessary party to this suit and this Application is dismissed with costs.

Dated and Delivered at Nairobi this 19th day of June, 2015.

MATHEWS NDERI NDUMA

PRINCIPAL JUDGE