



REPUBLIC OF KENYA
EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA

AT NAIROBI

CAUSE NO. 2001 OF 2014

AMALGAMATED UNION OF KENYA METAL WORKERS.....CLAIMANT

VERSUS

MASHARIKI MOTORS LIMITED 1ST RESPONDENT

KARUNA HOLDINGS LIMITED2ND RESPONDENT

SIMBA COLT MOTORS LIMITED3RD RESPONDENT

(Before Hon. Justice Hellen S. Wasilwa on 27th July, 2015)

RULING

1. The application before court is the one dated 11/12/2014 and filed in court on 15/12/2014. The application is brought through a Notice of Motion filed pursuant to Section 12 (3) (viii) of the Industrial Court Act, Rule 14 (5) of the Industrial Court Rules and any other enabling provisions of the law.
2. The Applicant seeks orders that:
 1. ***The Honourable Court be pleased to strike out the Memorandum of Claim dated 6/10/2014 as against the 3rd Respondent with costs to the 3rd Respondent.***
 2. ***The costs of this application be awarded to the 3rd Respondent.***
3. The application is based on the grounds that:
 - a. ***The Grievants in this case are not and have never been employees of the 3rd Respondent.***
 - b. ***There has never been a valid joint venture agreement between the 2nd and 3rd Respondents leading to the redundancy of the Grievants.***
 - c. ***The 3rd Respondent ceased to exist as a legal entity being sued on 15th July 2010.***
 - d. ***According, the entire claim is brought and served against the 3rd Respondent is defective, frivolous, vexatious and otherwise an abuse of the court process.***
4. In response to this application, the Claimant Respondents filed their submissions in court on 23/3/2015. They aver that the Applicants contention that the 3rd Respondent does not exist should

led to this court striking out their application since the application has been filed by non-existent entity.

5. They have also submitted that in paragraph 6 of the Applicants' supporting affidavit, they have admitted that there were negotiations between the Applicant the 3rd Respondent and 2nd Respondent and that this is reflected in the termination letters to the Grievants annexed as Appendix 1 of the Memorandum of Claim.
6. The Respondents aver that the 3rd Respondent employees underwent competitive processes and communication to the Grievants by the 1st Respondent (Appendix 2 of Memorandum of Claim) confirms the transfer of qualified personnel from the 1st Respondent and among the 7 Grievants, 4 of them are employees of Bavaria which is a subsidiary of the 3rd Respondent.
7. The Respondents at paragraph 8 have admitted having acquired distributorship of BMW Group in Germany directly yet it was the core business of the 1st Respondent and having bought almost all machines and equipments from the 2nd Respondent which were being used by the 1st Respondent should not be the hook at this moment. The Respondents attached payment transactions between the parties marked CR1. The Respondents asked court to dismiss this application with costs to them.
8. I have looked at the documents before court. Applicants attached to the Memorandum of Claim termination letters that were send to the Grievants and they read as follows:

“Dear

RE: TERMINATION OF SERVICE

Following the approval for the Joint Venture between Simba Colt Motors Limited and Karuna Holdings Limited to proceed and in which you have been offered an employment opportunity, Mashariki Motors Limited will cease trading on 31st October 2008.

In view of the above, the management has no alternative but to regrettably terminate your services with effect from 1st November 2008.

All staff will therefore from 1st November 2008, proceed to take their outstanding leave as at 31st October 2008 where applicable. Payments relating to notice pay, October 2008 pay and service terminal benefits are being worked upon and the time and manner of payment will be communicated with you shortly.

The management takes this opportunity to thank you for the services you have rendered to this company and wishes you the very best in your future endeavours.

Yours sincerely

Signed

E. Muthondu

Group Human Resource Manager

9. These termination letters show that the redundancy of the Grievants had something to do with the alleged joint venture between the 1st Respondent and 3rd Respondent.
10. The Applicants had submitted that the 3rd Respondent does not exist and had no connection to the Grievants. It is not viable that a non-existent entity will be filing an application before court.

There seems to be a connection between the Respondents herein and the 3rd Respondent as rightly enjoined in this suit.

11. The 3rd Respondent stand to lose nothing if not found culpable as they will be compensated in costs. I therefore find that the application has no merit and I dismiss it accordingly with costs to the Claimant Respondents. The suit may now be set down for hearing.

Read in open Court this 27th day of July, 2015

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

Tom Mahobe for Applicants – Present

No appearance for Respondents