



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT OF KENYA AT NAIROBI
CAUSE NO 106 OF 2014

MORRIS MAKOBA OKUSA.....1ST CLAIMANT

WILSON MULEYI NYIKULI.....2ND CLAIMANT

LAMECK MAKHAMA APONGO.....3RD CLAIMANT

VS

FURMART FURNISHERS LIMITED.....RESPONDENT

RULING

1. By a Memorandum of Claim dated 29th January and filed in Court on 30th January 2014, the Claimants have sued Furmart Furnishers Limited for wrongful termination of employment and failure to pay terminal dues. The Respondent filed a Statement of Defence on 3rd February 2014 in which it denies being a limited liability company. The Respondent subsequently filed a Notice of Motion on 12th March 2014 seeking orders to strike out the Claimants' claim.

2. The Respondent's application which is supported by the affidavit of Martin Nyoike Mwangi, is based on the ground that the Claimants' claim is brought against a limited liability company while the Respondent is a business name registered under the Business Names Act. The Claimants made no response to the Respondent's application.

3. The issue before the Court is whether the Claimants' claim is fatally defective on the basis of misjoinder of parties. Rule 4 (b) of the Industrial Court (Procedure) Rules, 2010 provides as follows:

A party who wishes to refer a dispute to the Court under any written law shall file a statement of claim setting out—

(b) the name, the physical and mailing address and the description of the respondent;

4. In the Claimants' Memorandum of Claim filed on 30th January 2014, the Respondent is described as a '*limited liability company incorporated in the Republic of Kenya under the Companies Act.*' In support of its denial of this description, the Respondent has produced a certificate of registration under the Registration of Business Names Act and the Claimants have not challenged the Respondent's position in this regard.

5. The Court therefore finds that the Claimants' claim is defective for misjoinder of parties and proceeds to strike it out on this ground. The Claimants are at liberty to bring a fresh claim against the correct party.

I make no order for costs.

DATED SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 27TH DAY OF MAY 2014

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JUDGE

In the Presence of:

.....*Claimants*

.....*Respondent*