



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT OF KENYA AT NAIROBI
CAUSE NO 998 OF 2013

PATRICK KIILU MUNYAU.....CLAIMANT

VS

THIKA NURSING HOME.....1ST RESPONDENT

DR. B.D VASISHT.....2ND RESPONDENT

RULING

1. By a Statement of Claim dated 2nd July 2013 and filed in Court on even date, the Claimant has sued the 1st and 2nd Respondents for unfair termination of employment and failure to pay terminal dues. The Respondents filed a Statement of Defence on 2nd August 2013 and on 24th October 2013, the 2nd Respondent filed a Notice of Motion seeking orders to strike out the Claimant's claim as against him.
2. The 2nd Respondent's application which is supported by his own affidavit sworn on 23rd October 2013 is based on the ground that he is a Director and Manager of the 1st Respondent which is a limited liability company. The 2nd Respondent depones that he is an employee of the 1st Respondent and cannot therefore be held liable for the liabilities and/or obligations of the 1st Respondent.
3. Counsel for the Respondents, Mr. Chege submitted that there was no employment relationship as between the Claimant and the 2nd Respondent. There was therefore no cause of action against the 2nd Respondent.
4. In opposing the 2nd Respondent's application, Mr. Mutua for the Claimant submitted that the issue of joiner of parties is a legal issue and the law gives Claimants a wide discretion to bring claims against parties in respect of whom they have grievances. According to Counsel, it is only at the end of the trial that the Court can determine which party to hold culpable. It is therefore premature to strike out the Claimant's case against the 2nd Respondent at this stage.
5. The single issue for determination in this application is whether the 2nd Respondent is properly joined in these proceedings. It is not in dispute that the 1st Respondent, which is a limited liability company is a legal entity separate from the 2nd Respondent. In the well known case of **Salomon Vs Salomon & Co. [1897] AC 22. H.L** it was held that the liability of a limited liability company can only be assigned to its subscribers and/or directors as provided by law. This remains good law and courts have over the years protected the sanctity of the corporate veil as far as it is

not employed to defeat justice.

6. In the case of *Aviation and Allied Workers Union Vs Kenya Aerotech Limited & Another (Industrial Court Cause No 1494 of 2011)* this Court held that:

“Only in cases where it has been demonstrated that the corporate veil is being used to defeat the ends of justice, would the Court allow lifting of the veil.”

7. No such argument has been advanced before the Court in this case and the 2nd Respondent's application that the Claimant's claim as against him be struck out therefore succeeds. The claim against the 1st Respondent shall proceed in the normal manner.

The costs of this application will be in the cause.

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

LINNET NDOLO

JUDGE

In the Presence of:

.....*Claimant*

.....*1st Responde*

.....*2nd Respondent*