



**REPUBLIC OF KENYA**

**IN THE INDUSTRIAL COURT OF KENYA AT NAKURU**

**CAUSE NO. 20 OF 2014**

**WILLIAM WINGA.....CLAIMANT**

**- VERSUS -**

**ROBINSON INVESTMENT LIMITED also trading as**

**SERVITOR INVESTMENT LIMITED..... ..RESPONDENT**

(Before Hon. Justice Byram Ongaya on Friday 6<sup>th</sup> June, 2014)

**RULING**

The claimant William Winga filed the statement of claim on 03.02.2014 through Wanyama & Company Advocates. At paragraph 2 of the statement of claim the claimant stated thus, **“2. That the respondent here in this matter is registered under the provisions of the Companies Act Cap 486 Laws of Kenya and is trading as Robinson Investment Ltd also trading as Servitor Investment and whose address of service shall be care of P. O. BOX 14140 – 20100, Nakuru in the Republic of Kenya.”**

On 26.02. 2014, the respondent filed a notice of preliminary objection against the statement of claim on the grounds that:

- a. The claim herein is defective and does not disclose any cause of action known in law against the respondent, and should therefore be struck out with costs.
- b. The claim is fatally defective in law for misjoinder of the respondent as a party to the suit and non-joinder of the actual employer as evidenced in the letter of appointment.
- c. The claim is fatally defective and bad in law for misjoinder of the respondent who denies ever trading as Servitor Investment Limited which is a separate legal entity and limited liability company with a capacity to sue or be sued.

The parties agreed to rely on written submissions in urging their respective cases on the preliminary objection.

For the respondent it was submitted that the claimant filed the suit through Wanyama & Company Advocates whose sole proprietor was Onyango Moses Wanyama and whom the Law Society of Kenya has confirmed did not hold a valid practicing certificate as an advocate for the year 2014 and as at 24.02.2014, the suit having been filed on 03.02.2014.

The respondent submitted that the said Wanyama was unqualified to act as an Advocate under section 9(c) of the Advocates Act and was precluded from filing the suit for the claimant under sections 31 and 34 (f) of the Act. The respondent relied on **Wilson Ngiga Kimotho –Versus- Independent Electoral & Boundaries Commission & 2 Others [2013]eKLR** where the court dismissed an election petition filed on behalf of the petitioner by an Advocate without a current practicing certificate. Thus, the respondent submitted that the claimant’s suit was liable to be struck out on the account that it was filed by an advocate without a practicing certificate.

It is not disputed that at the time of filing the suit the claimant’s advocate did not hold a valid practicing certificate. There is no evidence before the court that at the time of filing the suit the Advocate had taken steps to apply for the practicing certificate for 2014 and the court finds that in that circumstance the

omission cannot be visited upon delay to issue the certificate by the relevant authority. At the time of determining the preliminary objection, there is no evidence that the Advocate currently holds a practicing certificate or has taken steps to obtain the certificate.

In the circumstances, the court finds that the preliminary objection will succeed on the ground that the Advocate who filed the suit for the claimant did not hold the prescribed practicing certificate for 2014 and at the time of filing the suit. In view of the finding, the court will not proceed to make findings on the other issues in the preliminary objection.

In conclusion, the claimant's statement of claim is struck out with costs.

**Signed, dated and delivered** in court at **Nakuru** this **Friday 6<sup>th</sup> June, 2014**.

**BYRAM ONGAYA**

**JUDGE**