



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT OF KENYA AT NAKURU
CAUSE NO. 251 OF 2014
HENRY CHOTI CLAIMANT
v
SEASONS HOTEL NAKURU.....RESPONDENT

RULING

1. Henry Choti (Claimant) through Mirugi Kariuki & Co. Advocates filed a Statement of Claim against Seasons Hotel Nakuru (Respondent) on 26 June 2014 stating the issues in dispute as

1. Unlawful and unfair dismissal of the Claimant from employment.

2. Failure by the Respondent to pay terminal benefits owing to the claimant.

3. Failure to issue the claimant with pay slips.

2. The Respondent was served and through David W. Mwangi, a director, it filed a Statement of Defence on 17 July 2014. On 6 August 2014, the Claimant filed a Reply to the Statement of Defence.

3. On 9 September 2014, the Respondent filed what it referred to as Notice of Preliminary Objection. The grounds on the face of the objection were

1. That Seasons Hotel Ltd is wrongly served with the statement of claim herein as the defendant is Seasons Hotel Nakuru and not Seasons Hotel Ltd which are totally different entities.

2. That the claim does not particularize who the claimant is as some of the pleadings filed in the suit are in the name of Henry Choti Kanyi while others bear the name Henry Choti.

3. That the statement of claim discloses no reasonable cause of action against the defendant.

4. That the Claimant misrepresented material facts to this honourable court

5. That the Claimant concealed material facts from this honourable court 6. That on the date fixed for mention hearing only the defendant attended and admitted NO part of the claim. No good cause was shown by the plaintiff for failure to attend in person or to have his advocate or any other person authorised by law to act on his behalf, attend.

7. That a subsequent replay to the defence was filed and served out of time.

8. That the entire claim is therefore bad in law incompetent untenable and is an abuse of the court process.

4. The objection was taken on 16 October 2014 when the Claimant was represented by Mr. Kibet and David Mwangi submitted on behalf of the Respondent.
5. During submissions, the Respondent submitted that the Claimant had sued the wrong party. He further submitted that the Claimant's name as given in the Statement of Claim was different from that given in the witness statement and that the Claimant concealed material facts.
6. In a very brief response, Mr. Kibet submitted that there was no preliminary objection before Court as the objection related to disputed facts.

Evaluation

7. The Court has considered the preliminary objection and the submissions. The Court has also perused the pleadings.
8. The Statement of Claim is poorly drafted at best and leaves a lot to be desired. The name of the Claimant in the Statement of Claim and the witness statement are slightly dissimilar.
9. It is equally not clear what the legal capacity of the Respondent is, whether a business name as intitled or a limited liability company as pleaded in paragraph 2 of what is subtitled the PREAMBLE.
10. But in the view of the Court, the shortcomings raised by the Respondent are mere irregularities and typographical errors. They can be cured through appropriate amendments and keener draftsmanship.
11. The Respondent may not suffer any prejudice if the Claimant were directed to file and serve an Amended Statement of Claim. Costs can adequately compensate the Respondent.

Conclusion and Order

12. In light of the above, the Court orders as follows

- a. Claimant to file and serve an Amended Statement of Claim, witness statements and documents to be relied upon on or before 31 October 2014.
- b. Respondent at liberty to file and serve a Response, witness statements and documents to be relied upon on or before 7 November 2014.
- c. The Cause be mentioned on 10 November 2014 to confirm compliance and for further directions as to hearing.

13. Costs of the Objection to the Respondent.

Delivered, dated and signed in open Court in Nakuru on this 24th day of October 2014.

Radido Stephen

Judge

Appearances

For Claimant Mr. Kibet instructed by Mirugi Kariuki & Co. Advocates

For Respondent David Mwangi, Director of Seasons Hotels Ltd