



**REPUBLIC OF KENYA**  
**IN THE INDUSTRIAL COURT**  
**AT MOMBASA**  
**CAUSE NO. 167 OF 2014**

**KENYA UNION OF COMMERCIAL FOOD & ALLIED**

**WORKERS UNION .....CLAIMANTS**

**VERSUS**

**1 DOSHI IRON MONGERS LTD**

**2 CELLO THERMOWARE LTD .....RESPONDENTS**

**RULING**

1. The respondents have brought two separate Notices of Motion dated 29/5/2014 all of which seek the striking out of the claimant's suit. The Motions are each supported by an affidavit and the grounds set out on the body of the Motions. The main grounds upon which the Motions are premised are that the respondents are separate legal persons and should not be sued jointly; that the claimant was employed by the respondents on separate occasions; and lastly that the claimant lacks *locus standi* to sue the respondents.

2. The Motions are opposed vide the affidavits of Mr. John O. Owiyo sworn on 3/7/2014. The gist of the reply is that the anomaly of joinder of the respondents was cured by the leave of the court given on 3/7/2014 for amendment of the claim so that the respondents are separately described as independent parties. In addition the 2 respondents are necessary parties because the circumstances under which the grievant is alleged to have been transferred from one respondent to another is not clear.

**ANALYSIS AND DETERMINATION**

3. Mr. Attancha held brief for Mrs. Kibe, learned counsel for the applicant in prosecuting the 2 Motions on 22/10/2014. He only relied on the grounds in the Motions and the supporting affidavit and urged the court to strike out the suit as prayed in the Motions.

4. Mr. Owiyo on the other hand submitted that the grievant was employed by the 1<sup>st</sup> Applicant by letter dated 2/2/2005 (appendix 1) but from May 2010, the 2<sup>nd</sup> respondents started paying his salary. He further submitted that a search from the Companies Registry showed that the applicants are related companies in that they share the same Directors.

5. It is not in dispute that at one time the grievant worked for either or both applicants. The

circumstances under which the claimant is alleged to have moved from one company to the other and the reasons therefor or terms have not been explained. It is therefore this court's view that the two respondents should remain enjoined as parties to the suit as they are all necessary parties.

6. As regards the issue of *locus standi*, the court is satisfied that the claimant has the right to institute suit on behalf of her members once the dispute is not resolved through conciliation by the Minister under the Labour Relations Act. This view seems to be now a well settled principle in our jurisdiction.

### **DISPOSITION**

For the reasons stated above, the 2 Motions dated 29/5/2014 are dismissed with costs.

**Dated signed and delivered this 10<sup>th</sup> December 2014**

**O. N. Makau**

**Judge**