



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT
CASE NO.1465 OF 2012

(Before D.K.N.Marete)

MARTHA ILABONGA KASAYA.....CLAIMANT

-VERSUS-

DOLLY KILANI.....1ST RESPONDENT

JIRAQ JODAI.....2ND RESPONDENT

SAJANCHODAI.....3RD RESPONDENT

RULING

This matter came to court vide a Memorandum of Claim dated the 2th August, 2012 and filed on 27th instant. The issue in dispute is cited as;

Unfair termination and failure to adhere to the employment Act, 2007.

In the cause of pleadings and on 12th November, 2012 the 2nd and 3rd respondents filed their response and a Notice of Preliminary objection in court. The notice of the preliminary objection is dated 8th November, 2012 and provides as follows;

1. **THAT** the claim has no basis in law.
2. **THAT** the claim is incompetent on the basis that the 2nd and 3rd respondents are not the [personal representative of the deceased's estate.

On 9th October, 2012 the matter was fixed for hearing on 14th November, 2012. At this hearing all respondents submitted that they had raised preliminary objections in the matter and sought that the preliminary objections be heard first and on a priority basis. The hearing did not take off on grounds that the Judge was about to go on transfer.

The matter again came for hearing on 11th April, 2013 where the Counsel for the 1st respondent sought an adjournment to enable him format a way forward, having received instructions only the previous day. The 2nd and 3rd respondents however reiterated their request that they heard on the preliminary objection. The claimant was also ready to proceed but the matter was adjourned to 8th May, 2012 when the matter was at last heard on the 2nd and 3rd respondents' preliminary objection as filed in court.

At the hearing counsel for the 2nd and 3rd respondents submitted that the claim is incompetent, misconceived and an abuse of the process of court and has no basis in law as there is no employment relationship between the claimant and the 2nd and 3rd respondents. This is clearly evidenced in paragraph 2 of the claim where the claimant admits that no such relationship exists and therefore the contention of no viable legal claim for determination before this court.

The respondents further submit that they are not the personal representatives of the deceased and hence this claim is misplaced. They argue that this is a claim under the Law of Succession Act, Chapter 160, Laws of Kenya, Section 4 of which provides for claims against personal representatives. This has not been factored in or applied and therefore renders this claim a non starter. They pray that the same be dismissed with costs.

Paragraphs 2, 3, 5, 6, 7 and 8 *et al* bring out an employment relationship that is not very defined. The claimant was an employee of the 1st respondent before her sudden demise in May, 2012. The claimant makes further allegations about the relationship between herself and the other respondents but I must admit that the same does not in law bring out a case of a lawful employment contract. The 2nd and 3rd respondents may be related one way or the other with the deceased employer but this does not bind them to the employment contract. A claim against the respondents would therefore fail on grounds of misjoinder of parties.

The claimant should surely have identified the personal representative of Geeta Mandagia, now deceased and filed suit against him and the estate. Any other route would fail for being incompetent and an abuse of the process of court. As expressed and filed, the claim has no legal basis.

I am therefore inclined to uphold the preliminary objection and dismiss the claim but with no order as to costs.

Dated, delivered and signed this 15th day of May, 2013.

D.K. Njagi Marete

JUDGE

Appearances

1. Claimant in person.
2. Mr. Isinta instructed by Soita & Saende Advocates for 1st respondent.
3. Mr. Ogola instructed by Onyancha, Nyakundi & Company Advocates for 2nd and 3rd respondents.