



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT AT NAIROBI
CAUSE NUMBER 1739 OF 2011

BETWEEN

AGNES NTHENGE.....CLAIMANT

VERSUS

EXECUTIVE COMMITTEE

A.I.C. SENGANI D.C.C.....
RESPONDENT

Rika J

CC. Leah Muthaka

J. W. Madahana Advocate for the Claimant

Mr. Sawe instructed by J. K. Kiplagat & Company Advocates for the Respondent

RULING

The Claimant filed a Notice of Motion dated 3rd February 2012, seeking to have the Statement of Response struck out and Award entered in favour of the Claimant.

The motion is expressed to be made under Section 12(5) of the Labour Institutions Act No. 12 of 2007, and is based on the following grounds:-

- a. The address of the Respondent's Advocates is fictitious
- b. The person who signed the pleadings is not qualified to practice law on his own
- c. The Statement of Response is a sham and not supported by evidence
- d. Pleadings of the Respondent are meant to delay the fair and expeditious disposal of the claim.

The application is supported by the affidavit of the Claimant Agnes Nthenge, sworn on 3rd February 2012.

The Respondent swore and filed a replying affidavit through its Secretary, on 21st March 2012. It states its Advocates are duly qualified and authorized to act as its representatives. At the same time, the Respondent raises its own preliminary objection on the validity of the claim filed herein, stating that the

Claimant had filed her claim against a legal non-entity.

Parties agreed to have these technicalities disposed of by way of written submissions. The Claimant filed her submissions on 2nd April 2013, and the Respondent on 16th April 2013.

Upon reading the submissions and scrutinizing the pleadings, the Court finds and orders:-

1. The advocate acting for the Respondent is duly qualified and authorized to act as such. The allegation that the Respondent's Advocates used fictitious address or are unqualified to act, has no support in evidence. It would not have been possible to the Claimant to serve the Respondent if the Respondent's Advocates' address is unknown. The bundle of letters from the Law Society of Kenya do not support the Claimant's position. The application is incompetent, having been brought under a provision of the Law that has been repealed.
2. The preliminary objection by the Respondent on the capacity of the Respondent to be sued is not based on substantive ground. If there is reason for the Claimant to amend her pleadings to name the Respondent correctly, this can always be achieved before the full hearing. In any event if the Claimant proceeds against a non-entity, the Court shall on evaluation of evidence declare there was no proper Respondent, and the Claim shall fail. It is for the Claimant to show the proper Respondent has been brought before the Court.
3. In the end, the Court finds no merit in both the Claimant's application and the Respondent's preliminary objection.
 - a. ***The Application by the Claimant dated 3rd February 2012 is rejected***
 - b. ***The Preliminary Objection by the Respondent is rejected***
 - c. ***Parties to schedule the Claim for full hearing at the Registry.***

Dated and delivered at Nairobi this 20th day of December 2013

James Rika

Judge