



REPUBLIC OF KENYA



KENYA LAW
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Kenya Engineering Workers Union v Management & another (Cause E929 of 2023) [2025] KEELRC 2521 (KLR) (25 September 2025) (Ruling)

Neutral citation: [2025] KEELRC 2521 (KLR)

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E929 OF 2023
L NDOLO, J
SEPTEMBER 25, 2025

BETWEEN

KENYA ENGINEERING WORKERS UNION CLAIMANT

AND

VOLT MANAGEMENT 1ST RESPONDENT

MEGH CUSHIONS LIMITED 2ND RESPONDENT

RULING

1. This ruling determines two applications; one dated 12th February 2025, brought by the 1st Respondent, seeking orders to strike out the claim as against it, on the basis that the prayers sought are moot; and the second dated 14th February 2025, brought by the 2nd Respondent asking that it be struck out from the proceedings for misjoinder.
2. The 1st Respondent bases its application on the following grounds:
 - a. That the 1st Respondent executed a labour outsourcing agreement dated 21st June 2023 with the 2nd Respondent, Megh Cushions;
 - b. That the aforementioned agreement was supposed to commence on 1st April 2023 and terminate on 31st March 2024;
 - c. That the 1st Respondent provided a number of outsourced employees to the 2nd Respondent, depending on availability of work and requests made by the 1st Respondent;
 - d. That as at 2nd August 2023, the 1st Respondent had outsourced 21 personnel to the 2nd Respondent;



- e. That the aforesaid employees were on fixed term contracts for a period of one month, as per the 2nd Respondent's specifications and availability of work. These contracts expired on 31st August 2023, releasing all parties from their obligations thereunder;
 - f. That after the termination of the aforementioned contracts, the 1st Respondent did not receive any other instructions or request from the 2nd Respondent to provide it with outsourced personnel, and as such, the 1st Respondent does not have any employees outsourced to the 2nd Respondent as from September 2023 to date;
 - g. That the 1st Respondent does not know the status of the people working at the 2nd Respondent's premises as they do not form part of its employee base, given that it has not outsourced any personnel to the 2nd Respondent since September 2023 to date;
 - h. That as at the date of filing this application, the 1st Respondent does not have any employees outsourced to the 2nd Respondent, and is thus not a necessary party in the claim levelled by the Claimant against the 2nd Respondent;
 - i. That the 1st Respondent has not received any communication from the Claimant Union, regarding recruitment of any of its employees as members of the Union;
 - j. That the 1st Respondent is in the outsourcing and human resource sector, which does not fall within the representation jurisdiction of the Claimant;
 - k. That this is a moot case as there is no controversy in existence as against the 1st Respondent.
3. In his affidavit in support of the application, the 1st Respondent's Human Resource Manager, Michael Mwanza depones that pursuant to the expiry of the outsourcing agreement between the 1st and 2nd Respondents, on 31st August 2024, the parties were released from their obligations thereunder.
 4. The 2nd Respondent's application dated 14th February 2025, is based on the following grounds:
 - a. That the 2nd Respondent has been improperly joined as a party in these proceedings;
 - b. That from the list of employees on account of whom the Claimant seeks payment of union dues, only two were employed by the 2nd Respondent;
 - c. That the two employees who were employees of the 2nd Respondent were not members of the Claimant Union and the Union has no locus standi to initiate the present suit against the 2nd Respondent;
 - d. That the presence of the 2nd Respondent in these proceedings is unnecessary as no cause of action exists against it;
 - e. That the joinder of the 2nd Respondent is prejudicial to the expeditious determination of this suit;
 - f. That it is in the interest of justice and the overriding objective of the Court that the 2nd Respondent be struck out, to avoid unnecessary expense and delay in resolving the dispute.
 5. In his affidavit in support of the application, the 2nd Respondent's Human Resources Officer, Frank Otieno depones that out of 73 names on the list submitted by the Claimant for deduction of union dues, only two are employees of the 2nd Respondent.



6. Otieno further depones that the two employees had denied having any communication with the Claimant. He maintains that the 2nd Respondent has no employees affiliated with the Claimant, adding that the Claimant had not provided any evidence in this regard.
7. In response to the 1st Respondent's application, the Claimant filed Grounds of Opposition dated 7th May 2025, terming the application as fatally defective and only meant to confuse the facts in this matter.
8. The Claimant maintains that the application is properly before the Court under Section 74 of the *Labour Relations Act*.
9. According to the Claimant, the 1st Respondent is a secondary employer, with the 2nd Respondent being the primary employer.
10. The Claimant states that prior to commencement of the outsourcing agreement, the 2nd Respondent's employees were members of the Claimant.
11. With respect to the 2nd Respondent's application, the Claimant filed Grounds of Opposition dated 22nd April 2025, stating that the application is frivolous, misconceived and devoid of merit.
12. The Claimant contends that the 2nd Respondent is a proper party in these proceedings, stating that prior to filing of this claim, it had recruited into its membership, forty-six (46) of the 2nd Respondent's employees.
13. The Claimant states that it had forwarded check off forms to the 2nd Respondent, vide a covering letter dated 27th March 2009.
14. The Claimant claims that the 2nd Respondent, Megh Cushions Limited is an engineering firm within the motor industry, formerly under the name Megh Metal Works Limited, which had a Recognition Agreement with the Claimant.
15. The Claimant avers that Megh Metal Works Limited declared all its employees redundant, upon which the same employees were employed by Megh Cushions Limited, on periodic contracts of employment.
16. I have considered both applications filed by the Respondents, together with the respective Grounds of Opposition filed by the Claimant. The parties have presented many issues of fact that are in controversy.
17. First, there is the outsourcing agreement between the 1st and 2nd Respondents, whose ramifications merit examination by the Court, Second, there is the allegation made by the Claimant that the 2nd Respondent, Megh Cushions Limited had morphed from Megh Metal Works Limited, with which the Claimant had a Recognition Agreement. Third, the parties presented divergent positions regarding the existence of union members within the Respondents' establishments.
18. The foregoing, among others, are matters of fact that are not amenable to determination in a summary fashion as sought by the Respondents. Rather, these are matters that can only be effectively determined in full trial.
19. For this reason, the applications dated 12th February 2025 and 14th February 2025 are declined with costs in the cause.
20. Orders accordingly.

DELIVERED VIRTUALLY AT NAIROBI THIS 25TH DAY OF SEPTEMBER 2025

LINNET NDOLO



JUDGE

Appearance:

Mr. Araka for the Claimant

Mr. Ondego for the 1st Respondent

Mr. Githiomi for the 2nd Respondent

