



Kaala v Seyani Brothers & Company (K) Limited & 3 others (Cause E988 of 2025) [2025] KEELRC 2462 (KLR) (19 September 2025) (Ruling)

Neutral citation: [2025] KEELRC 2462 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E988 OF 2025
AK NZEI, J
SEPTEMBER 19, 2025**

BETWEEN

FESTON MWANZIA KAALA CLAIMANT

AND

SEYANI BROTHERS & COMPANY (K) LIMITED 1ST RESPONDENT

KENYA REVENUE AUTHORITY 2ND RESPONDENT

NATIONAL SOCIAL SECURITY FUND 3RD RESPONDENT

**DIRECTOR OCCUPATIONAL SAFETY AND HEALTH SERVICES 4TH
RESPONDENT**

RULING

1. In the suit herein, instituted by the Claimant vide a Memorandum of Claim dated 19th December, 2024, the Claimant pleads, inter-alia:-
 - a. that he was employed by the 1st Respondent (Sayane Brothers & Company (K) Limited) on 3rd September, 2003 as a Carpentry Works Supervisor, and worked until 22nd November, 2021 when his employment was unfairly terminated by the 1st Respondent.
 - b. that the Claimant was not given a contract, and that he worked for the 1st Respondent for 18 years in a hazardous and dangerous work place (environment) which potentially exposed him to yet to be determined occupational diseases and to a multiplicity of accidents and incidents; and blames the 2nd, 3rd and 4th Respondents of failure to act against the 1st Respondent as mandated in the said Respondents' respective parent statutes, thus exposing the Claimant to pleaded/alleged exploitation and slavery by the 1st Respondent.



- c. that the Claimant suffered a work injury on 20th July, 2021, and that the occupational accident was not reported to the Directorate of Occupational Safety and Health Services, and that the Claimant was never compensated under the relevant statute.
 - d. that the Claimant was on 18th November, 2021 arrested on allegations of theft, and that his employment was unfairly terminated by the 1st Respondent on 22nd November, 2021 when he was abused and inhumanely chased away by the 1st Respondent's directors.
 - e. that no letter of recommendation was issued to the Claimant, and that his dues, unpaid leave and compensation was not paid.
2. Reliefs sought by the Claimant in the suit include those sought in the Claimant's Notice of Motion dated 29th November, 2024 and filed herein. Other reliefs sought in the main suit include prayers for the Claimant's reinstatement to his previous position, notice pay, severance pay, compensation for unjust termination of employment, payment for accrued annual leave days, unpaid overtime and payment for public holidays worked and not paid; among other prayers.
 3. The 1st Respondent filed a Memorandum of Response dated 27th January, 2025 and admitted having engaged the Claimant as a Carpentry Works Supervisor on casual basis, which engagement later evolved to permanent employment by operation of the law. The 1st Respondent, however, denies all the other allegations made against it by the Claimant, and pleads that it fully complied with the [Income Tax Act](#) regarding PAYE, and deducted and remitted the Claimant's NSSF and NHIF contributions. That the Claimant never notified the 1st Respondent of any work injury, that the Claimant forged the 4th Respondent's forms and falsely alleged that the 4th Respondent had assessed damages payable to him in a fraudulent attempt to obtain Kshs.2,317,258/= from the 1st Respondent; and that the Claimant voluntarily resigned from his position at the 1st Respondent company. That the Claimant is not entitled to the reliefs sought.
 4. Also filed by the 1st Respondent in the main suit is a witness statement and a list and bundle of documentary evidence intended to be produced at the trial herein.
 5. The Notice of Motion dated 29th November, 2024

The application is expressed to be brought under Order 10 Rule 8 of the Civil Procedure Rules and Section 25 of the [Civil Procedure Act](#). The Claimant/Applicant seeks the following Orders:-

- a. That before hearing of the instant claim, an order compelling the 4th Respondent to designate an Occupational and Health Officer to enter, inspect and examine, produce and report back to the Court before hearing of the instant claim on all things and/or matters referred [to] in Section 32 of the [Occupational Safety and Health Act](#) of 2007 for the period ranging from September 2003 to November 2021.
- b. That before hearing of the instant claim, an order compelling the 4th Respondent to designate an Occupational and Health Officer who is a Medical Practitioner under Section 32K of the [Occupational Safety and Health Act](#) 2007 [as] read together with Rule 4(1) of the Factory and Other Places of Work (Medical Examination) Rules 2005 to inter alia undertake the following tests and examinations on the Claimant:- Medical history review for the period from September 2003 to November 2021, sputum cytology; full haemogram, lung function tests; laboratory tests; Beryllium Lymphocyte Proliferation test; Asbestos screening; bloodborne pathogen exposure test; hearing test and liver function test; and to present a detailed medical report outlining normal and abnormal results linked to the period of the Claimant's employment herein, being September 2003 to November 2021.



- c. That before hearing of the instant claim, an order be issued compelling the Commissioner General of the 2nd Respondent to issue notice to the 1st Respondent to furnish this Court with PAYE returns showing payments of emoluments together with particulars with regard to Rule 11 of the Income Tax (PAYE) Rules provided for under the *Income Tax Act* (Cap.470) for the period ranging from September 2003 to November 2021.
 - d. That before hearing of the instant claim, an order compelling the Managing Director of the 3rd Respondent to appoint a Compliance Officer pursuant to Section 17 of the *National Social Security Fund Act* (Cap. 258) to enter, inspect and examine, produce and report back to Court detailing mandatory contributions, if any, by the 1st Respondent and the Claimant for the period ranging from September 2003 to November 2021.
 - e. That the Respondents be condemned to pay costs of the application.
6. The application sets out on its face the grounds on which it is brought, and is anchored on the annexed supporting affidavit sworn by Solomon Akanga Advocate on 29th November, 2024. It is deponed in the said supporting affidavit that the law requires that the application be filed on behalf of the Claimant/Applicant.
 7. The Application is opposed by the 1st Respondent vide a replying affidavit of Chanshyam M. Gondariya, the 1st Respondent's Workshop Manager, sworn on 20th January, 2025. It is deponed in the said affidavit that the application is without merit and is an abuse of the Court's process as:-
 - a. the 1st Respondent has fully complied with the provisions of the *Occupational Safety and Health Act* 2007, a situation confirmed by the Claimant during his employment vide a written witness statement in Milimani CMCC No. 8396 of 2019 (William Kivati Ndunga – vs – Seyani Brothers and Company Limited).
 - b. that the period referred to (September 2003 to November 2021) spans 18 years and that during that period, no adverse findings and/or unsafe conditions were identified during inspections conducted by the 4th Respondent.
 - c. that Section 32 (of the *Occupational Safety and Health Act*) does not require the 4th Respondent to conduct retrospective investigations for periods over which compliance had already been verified.
 - d. that the Claimant has not provided factual or documentary evidence to substantiate the allegations of unsafe working conditions.
 - e. that the Claimant did not report any workplace-health related issues during his employment or upon departure from the 1st Respondent; and that the medical examinations sought are speculative and unsupported by any credible evidence directly linking the alleged health conditions to the Claimant's work environment or duties.
 - f. that the Claimant was in a supervisory role, and was responsible for ensuring compliance with health standards.
 - g. that the 1st Respondent was fully compliant with its PAYE statutory obligations under the *Income Tax Act*, including deduction and remittance of PAYE for all its employees whose salary exceeded the applicable threshold.



- h. that the prayer for PAYE returns is pre-mature as the issue can be addressed at the hearing of the main suit.
 - i. that the 1st Respondent has consistently complied with the [National Social Security Fund Act](#) by remitting all the required contributions for the Claimant and other employees. That such contributions can be confirmed at the hearing of the suit.
8. Documents annexed to the said replying affidavit are copies of Certificates of Registration of a Workplace, a 4 line written statement of the Claimant dated 14th September, 2018, and confirmation of remittance of PAYE and NSSF records/statements.
9. The 2nd Respondent (Kenya Revenue Authority) has opposed the Claimant's application vide a replying affidavit of Lizah Miriti, a Principal Officer of the 2nd Respondent, sworn on 26th March, 2025. It is deponed in the said replying affidavit that the 1st Respondent has provided the required PAYE returns, which the Court will have an opportunity to review and establish their validity under the rules of evidence; that the information requested for in prayer (c) of the application is protected under Articles 31 and 35 of [the Constitution](#) of Kenya, that the tax system in Kenya is a self-assessment based system and that the 2nd Respondent keeps records based on returns filed by tax-payers, and that the 1st Respondent has provided the requested PAYE returns. That the onus is on the Applicant to establish his employment period from September 2003 to November 2021, which is a substantive issue to be determined in the main suit.
10. The 4th Respondent has opposed the Claimant's application vide a replying affidavit of Justus Bosire Nyakego, the Deputy Director of Occupational Safety and Health, sworn on 10th February, 2025. It is deponed in the said replying affidavit, inter-alia:-
 - a. that the 4th Respondent did not fail or refuse to consider any claim in respect of an injury of the Claimant. That for an injury to be considered occupational, the workplace hazards to which one is subjected has to have explicit nexus conditions and/or symptoms of the injury. That the Claimant cited scorching sun, heavy rainfall and non-provision of sitting facilities as the hazards at the work place, but failed to link the hazards to the alleged spinal injury pleaded in paragraphs 21, 22 and 23 of his Memorandum of Claim.
 - b. that whereas Personal Protective Equipment for use in workplaces are issued and used based on specific prevailing hazards, the Claimant has not pleaded the hazards requiring the use of Personal Protective Equipment.
 - c. that the certificates of approval issued under Section 23(5) of the [Occupational Safety and Health Act](#) are not issued to competent persons and institutions (employers) duly vetted and approved by the 4th Respondent for lawful operations.
 - d. that the Certificate of registration of workplace issued under Sections 44 and 45(6) of the [Occupational Safety and Health Act](#) is issued to employers after processing of an employer's application, and is retained in the employer's custody. That having been an employee of the 1st Respondent, the Claimant had little to do with such certificate, and the certificate cannot form the basis of the Claimant's claim.



- e. that whereas any claim lodged with the 4th Respondent for injury compensation is based on already known and assessed injuries, the Claimant alleges/pleads possible occupational diseases, and multiplicity of accidents and incidents yet to be determined.
- f. that whereas notice of an accident and/or occupational disease respectively should be send to the Director within 7 days pursuant to Sections 21 and 22 of the [Occupational Safety and Health Act](#), no notice was sent to the 4th Respondent. That the Claimant says that diseases and accidents are yet to be determined, years since the alleged accidents and conditions of alleged occupational diseases.
- g. that no evidence in terms of medical reports and medical tests have been shared by the Respondent to demonstrate that the alleged injuries directly emanated from his work.
- h. that notwithstanding the absence of medical history and medical tests in support of the health condition, no details have been given on individual periods of exposure to alleged hazards and respective Occupational Exposure Limits (OEL); as occupational ailments present symptoms when OELs are exceeded.
 - i. that the exact hazards responsible for the alleged health disorders have not been provided by the Claimant; and the Claimant's health status during and at the time of departure from employment has not been highlighted for comparison with his health status at the time of filing suit.
- j. that although pursuant to Section 22(5) of the [Work Injury Benefits Act](#) an employee is not barred from reporting an occupational disease to the Director for assistance at any stage, the Claimant did not report any occurrence of any accident or occupational disease as provided in the said Section and did not seek assistance from the 4th Respondent.
- k. that the Claimant has not been assessed and computation done in accordance with Sections 28 and 30 of the [Work Injury Benefits Act](#) 2007 to enable him to seek compensation.

11. It is clear from all the foregoing that the compelling orders sought by the Claimant/Applicant vide an interlocutory application are aimed at yielding evidence from the 4 named Respondents touching on disputed and highly contentious matters pleaded by the Claimant/Applicant and denied/disputed by the 1st, 2nd and the 4th Respondents, against whom the compelling orders are sought. The 3rd Respondent, against whom a compelling order is also sought, is not shown to have filed response to either the application or the main suit. It is to be noted that pleadings herein are yet to close, and that pre-trial directions on the main suit are yet to be taken pursuant to Rule 40 of the Employment and Labour Relations Court (Procedure) Rules 2024.



12. Once matters are pleaded by a Claimant and are subsequently denied by the named Respondent, the suit must ordinarily go for a full trial for the Claimant to prove his case in accordance with the law. Section 107(1) of the *Evidence Act* provides as follows:-

“ 107(1) Whoever desires any court to give Judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.”

13. The burden of proving the existence of the facts pleaded by the Claimant is on the Claimant himself. Granting the Orders sought by the Claimant in his application would amount to the Court assisting a party to gather and to compile evidence from the defendants after an alleged accrual of an alleged cause of action and institution of a suit. The situation would, however, be different if the Claimant was asking the Court to compel the Respondents to furnish further and/or better particulars on matters pleaded in their respective statements of Response to the suit/claim herein.

14. Indeed, under Order 2 Rule 10(2) of the Civil Procedure Rules 2010, a Court can issue a specific order compelling a party to provide particulars of their defence if those particulars are not sufficiently detailed in their pleadings. The said sub-rule provides as follows:-

“ 10(2) The Court may order a party to serve on any other party particulars of any claim, defence or other matter stated in his pleadings, or a statement of the nature of the case on which he relies, and the order may be made on such terms as the Court thinks just.”

15. For record purposes, this Court may, in my view, be guided by the Civil Procedure Rules on any procedural issue whereon the Court’s Rules of Procedure, the Employment and Labour Relations Court (Procedure) Rules 2024, are silent.

16. It is to be noted that there currently does not exist an employer-employee relationship between the Claimant and the 1st Respondent. The Claimant has pleaded that his employment was terminated by the 1st Respondent on 21st November, 2021, while the 1st Respondent has pleaded that the Claimant resigned from its employment in 2024. There is no ongoing and/or current or possible exposure of the Claimant to hazardous work environment or non-compliance by the 1st Respondent with provisions of the law. The suit as pleaded relates to an alleged cause of action that has long accrued. The orders sought by the Claimant/Applicant are not capable of being granted.

17. Consequently, and having considered written submissions filed by the Claimant/Applicant as the Respondents opted not to file submissions, I find no merit in the Notice of Motion dated 29th November, 2024, and the same is hereby dismissed.

18. Costs of the application shall be in the suit.

19. It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 19TH DAY OF SEPTEMBER 2025

AGNES KITIKU NZEI

JUDGE

Order

This Ruling has been delivered via Microsoft Teams Online Platform. A signed copy will be availed to each party upon payment of the applicable Court fees.

AGNES KITIKU NZEI



JUDGE

Appearance:

Mr. Akanga for the Claimant/Applicant

No appearance for the 1st Respondent

Mr. Lemayan for the 2nd Respondent

No appearance for the 3rd Respondent

Mr. Nyakego for the 4th Respondent.

