



**Mutung'a v Kenya Wildlife Service & another (Cause E820 of 2023)
[2024] KEELRC 1995 (KLR) (23 July 2024) (Ruling)**

Neutral citation: [2024] KEELRC 1995 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E820 OF 2023
NZIOKI WA MAKAU, J
JULY 23, 2024**

BETWEEN

DOREEN KAVENYA MUTUNG'A CLAIMANT

AND

KENYA WILDLIFE SERVICE 1ST RESPONDENT

DR. ERUSTUS KANGA 2ND RESPONDENT

RULING

1. The Respondents raise a preliminary objection in relation to the suit by the Claimant as filed against the 2nd Respondent. They assert that there was no employee-employer relationship between the Claimant and the 2nd Respondent.

2. This matter relates to the issue of joinder. Under the *Employment Act*, employers are liable to be sued for their actions or inactions which lead to a cause of action. In some cases, there is room to sue the manager or factor of the company when the provisions of section 3 of the *Employment Act* are met. It provides as follows:-

“employer” means any person, public body, firm, corporation or company who or which has entered into a contract of service to employ an individual and includes the agent, foreman, manager, or factor of such person, public body, firm, corporation or company. [Emphasis supplied]

3. That means the contract of service must have been entered into between that person or the corporation on the one hand, and the employee. In this case the contract was entered into between the Claimant and the 1st Respondent (hereafter “the Service”) on 30th November 2021. The Director General at the time was Brig. (Rtd.) Waweru. Upon his departure from the Service, it would seem the 2nd Respondent was appointed DG. It is common ground that the 2nd Respondent supervised the Claimant as her



immediate boss. The 2nd Respondent is from all accounts, per the pleadings before the court, an employer for purposes of the law and is thus rightly before this Court. He cannot shy away from his own actions which demonstrate his exercise of prerogatives of an employer in the matter. He therefore is unsuccessful in getting the reprieve he seeks in the preliminary objection. Preliminary objection is dismissed albeit with no order as to costs.

It is so ordered.

DATED AND DELIVERED AT KISUMU THIS 23RD DAY OF JULY 2024

Nzioki wa Makau

JUDGE

