



**Kyalo v DT Dobie & Company (Kenya) Limited & 2 others (Cause E507 of 2024) [2025] KEELRC 2702 (KLR) (3 October 2025) (Ruling)**

Neutral citation: [2025] KEELRC 2702 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E507 OF 2024  
AK NZEI, J  
OCTOBER 3, 2025**

**BETWEEN**

**JOHN ROY KYALO ..... CLAIMANT**

**AND**

**DT DOBIE & COMPANY (KENYA) LIMITED ..... 1<sup>ST</sup> RESPONDENT**

**CFAO MOBILITY KENYA LIMITED (FORMERLY KNOWN AS CFAO MOTORS KENYA LIMITED) ..... 2<sup>ND</sup> RESPONDENT**

**CFAO SAS ..... 3<sup>RD</sup> RESPONDENT**

**RULING**

1. Before me for determination are two applications, the Claimant’s Notice of Motion dated 10<sup>th</sup> July, 2024 and the 1<sup>st</sup> and 2<sup>nd</sup> Respondents’ Notice of Motion dated 28<sup>th</sup> February, 2025. On 8<sup>th</sup> May, 2025, the Court directed that the two applications be heard concurrently/together, and be canvassed by way of written submissions.

**The Notice of Motion dated 10<sup>th</sup> July, 2024**

2. The Notice of Motion dated 10<sup>th</sup> July, 2024 is filed by the Claimant, and is expressed to be brought under Order 5 Rules 21, 22B, 25 and 26 and Order 50 Rule 1 of the Civil Procedure Rules and Article 159 of *the Constitution* of Kenya 2010. The Claimant/Applicant seeks the following substantive Orders:-
  - a. That leave be granted to the Claimant/Applicant to effect service of summons and/or Notice of Summons herein outside Kenya upon the Third Respondent which is a foreign company incorporated in France by way of Electronic Mail to the Third Respondent’s last confirmed and used Email addresses, namely rbielle@cfao.com and thirata@cfao.com, and that the Third Respondent do enter appearance within 21 days of service.



- b. That costs of, and incidental to the application be provided for.
3. The application sets out general grounds on which it is brought, which include an averment that the Claimant has a good cause of action against the Third Respondent. The application is anchored on the Claimant/Applicant's supporting affidavit sworn on 10<sup>th</sup> July, 2024. It is deponed in the said supporting affidavit, inter-alia:-
- a. that the 3<sup>rd</sup> Respondent is incorporated outside Kenya, in France, and that leave of the Court is necessary to effect service of summons and/or Notice of Summons upon the 3<sup>rd</sup> Respondent ex- Juris in order to empower the Court to assume Jurisdiction over the 3<sup>rd</sup> Respondent.
  - b. that the 3<sup>rd</sup> Respondent is the Parent Company of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents, which are its wholly owned and controlled subsidiaries incorporated in Kenya.
  - c. that at all material times relevant hereto upto 9<sup>th</sup> May, 2024, the Claimant was employed by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents in the position of General Manager – Passenger Car Sales, pursuant to contracts of employment dated 22<sup>nd</sup> December, 2020 and 31<sup>st</sup> March, 2023 respectively.
  - d. that the Claimant's claim against the 3<sup>rd</sup> Respondent is in the tort of inducing breach of the employment contract dated 31<sup>st</sup> March, 2023.
  - e. that while discharging his duties as General Manager – Passenger Car, the Claimant discovered evidence of a massive bribery scheme perpetrated by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents, with the complicity of the 3<sup>rd</sup> Respondent, relating to corrupt bribe payments made to public officials in order to win and retain public tenders for leasing of motor vehicles under Government of Kenya (GOK) Vehicle Leasing Program for the period 2017 to 2023.
  - f. that in order to conceal and to facilitate the corrupt bribe scheme, the 1<sup>st</sup> and 2<sup>nd</sup> Respondents, with complicity of the 3<sup>rd</sup> Respondent, engaged an intermediary, in part to assist in the bribery scheme, and to offer and make bribe payments to public officials. (Some details and particulars are stated in the supporting affidavit).
  - g. that concerned that the bribery scheme and corrupt payments disclosed potential violation of Kenya anti-bribery laws (i.e Anti-*Bribery Act*, the *Anti-Corruption and Economic Crimes Act*, the Proceeds of Crime and Anti-Money Laundering Act and the Respondents' Anti-Bribery Policies and Procedures), and pursuant to the Claimant's contractual obligation of "up the ladder reporting", the Claimant severally notified the Respondents of his concerns and submitted to them evidence of bribery and potential violation of anti-bribery laws and compliance policies.
  - h. that the Respondents failed to take any reasonable steps to investigate and to remedy the violations aforementioned.
  - i. that subsequent to the aforesaid reports of bribery and potential violation of the law, the 3<sup>rd</sup> Respondent knowingly and intentionally procured, instigated, incited and assisted the 1<sup>st</sup> and 2<sup>nd</sup> Respondents to terminate the Claimant's contract of employment. That in particular, the 3<sup>rd</sup> Respondent's Managing Director for Multi-brand Division (in a meeting held at Nairobi on 24<sup>th</sup> October, 2024) instructed the 2<sup>nd</sup> Respondent to sack the Claimant and to subsequently appoint its own HR Manager to implement its instructions. (Documents in this regard are annexed to the supporting affidavit).



- j. that as a result of the 3<sup>rd</sup> Respondent's inducement, the 2<sup>nd</sup> Respondent terminated the Claimant's contract of employment on 9<sup>th</sup> May, 2024 without notice and payment of lawful dues, without any valid grounds, and in violation of its HR Policies, Procedures and fair procedure.
  - k. that breach of the Claimant's employment contract was directly attributable to the 3<sup>rd</sup> Respondent's tortious inducement, without lawful justification for such inducement.
  - l. that this court has jurisdiction, under Article 162(2) of *the Constitution* of Kenya and Section 12 of the *Employment and Labour Relations Court Act* 2012, to hear and to determine all aspects of the dispute herein, and in particular the inducement claim against the 3<sup>rd</sup> Respondent.
4. The application is opposed by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents vide their grounds of opposition dated 30<sup>th</sup> July, 2024. It is stated in the grounds of opposition:-
- a. That the statement of claim does not disclose any cause of action against the 3<sup>rd</sup> Respondent, and that the Claimant has no locus standi to sue the 3<sup>rd</sup> Respondent before this Court for reasons:-
    - i. that there is no employment relationship between the 3<sup>rd</sup> Respondent and the Claimant. That pursuant to Section 12 of the *Employment and Labour Relations Court Act*, this Court lacks jurisdiction to entertain the claim against the 3<sup>rd</sup> Respondent.
    - ii. that the 3<sup>rd</sup> Respondent is a foreign company and a shareholder of the 2<sup>nd</sup> Respondent. That the 1<sup>st</sup> and 2<sup>nd</sup> Respondents are separate entities and that the Claimant has not disclosed any legal basis for the joinder of the 3<sup>rd</sup> Respondent in the proceedings herein.
    - iii. in the absence of Jurisdiction, an order allowing service of process upon the 3<sup>rd</sup> Respondent would be in vain, and the Court should not issue orders in vain.
  - c. that the 3<sup>rd</sup> Respondent is not a necessary or proper party to the suit. That the Claimant and the 1<sup>st</sup> and 2<sup>nd</sup> Respondents possess all the material and facts necessary for the Court to determine the suit herein, and that no value would be added by the 3<sup>rd</sup> Respondent.
  - d. that the application is an abuse of the Court's process and ought to be dismissed.
5. The 1<sup>st</sup> and 2<sup>nd</sup> Respondents' foregoing grounds of opposition were filed contemporaneously with an evenly dated Notice of Preliminary Objection which raised the same grounds as in the grounds of opposition, albeit in a shorter form. The said preliminary objection has since been determined by this Court vide its Ruling delivered on 31<sup>st</sup> January, 2025. The Court was on 6<sup>th</sup> March, 2025 informed by Counsel for the 1<sup>st</sup> and 2<sup>nd</sup> Respondents that this Court's said Ruling is now the subject of Court of Appeal Civil Appeal No. 141 of 2025. I will, therefore, determine only two issues on the Notice of Motion dated 10<sup>th</sup> July, 2024, and that is whether the Claimant has disclosed a reasonable cause of action against the 3<sup>rd</sup> Respondent; and whether the order sought should issue.
6. Before delving into the identified issues, however, it is worthy noting that proceedings so far taken in the suit herein relate to the 3<sup>rd</sup> Respondent foreign company, which is sued herein, but which has never been served with Summons to enter appearance to facilitate its participation in these proceedings. Allegations of inducement of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents by the 3<sup>rd</sup> Respondent to breach the Claimant's contract of employment have been made by the Claimant in the suit herein, and



documents tending to point to that direction have been placed before this Court. The 3<sup>rd</sup> Respondent is an admitted shareholder of the 2<sup>nd</sup> Respondent, and therefore not a stranger to the 1<sup>st</sup> and 2<sup>nd</sup> Respondents. The validity of the documents annexed to the Claimant's supporting affidavit has not been questioned by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents.

7. Employment contracts are contractual relationships, and established general principles and doctrines relating to the law of contract, where necessary, apply regarding employment contracts. In the English cases of OBG Limited and Others v Allan and Others, Douglas & Others v Hello ! Limited & Others; and Mainstream Properties Limited v Young and Others [2007] UKHL 21, Lord Hoffmann stated the legal position regarding inducing breach of contract as follows:-

“3. Liability for inducing breach of contract was established by the famous case of Lumley v Gye [1853] 2E & B216. The Court based its decision on the general principle that a person who procures another to commit a wrong incurs liability as an accessory. As Erle J put it (at P 232):-

“It is clear that the procurement of the violation of a right is a cause of action in all instances where the violation is an actionable wrong, as in violation of a right to property, whether real or personal, or to personal security: he who procures the wrong is a joint wrongdoer, and may be sued; either alone or jointly with the agent, in the appropriate action for the wrong complained of” . . . . .

5. The forms of action no longer trouble us. But the important point to bear in mind about Lumley v Gye is that the person procuring the breach of contract was held liable as accessory to the liability of the contracting party. Liability depended on the contracting party having committed an actionable wrong . . .”

8. It was stated as follows in Joseph Ochieng & 2 Others t/a Acquiline Agencies v First National Bank of Chicago [1990] eKLR:-

“ . . . It is stated in Bullen and Leak's Precedents of Pleadings, 12<sup>th</sup> edition, at page 500 under rubric Right of Action that:-

“The essential ingredients of the tort of inducing a breach of contract are:-

1. the wrongdoer knew or acquired knowledge of the contract in question and its essential terms,
2. that he so acted or interfered whether by persuasion, inducement or procurement or other means as to show that he intended to cause a breach of the contract or prevent its performance by one party to the detriment of the other party.
3. that the breach of the contract was directly attributable to such act or interference, and
4. that damage was occasioned or was likely to be occasioned to such other party.”

9. In the present case, I am satisfied that the Claimant, whose contract of employment was terminated as a result of the alleged inducement by the 3<sup>rd</sup> Respondent, has demonstrated the existence of a probable cause of action against the 3<sup>rd</sup> Respondent, regarding which the 3<sup>rd</sup> Respondent should be served with summons and suit documents herein to enable it to enter appearance and defence, if it so wishes.



10. As stated in Daniel Motaung v Somasource Kenya EPZ Ltd t/a Sama & 2 Others [2024] KEELRC 7 (KLR):-

“ 63. . . . Summons to enter appearance also play a pivotal role when it comes to a defendant who is outside the Court’s Jurisdiction. The supplemental but equally important role is that it empowers the Court in question to assume jurisdiction over such party.

The manner in which such Jurisdiction is assumed by the Court is that firstly the Plaintiff has to seek leave of the Court to serve such summons outside the Court’s Jurisdiction. The purpose of seeking leave is to enable the Court to weigh the reasons adduced by the Plaintiff and determine whether a proper case has been made out for service of summons outside its jurisdiction. The principles that govern the Court in determining whether or not to grant leave are set out, though not exhaustively, under Order 5 Rule 25 . . . Secondly, upon such leave being granted, the summons has to be served upon the defendant. It is only upon service of the summons that a Court assumes jurisdiction over a foreign defendant . . .”

11. I have taken note of the fact that three of the reliefs sought by the Claimant in his Statement of Claim dated 1<sup>st</sup> July, 2024 are as follows:-

“(d) A declaration that the Third Respondent induced breach of the Employment Contract between the Claimant and the Second Respondent.

(g) An award of Kshs.123,193,057.60 against the Third Respondent.

(h) General, exemplary and punitive damages against the Respondents.”

12. It cannot be said that there is no legal basis upon which the 3<sup>rd</sup> Respondent can be served with summons and/or Notice of Summons to Enter Appearance ex-Juris.

13. The 1<sup>st</sup> and 2<sup>nd</sup> Respondents have submitted that the tort of inducing a breach of contract does not fall within the Jurisdiction of the Employment and Labour Relations Court, and to firm up this position they have cited a decision of a Court of concurrent status, the High Court, in the case of Ezekiel Oira v Ethics and Anti-Corruption Commission and Director of Public Prosecutions [2016] KEHC 4562 (KLR).

14. The Court of Appeal stated as follows in the case of Paramount Bank Limited v Vaqvi Syed Qamara & Another [2017] eKLR:-

“ . . . The preamble to *Employment and Labour Relations Court Act* states that the Court is established to hear and determine disputes relating to “employment and labour relations” and “for connected purposes”. Among its powers under Section 12, the Court hears and determines all disputes relating to and arising out of employment and labour relations. In the exercise of that Jurisdiction, the Court has the power to award compensation or damages in any circumstances contemplated under the Act or any other written law and to grant any other appropriate relief that it may deem fit.”

15. As I preceded to point out in this Ruling, employment contracts are contracts, and may fall within the purview of established doctrines and principles that apply, or may apply in relation to other contracts.



16. Although the 3<sup>rd</sup> Respondent is yet to respond to the allegations made against it by the Claimant in the pleadings herein as it is yet to be served with summons and pleadings herein, the 1<sup>st</sup> and 2<sup>nd</sup> Respondents have put up a spirited legal effort to have the 3<sup>rd</sup> Respondent, on whose behalf they cannot validly litigate, struck off these proceedings. They have, however, not told this Court what prejudice they will suffer if the 3<sup>rd</sup> Respondent, a foreign company incorporated in France, is served with summons and pleadings herein as by law provided. Having considered written submissions filed by both parties, I find merit in the Notice of Motion dated 10<sup>th</sup> July, 2025. The same is allowed in the following terms:-
- a. Leave is hereby granted to the Claimant/Applicant to effect service of summons and/or Notice of Summons herein outside Kenya upon the Third Respondent, which is a foreign company incorporated in France, by way of Electronic Mail to the Third Respondent's last confirmed and used Email addresses, namely rbielle@cfao.com and thirata@cfao.com.
  - b. The Third Respondent shall enter appearance within 21 days of service.
  - c. Costs of the application shall be in the suit.

### **The Notice of Motion dated 28<sup>th</sup> February, 2025**

17. The application is expressed to be brought under Rule 45(1) of the Employment and Labour Relations Court (Procedure) Rules 2024. The 1<sup>st</sup> and 2<sup>nd</sup> Respondents, at this stage, seek Orders:-
- a. That there be a stay of proceedings herein pending the hearing and determination of the appeal to the Court of Appeal being Civil Appeal No. 141 of 2025 against the Ruling delivered on 31<sup>st</sup> January, 2025.
18. The application sets out on its face the grounds on which it is brought, and it is based on the supporting affidavit of Eunice Kamau, the 2<sup>nd</sup> Respondent's Legal Manager, sworn on 28<sup>th</sup> February, 2025. It is deponed in the said supporting affidavit that:-
- a. aggrieved by this Court's Ruling of 31<sup>st</sup> January, 2025, the 1<sup>st</sup> and 2<sup>nd</sup> Respondents filed an appeal to the Court of Appeal being Civil Appeal No. E141 of 2025; and that the intended appeal has good chances of success.
19. In opposition to the application, the Claimant filed a replying affidavit sworn by himself on 28<sup>th</sup> March, 2025. It is deponed in the said affidavit that this Court has no jurisdiction to determine the application, that the application is incompetent and is an abuse of the Court's process as the Applicants have not sought leave to effect service on the 3<sup>rd</sup> Respondent ex-Juris, that stay of proceedings is a grave Judicial action which will interfere with the Claimant's right to access to justice, fair trial and right to be heard without delay.
20. It is also deponed in the Claimant's said replying affidavit that there are no circumstances warranting stay of proceedings, that the appeal will not be rendered nugatory if stay of proceedings is not granted, that the application is brought at the behest of the 3<sup>rd</sup> Respondent in order to obstruct and defeat Justice, and that the appeal has no prospects of success.
21. The Claimant also filed a Notice of Preliminary Objection dated 28<sup>th</sup> March, 2025, pleading lack of jurisdiction on the part of this Court [over the application] on account of failure by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents to seek leave to effect service of the Application on the 3<sup>rd</sup> Respondent (CFAO SAS) EX-JURIS.



22. Both sides (the Claimant on one side and the 1<sup>st</sup> and 2<sup>nd</sup> Respondents on the other side) filed written submissions on the application, the Claimant having chosen to withdraw his Notice of Preliminary Objection. In urging the Court to grant the stay of proceedings sought, the 1<sup>st</sup> and 2<sup>nd</sup> Respondents argued that this Court has jurisdiction to order stay of proceedings.
23. The 1<sup>st</sup> and 2<sup>nd</sup> Respondents cited Halsbury's Laws of England, 5<sup>th</sup> Edition, Volume 12, at paragraph 1028 where the purpose of stay of proceedings is stated as follows:-

“A stay of proceedings arises under an order of the court which puts a stop or ‘stay’ on the further conduct of the proceedings in that court at the stage which they have then reached, so that the parties are precluded thereafter from taking any further step in the proceedings. The object of the order is to avoid the trial or hearing of the claim taking place, where the court thinks it is just and convenient to make the order, to prevent undue prejudice being occasioned to the opposite party or to prevent the abuse of the process.”
24. The 1<sup>st</sup> and 2<sup>nd</sup> Respondent/Applicants relied on several decided cases, which include the Court of Appeal decisions in the cases of Co-operative Bank of Kenya Ltd v Banking Insurance & Finance Union Kenya [2014] KECA 109 (KLR) and Delphis Bank Limited – v Channan Singh Chatthe & 5 Others [2006] KECA 295 (KLR).
25. It ought to be appreciated that no two cases are identical in facts and circumstances, and that similar cases are usually cited for purposes of guidance. In the present case, the 1<sup>st</sup> and 2<sup>nd</sup> Respondent/Applicants have not stated what prejudice they will suffer if proceedings herein are not stayed. It is to be noted that the preliminary objection giving rise to the Ruling which the 1<sup>st</sup> and 2<sup>nd</sup> Respondent/Applicants' have appealed from related to the 3<sup>rd</sup> Respondent in the main suit herein, a foreign company which is yet to be served with summons ex-Juris. The said preliminary objection, seeking to have the 3<sup>rd</sup> Respondent struck off from the suit herein, and which this Court dismissed vide its Ruling delivered on 31<sup>st</sup> January, 2025, was about the 3<sup>rd</sup> Respondent, not about the 1<sup>st</sup> and 2<sup>nd</sup> Respondents.
26. This Court is yet to assume Jurisdiction over the 3<sup>rd</sup> Respondent, as service of summons ex-Juris is yet to happen. The 1<sup>st</sup> and 2<sup>nd</sup> Respondents appear to be purporting “to litigate” on behalf of the 3<sup>rd</sup> Respondent. The Claimant's deposition that the present application “has been brought at the behest of the 3<sup>rd</sup> Respondent” cannot, in my view, be viewed as hollow deposition.
27. The 1<sup>st</sup> and 2<sup>nd</sup> Respondents have not demonstrated that they will suffer any form of prejudice if the stay of proceedings sought is not granted, and have not demonstrated that the pending appeal will be rendered nugatory.
28. Having said that, and having considered the written submissions filed, I find no merit in the Notice of Motion dated 28<sup>th</sup> February, 2025, and the same is hereby dismissed. Costs of the application shall be in the suit.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 3<sup>RD</sup> DAY OF OCTOBER 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. Kiplangat for the Claimant/Applicant

Mr. Makori and Miss Muthiani for the Respondent

**DRAFT**

