

**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT & LABOUR RELATIONS COURT AT**  
**NAIROBI**

**CAUSE NO. E134 OF 2024**

**BAKERY CONFECTIONERY FOOD MANUFACTURING &  
ALLIED WORKERS UNION (K).....**

**.....CLAIMANT/APPLICANT**

**VERSUS**

**MJENGO LIMITED.....1<sup>ST</sup>**

**RESPONDENT**

**CONSOLIDATED HUMAN RESOURCES**

**SOLUTIONS LIMITED.....PROPOSED 2<sup>ND</sup>**

**RESPONDENT**

**RULING**

1. Before Court is a Notice of Motion application dated 15<sup>th</sup> May, 2025, brought pursuant to Order 1 Rule 6 and 7 of the Civil Procedure Rules 2010 as read with Rule 45 of the Employment & Labour Relations Court (Procedure) Rules 2024, wherein the Claimant/Applicant seeks orders

**THAT: -**

- i. This Honorable Court be pleased to join the proposed 2<sup>nd</sup> Respondent, Consolidated Human Resource Solutions Limited, as a 2<sup>nd</sup> Respondent in these proceedings.

- ii. The Claimant be henceforth granted leave to file and serve an Amended Memorandum of Claim within 14 days or such other period as the Court may deem fit to direct.
  - iii. The Cost of the application to abide by the main cause.
2. The application is supported by grounds on the face thereof and the affidavit of Danchael Mwangure, the General Secretary of the Claimant union, sworn on 15<sup>th</sup> May, 2025.
3. The Applicant avers that during the period of December 2023 and January 2024, it recruited the Respondent's employees into its membership, and the said employees subscribed to its membership by appending their signatures on Form (S) (Check-off forms) to acknowledge such membership.
4. It avers that the 1<sup>st</sup> Respondent declined to deduct and remit union dues in respect of the said employees who had joined the Claimant/Applicant union and resorted to victimizing the said employees, hence the institution of these proceedings.
5. It is its case that at the time of filing these proceedings, it filed an application under Certificate of Urgency expressing fear that the Respondent was intent on outsourcing its employees to defeat their rights to join and belong to the union, and sought orders to restrain the Respondent from deploying outsourced labour.

6. It avers that those interim orders were granted, directing the Respondent not to victimize the Applicant's members even as the suit was referred to conciliation. It further states that the Respondent engaged an outsourcing agency and transferred the services of its workforce, including members who perform core functions, to the proposed 2<sup>nd</sup> Respondent.
7. It is the Applicant's position that, despite the said suit, the Respondent purported to direct its own employees to execute contracts with an outsourcing agent, the proposed 2<sup>nd</sup> Respondent.
8. The Applicant states that it seeks to challenge the said transfer and deployment of the outsourcing agent at the Respondent's premises, and it will therefore be necessary that the proposed 2<sup>nd</sup> Respondent be admitted as a party to these proceedings.
9. It avers that during conciliation proceedings at the Labour office, the Respondent openly conceded to the outsourcing and as such, it is imperative that the proposed 2<sup>nd</sup> Respondent be joined to this suit and the Applicant be allowed to file amended Pleadings.
10. In his oral submissions, counsel for the Claimant/Applicant told the court that he had earlier been allowed leave to file an amended memorandum of claim. He argued further that the suit herein cannot be determined without joining the proposed 2<sup>nd</sup> Respondent.

11. The Respondent opposed the joinder of the proposed 2<sup>nd</sup> Respondent vide grounds of opposition dated 24<sup>th</sup> September, 2025, wherein it argues that, as far as the claim challenges its decision to outsource employees as being unlawful, irregular, and seeks reversal thereof, such prayers can be effectively heard and determined within the framework of the existing claim.
12. The deponent avers that the Claimant has failed to demonstrate that the proposed 2<sup>nd</sup> Respondent is a necessary or proper party to these proceedings, as no relief is shown to lie against the proposed party in respect of the subject matter, nor has it been established that this Court would be unable to pass an effective decree in its absence.
13. The Respondent further states that the Claimant has not established any enforceable right of relief against the proposed 2<sup>nd</sup> Respondent, nor demonstrated that an effective order cannot be made without its joinder. That the application does not plead or disclose a prima facie basis for such propositions.
14. It is its position that the application is fatally defective for failure by the Claimant to annex a copy of the proposed amended claim, in the absence of which, neither the Court nor the parties can satisfy themselves as to the nature and extent of the proposed amendments.

15. The Respondent states that there exist alternative, less prejudicial remedies available to the Claimant, rendering joinder unnecessary. It avers further that should the Claimant wish to pursue claims against the proposed 2<sup>nd</sup> Respondent for acts allegedly committed by it, the proper course would be to institute a separate suit.
16. The Respondent finally avers that the Claimant has not demonstrated that the refusal of the orders sought will result in a multiplicity of proceedings.
17. The Motion was urged by oral submissions on 15<sup>th</sup> October, 2025, and both counsels reiterated their pleadings.

### **Determination**

18. The singular issue for determination is whether the proposed 2<sup>nd</sup> Respondent, Consolidated Human Resource Solutions Limited, should be joined as a party to the proceedings.
19. Order 1 Rule 10(2) of the Civil Procedure Rules, 2010 provides thus on addition of parties: -

***"The court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the court to be just, order that the name of any party improperly joined be struck out, and that the name of any person***

***who ought to have been joined, or whose presence before the court may be necessary in order to enable the court to effectually and completely adjudicate upon and settle all questions involved in the suit, be added."***

20. In the case of ***Departed Asians Property Custodian Board v. Jaffer Brothers Ltd [1999] 1 EA 55***, it was held that a necessary party is one whose presence is essential for the court to effectually and completely adjudicate upon all matters in dispute.
21. The court will allow a person to be joined as a party, either as a Claimant, Respondent or interested party, where the Applicant satisfies it that the person's presence is necessary to enable the court effectively and completely adjudicate upon and settle all questions in the suit, the person has a direct legal interest in the subject matter of the dispute, the joinder will help to avoid multiple suits over the same subject matter, promoting judicial economy and consistency of outcomes, and where the joinder will not cause undue delay, inconvenience, or prejudice to the existing parties in the suit.
22. A party can be joined to proceedings as a Respondent where several persons are alleged to be jointly, severally, or alternatively liable in accordance with Order 1 Rule 3 of the Civil Procedure Rules, 2010.
23. The Claimant union alleges that after it recruited members from the 1<sup>st</sup> Respondent's workforce, the 1<sup>st</sup> Respondent

retaliated by outsourcing those employees to the proposed 2<sup>nd</sup> Respondent. It submits that it now seeks to challenge that outsourcing arrangement and the alleged transfer of its members' contracts to the proposed 2<sup>nd</sup> Respondent.

24. The Claimant/Applicant further argues that the proposed 2<sup>nd</sup> Respondent is now, in fact, the employer of the affected employees and therefore a necessary party to the dispute herein.
25. The Respondent, on its part, contends that the reliefs sought challenging the outsourcing and non-deduction of union dues can be fully addressed without the presence of the 2<sup>nd</sup> Respondent. It maintains that the Claimant has not shown any specific cause of action or enforceable right against the proposed 2<sup>nd</sup> Respondent.
26. The Respondent further points out a procedural defect, being that the Claimant did not annex a draft amended memorandum of claim, making it impossible for the Court to evaluate the necessity or scope of the proposed amendments.
27. The Supreme Court of Kenya in ***Trusted Society of Human Rights Alliance v Mumo Matemu SC Petition No. 12 of 2013 [2015] eKLR (Mumo Matemu case)*** held that a party seeking to be enjoined in proceedings must prove the personal interest or stake that the party has in the matter, and the interest must be clearly identifiable and

must be proximate enough, to stand apart from anything that is merely peripheral.

28. The Court notes that the subject of the claim includes an alleged unlawful outsourcing of unionisable employees of the Claimant/Applicant. The evidence before the Court and admissions made during conciliation indicate that the Respondent did engage the proposed 2<sup>nd</sup> Respondent as the outsourcing agent.

29. It is further evident that the employees' current terms of engagement and control rest with the proposed 2<sup>nd</sup> Respondent; hence, any effective determination of their employment status, rights, and union membership will inevitably affect the proposed 2<sup>nd</sup> Respondent.

30. It is therefore my considered view that the proposed 2<sup>nd</sup> Respondent has a direct legal and factual interest in the outcome of this dispute.

31. Further, while the Respondent correctly observed that the Claimant did not annex the proposed amended memorandum of claim, this omission is not fatal. Courts have consistently held that failure to attach a draft pleading is a curable procedural lapse, provided the necessity for joinder is otherwise demonstrated (**see *Central Kenya Ltd v. Trust Bank Ltd [2000] 2 EA 365***).

32. In the upshot, the Claimant/Applicant's motion is found to have merit, and is allowed in terms of the following orders: -

- a) That Consolidated Human Resource Solutions Limited be and is hereby joined as the 2<sup>nd</sup> Respondent in this matter.
- b) That the Claimant/Applicant is granted leave to file and serve an Amended Memorandum of Claim within fourteen (14) days from the date hereof.
- c) The Respondents shall have corresponding leave to file and serve amended responses within fourteen (14) days of service.
- d) Costs shall abide the cause.

33. Orders accordingly.

**SIGNED, DATED, AND DELIVERED AT NAIROBI THIS 20<sup>TH</sup> DAY OF NOVEMBER, 2025**

**C. N. BAARI**  
**JUDGE**

**Appearance:**

Mr. Amalemba present for the Claimant/Applicant

Mr. Andiwo present for the 1<sup>st</sup> Respondent

N/A for the Proposed 2<sup>nd</sup> Respondent

Ms. Esther S - Court Assistant