



REPUBLIC OF KENYA



**KENYA LAW**  
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**Ndungu v FAPCL Group Limited & another (Cause 448 of 2023)  
[2025] KEELRC 3188 (KLR) (13 November 2025) (Ruling)**

Neutral citation: [2025] KEELRC 3188 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE 448 OF 2023  
CN BAARI, J  
NOVEMBER 13, 2025**

**BETWEEN**

**BILL NDUNGU ..... CLAIMANT**

**AND**

**FAPCL GROUP LIMITED ..... RESPONDENT**

**AND**

**FAPCL VALUERS LIMITED ..... INTENDED RESPONDENT**

**RULING**

1. Before Court is a Notice of Motion application dated 11<sup>th</sup> March, 2025, brought pursuant to Order 1 Rule 3 of the Civil Procedure Rules, wherein the Claimant/Applicant seeks orders THAT: -
  - a. Spent
  - b. The Intended 2<sup>nd</sup> Defendant herein be enjoined in this suit as the 2<sup>nd</sup> Defendant.
  - c. Costs be provided for.
2. The application is supported by grounds on the face thereof and the affidavit of Bill Ndungu, the Applicant, sworn on 11<sup>th</sup> March, 2025.
3. The Applicant avers that he was employed by the Respondent since 5<sup>th</sup> July, 2016, and later appointed as a Director in the Respondent's affiliate company FAPCL Valuers Limited, the Intended 2<sup>nd</sup> Respondent herein.
4. It is his case that being a registered valuer, his credentials were and are still used by the Respondent in tendering for works without rightfully compensating him. He avers that even after resigning from the Respondent's company, his name is still retained as a Director in the Respondent's affiliate company, FAPCL Valuers Limited.



5. It is the Applicant's position that the Intended 2<sup>nd</sup> Respondent has not paid him directorship emoluments and royalties derived from the use of his credentials, information and images to secure tenders.
6. The Applicant states that the orders sought in this application if granted will not occasion any prejudice to the Respondent herein, and that the interest of justice and the fair resolution of this matter favour joinder of the Intended 2<sup>nd</sup> Respondent to this suit.
7. The Respondent opposed the joinder of the Intended 2<sup>nd</sup> Respondent vide a Replying Affidavit sworn by one Martin Dias on 9<sup>th</sup> June, 2025.
8. The deponent avers that the Intended 2<sup>nd</sup> Respondent, although an affiliate of the 1<sup>st</sup> Respondent, is a separate and distinct legal entity, and no specific cause of action has been pleaded or demonstrated against it.
9. He avers that the Applicant has not demonstrated sufficient reason why the Intended 2<sup>nd</sup> Respondent should be joined as a party under Order 1 Rule 10(2) of the Civil Procedure Rules.
10. It is the Respondent's position that it applied for the removal of the Applicant as a director of the Intended 2<sup>nd</sup> Respondent; but that the process is yet to be finalized by the Business Registration Service. It avers further, that the current CR12 issued by the Registrar of Companies still lists the Applicant as a director, creating a presumption that the Applicant remains involved in the affairs of the Intended 2<sup>nd</sup> Respondent until the Registrar's records are duly updated.
11. The Respondent avers that the Applicant has failed to demonstrate how the joinder of the Intended 2<sup>nd</sup> Respondent is necessary for the court to effectively and completely adjudicate upon the issues in dispute.
12. It avers further that the present application is an attempt by the Applicant to unnecessarily widen the scope of the proceedings and divert the court's attention from the core employment issues in dispute. It is its assertion that the application is made in bad faith, is speculative in nature, and, if allowed, will occasion prejudice and delay contrary to the overriding objective of the court as set out under Section 3 of the *Employment and Labour Relations Court Act*.
13. The deponent further contends that the 1<sup>st</sup> Respondent will suffer prejudice through the introduction of irrelevant and extraneous issues into the proceedings, thereby undermining the fair and expeditious determination of the matter.
14. That the deponent therefore, prays that the Claimant/Applicant's Notice of Motion dated 11<sup>th</sup> March 2025 be dismissed with costs.
15. The Motion was canvassed by way of written submissions. All parties filed submissions, and the submissions have been duly considered.

### **Determination**

16. 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."

17. 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 that the joinder will not cause undue delay, inconvenience, or prejudice to the existing parties in the suit.
18. 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.
19. The Applicant contends that he was employed by the Respondent since 5<sup>th</sup> July, 2016, and was later appointed as a Director in the Respondent's affiliate company FAPCL Valuers Limited, the Intended 2<sup>nd</sup> Respondent herein. It is his assertion that being a registered valuer, his credentials were and are still used by the Respondent in tendering for works without rightfully compensating him.
20. The Respondent on its part, acknowledges that the Intended 2<sup>nd</sup> Respondent, is indeed an affiliate of the 1<sup>st</sup> Respondent, but contends that it is a separate and distinct legal entity, and no specific cause of action has been pleaded or demonstrated against it.
21. It is the Respondent's position that it applied for the removal of the Applicant as a director of the Intended 2<sup>nd</sup> Respondent; but that the process is yet to be finalized by the Business Registration Service. It confirmed that the current CR12 issued by the Registrar of Companies still lists the Applicant as a director, creating a presumption that the Applicant remains involved in the affairs of the Intended 2<sup>nd</sup> Respondent until the Registrar's records are duly updated.
22. 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. Further in *Civicon Limited v. Kivuwatt Limited & 2 Others* [2015] eKLR, the Court of Appeal held that a party may be joined if they have a stake or legal interest in the subject matter, or if their participation is necessary for a complete resolution of the dispute.
23. 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.
24. From the Claimant/Applicant's claim, it is evident that part of what the Applicant seeks is director emolument for its failure to delist the Claimant, and which the Respondent has confirmed that the Claimant is indeed still listed as a director of the Intended 2<sup>nd</sup> Respondent which it also confirmed being its affiliate and an independent legal entity.
25. Further, the Respondent has equally not denied that the Claimant/applicant was appointed a director of the Intended 2<sup>nd</sup> Respondent.
26. In light of the foregoing, I find and hold that the Intended 2<sup>nd</sup> Respondent may be jointly, severally, or alternatively liable to the Claimant/Applicant, hence its presence in this matter is necessary to enable the court effectively and completely adjudicate upon and settle all questions in the suit.



27. In whole, I reach the conclusion that the Claimant/Applicant's motion is merited and is hereby allowed in terms of the following orders: -
- a. That the Intended 2<sup>nd</sup> Respondent; FAPCL Valuers Limited be and is hereby joined in this suit as the 2<sup>nd</sup> Respondent.
  - b. That the Claimant to amend their claim accordingly and serve the same on the Respondents within 14 days of this ruling.
  - c. Costs shall abide the cause.
28. Orders accordingly.

**SIGNED, DATED AND DELIVERED AT NAIROBI THIS 13<sup>TH</sup> DAY OF NOVEMBER, 2025**

**C. N. BAARI**

**JUDGE**

Appearance:

N/A for the Claimant/Applicant

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

Ms. Esther S - Court Assistant

