

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS  
COURT AT NAIROBI  
CAUSE NO. E086 OF 2024  
PETERSON KABUTI NDEKERE  
CLAIMANT  
v  
SALIMIRWA TRADING CO LTD  
RESPONDENT**

**EMPLOYMENT AND LABOUR RELATIONS COURT  
RULING**

Peterson Kabuti Ndekere (the Claimant) sued Salimirwa Trading Co Ltd (the Respondent) on 1 February 2024, and he stated the Issue in Dispute as:

Wrongful and unlawful summary dismissal of the Claimant without notice, accrued annual leave, overtime, salary arrears, Certificate of Service, failure and/or refusal and/or neglect to pay terminal dues/benefits.

2. The Respondent filed a Reply to the Claim on 23 May 2024, wherein it was pleaded that the parties were embroiled in a suit before the High

Court, being Nairobi High Court Commercial Case No. E388 of 2023, *Peterson Kabuti Ndekere & Another v. David Kabuti & Ors* over similar subject matter

3. On 30 July 2025, the Respondent filed a Motion dated 14 June 2025, seeking orders:

(i) THAT the suit be struck out for being *sub judice*, vexatious, and an abuse of the court process.

(ii) THAT in the alternative, this Honourable Court be pleased to stay these proceedings pending the hearing and determination of High

Court Commercial Case No. E388 of

**NAIROBI** 2023, *Peterson Kabuti Ndekere & Another v. David Kabuti & Ors*.

(iii) THAT the costs of this application be provided for.

4. The grounds advanced in support of the Motion were that the Claimant had instituted High Court

Commercial Case No. E388 of 2023, *Peterson Kabuti Ndekere & Another v David Kabuti & Ors*, raising the issues substantially similar to those pleaded in this Cause; the parties were substantially the same; the Claimant had now characterized the dispute as an employment dispute, and that section 6 of the Civil Procedure Act applied.

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5. The Claimant filed a replying affidavit in opposition to the Motion on 5 August 2025.

6. In the affidavit, the Claimant deponed that the Motion was defective and incompetent; that High Court Commercial Case No. E388 of 2023,

*Peterson Kabuti Ndekere & Another v. David Kabuti & Ors* was a derivative suit alleging constitutional violations of his rights by the Board of Directors as well as breach of fiduciary duties; he was a shareholder of the Respondent; the subject matter of the suits were not the same and reliefs sought were different; the

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parties were different; there was no forum shopping and that dismissal from employment occurred after the filing of the suit before the High Court.

7. The Court directed the parties on 13 October 2025 to file and exchange submissions.

8. The Respondent filed its submissions on 3 November 2025 (should have been filed and served before 24 October 2025) and the Claimant on 7 November 2025.

9. The Court has considered the Motion, affidavits and submissions.

10. The cause of action in High Court Commercial Case No. E388 of 2023, *Peterson Kabuti Ndekere & Another v. David Kabuti & Ors* is markedly different from the action in the instant Cause.

11. Even the remedies sought are distinct. Before the High Court, the Claimant and others are challenging the governance of the Respondent

and alleging breach of fiduciary duties by the Directors of the Respondent.

12. The remedies sought therein are:

(i) THAT the officials of the company be compelled to provide an Audited and certified financial Accounts for all Assets and Liabilities of the company within thirty (30) days from the date of the Order.

(ii) THAT the 1<sup>st</sup> Plaintiff be appointed/ admitted to the board of the company forthwith.

(iii) THAT the officials of the company be compelled to comply and file all the statutory returns forthwith.

(iv) THAT the officials of the company be declared to be unlawfully in office, elections for company's officials be carried out within 4 days of this Orders.

(v) THAT a declaration that the order directing the 1<sup>st</sup> Plaintiff to report to the Nyahururu office of the company is irregular/unfair/unlawful.

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(vi) The accumulated dividends of the 1<sup>st</sup> and 2<sup>nd</sup> Plaintiffs and other shareholders do issue forthwith.

(vii) General, exemplary and punitive Damage

13. Before this Court, the Claimant has prayed for:

(i) A declaration that the termination of employment was unfair/arbitrary/irregular/unlawful.

(ii) **NAIROBI** immediate reinstatement of the Claimant.

(iii) Immediate reinstatement of the Claimant's medical covers.

(iv) The sum of Kshs 4,635,000/- as particularised in paragraph 31 of the Claim.

(v) Certificate of Service.

(vi) Maximum compensation for

wrongful dismissal and lost income for 12 months in the sum of Kshs 1,080,000/-.

(vii) General, exemplary and punitive damages.

(viii) Any other relief this Honourable Court deems fit and just to grant.

(ix) Costs of this suit and interest on the above.

14. It is clear to the Court that the causes of action are different, and section 6 of the Civil Procedure Act is not applicable in the circumstances.

## Orders

15. The Motion filed in Court on 30 July 2025 is dismissed with costs.

**Delivered virtually, dated and signed in Nairobi on this 27<sup>th</sup> day of November 2025.**

**Radido Stephen, MCI Arb  
Judge**

**Appearances**

For Claimant

Anya Kalwa & Co.  
Advocates

For Respondent

Gichuki Kimere &  
Co. Advocates

Court Assistant

Wangu



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