



**Kenya Engineering Workers Union v Booth Extrusions Limited
& another; Waweru & 30 others (Intended Applicant) (Cause
E539 of 2023) [2025] KEELRC 3401 (KLR) (28 November 2025) (Ruling)**

Neutral citation: [2025] KEELRC 3401 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E539 OF 2023
AK NZEI, J
NOVEMBER 28, 2025**

BETWEEN

KENYA ENGINEERING WORKERS UNION CLAIMANT

AND

BOOTH EXTRUSIONS LIMITED 1ST RESPONDENT

TACT CONSULTANCY SERVICES 2ND RESPONDENT

AND

JOSEPH MWAURA WAWERU INTENDED APPLICANT

ABRAHAM ANUSU IMBUDIRA INTENDED APPLICANT

RICHARD NYANGEMI MOSE INTENDED APPLICANT

NICHOLAS KIOKO KIVAA INTENDED APPLICANT

FRANCIS NDUNGU KAMAU INTENDED APPLICANT

WILTONE JABUTO OBONGO INTENDED APPLICANT

STEPHEN KIMANI MBOGO INTENDED APPLICANT

GEORGE GITAU NG'ANG'A INTENDED APPLICANT

STEPHEN ODHIAMBO KABULO INTENDED APPLICANT

FREDRICK WANJOHI KIAMA INTENDED APPLICANT

ISAAC ODHIAMBO OWUOR INTENDED APPLICANT

NDEKE KASIKO MAITHA INTENDED APPLICANT

CHARLES NDIRITU GAKUO INTENDED APPLICANT

ELVIS ONYANGO OWUOR INTENDED APPLICANT



PAUL MUCHIRI GITONGA INTENDED APPLICANT
 JOHN KINYANJUI KARANJA INTENDED APPLICANT
 CHARLES OCHIEL OJWANG INTENDED APPLICANT
 KEFA USENGE BALA INTENDED APPLICANT
 JOHN OTIENO OGOLA INTENDED APPLICANT
 MIKE CHIKANI MUMASI INTENDED APPLICANT
 NABOTH MBOGO MAINA INTENDED APPLICANT
 OUMA ZABLON KUMO INTENDED APPLICANT
 DAVID MAINA GITONGA INTENDED APPLICANT
 JARED OTIENO OKOTH INTENDED APPLICANT
 MWENDWA KITHEKA INTENDED APPLICANT
 FRANCIS ODEMBO DENYI INTENDED APPLICANT
 CRISPIN ODHIAMBO MAGATA INTENDED APPLICANT
 BANKOF BARODA (K) LIMITED INTENDED APPLICANT
 PONANGIPALLI VENKATA RAMANA RAO (SUED ON THE RECEIVER
 MANAGER OF BOOTH EXTRUSIONS LIMITED) INTENDED APPLICANT
 LEONARD OTIENO NJIRI INTENDED APPLICANT
 ALEXANDER WILLY UKUMU INTENDED APPLICANT

RULING

1. The suit herein was on 10th July, 2023 instituted by the Claimant Trade Union against the 1st and 2nd Respondents herein named. On or about 6th December, 2024, a Chamber Summons application dated 29th November, 2024 was filed by the Firm of E.S. Ochieng & Co. Advocates on behalf of the twenty nine (29) named intended Claimants (“intended Claimants”) seeking the following Orders:-
 - a. That the Court be pleased to order that the intended Claimants be joined and added to the suit herein as 2nd to 30th Claimants.
 - b. That the Court be pleased to order that the intended Respondents be joined and added to the suit herein as the 3rd and 4th Respondents.
 - c. That the Court be pleased to order the Claimant (Kenya Engineering Workers Union) to jointly amend the Memorandum of Claim to add the intended Claimants and the intended Respondents in the suit herein.
 - d. That the Court be pleased to grant leave to the intended Claimants’ advocates to file a Memorandum of Claim in the suit herein on behalf of the intended Claimants and [to] include the intended Respondents in the suit.
 - e. That costs of the application be provided for.



2. The application sets out on its face the grounds upon which it is brought, and is predicated on the supporting affidavit of Fredrick Wanjohi Kiama sworn on 29th November, 2024. It is deponed in the said supporting affidavit, inter-alia:-
 - a. that the deponent is authorised by the rest of the intended Claimants to swear the supporting affidavit.
 - b. that the intended Claimants are amongst 79 members of the Claimant Trade Union whose claims have been presented to this Court against the 1st and the 2nd Respondents.
 - c. that the intended Claimants are desirous of being added to the suit herein as the 2nd to 30th Claimants to effectively prosecute their claim through the firm of E. S. Ochieng & Company Advocates in the place of the union.
 - d. that the intended Claimants are dissatisfied with the Union's representation and prosecution of their claim.
 - e. that the 1st Respondent was, at all material times, under receivership following the appointment of the 4th Respondent as the Receiver Manager effective 27th September, 2021 by the intended 3rd Respondent.
 - f. that the Union ought to have sued the 1st Respondent through the Intended 4th Respondent or all of them if it became unclear which party would be liable to settle the intended Claimants' and other grievants' claim.
 - g. that the 1st and 2nd Respondents have not entered appearance, and that this could be because the said Respondents could argue that the Claimant ought to have joined the 4th Respondent, an argument that could jeopardize the entire claim in the long run, to the intended Claimants' detriment.
 - h. that it is necessary to add the intended Respondents to the suit herein as there exists a right of relief against them; and that the joinder will not embarrass or delay the trial of the suit.
3. The application is opposed by Claimant, the Respondents and the intended Respondents. The Claimant opposed the application vide a replying affidavit of Wycliffe Nyamwata sworn on 23rd January, 2025. It is deponed in the said replying affidavit:-
 - a. that the intended introduction of a new party (Bank of Baroda Limited) as intended 3rd Respondent offends Section 90 of the Employment Act, 2007 on limitation of time.
 - b. that although the intended 2nd to 30th Claimants have a constitutional right to be represented by a person of their choice, the Claimant will not allow the same in the suit herein as this might spoil the entire suit on technicalities as the intended Claimants were earning below Kshs.80,000/=, and if they act in person or through an Advocate, their suit will become one that ought to have been filed in the Chief Magistrate's Court pursuant to Gazette Notice No. 6024 of 22nd June, 2018.
4. The 1st Respondent opposed the application vide grounds of opposition dated 24th March, 2025, on the following grounds:-
 - a. that the suit herein was instituted pursuant to provisions of the Labour Relations Act which mandates the Claimant to represent all its members employed by the 1st Respondent. That



- the 2nd to the 30th intended Claimants, who admit to being members of the Claimant Union, cannot represent themselves in the same suit where the union represents them.
- b. that the Applicants cannot invoke Order 1 Rules 3 and 7, as those provisions relate to joinder of defendants only, and not joinder of Claimants.
 - c. that there is no legal provision that can compel a party to amend its pleadings in the manner sought in the application herein.
 - d. that the intended 2nd to 30th Claimants do not have a cause of action which is separate from that which has been brought by the Claimant for the benefit of the Claimant's Members, including the 2nd to 30th intended Claimants.
5. The 3rd Intended Respondent opposed the application vide a replying affidavit of Alfred Arunga Inganga sworn on 14th March, 2025. It is deponed in the said replying affidavit:-
- a. that the 4th Respondent was on 27th September, 2021 appointed by the Bank of Baroda (K) Limited as a Receiver Manager of the 1st Respondent, the said bank having been a secured creditor that had extended financial facilities to the 1st Respondent.
 - b. that it was the deponent who was appointed as a Receiver Manager, but not the intended 2nd Respondent.
 - c. that the 1st Respondent is a separate entity from 2nd, 3rd and 4th Respondents.
 - d. that the 1st Respondent, which is the intended Claimants' employer, is already a party to the suit; and there are no reliefs which the intended Claimants can obtain from the 2nd, 3rd and 4th Intended Respondents in their capacity. That the application ought to be dismissed.
6. The 4th Intended Respondent opposed the application vide his replying affidavit sworn on 14th March, 2025, wherein it is deponed, inter alia:-
- a. that the 4th Intended Respondent, who is an experienced Licenced Insolvency Practitioner, was on 27th September, 2021 appointed by the Bank of Baroda (K) Limited, which is a Secured Creditor, having extended some financial facilities to the 1st Respondent.
 - b. that the Receiver Manager was appointed over the 1st Respondent and not the 2nd Respondent; the two being separate legal entities.
 - c. that the 1st Respondent, which was the employer of the intended Claimants, is already a party to the suit herein.
 - d. that the 4th Intended Respondent (Receiver Manager's) obligations and responsibilities towards the 1st Respondent came to an end on 5th February, 2025.
 - e. that Section 12 of the *Employment and Labour Relations Court Act* does not bestow jurisdiction on this Court to determine issues between the intended Claimants and the 2nd and 4th Intended Respondents.
 - f. that the application herein is based on mere apprehensions with no cogent basis.
7. Written submissions were filed on behalf of the parties herein, pursuant to the Court's directions in that regard.
8. Having considered the application and responses thereto filed, issues that fall for determination, in my view, are as follows:-



- a. Whether a trade union can legally and validly sue in its name for the benefit of its members.
 - b. Whether Orders sought by the Intended Claimants are capable of being granted.
9. Before delving into the aforesaid two issues, I have to state here that I have noted that the Claimant Trade Union has put a preamble to its Memorandum of Claim dated 28th June, 2023, which states as follows:-

“ISSUES IN DISPUTE

Failure by the Respondents to pay wages to the 79 grievants for the months of July, August & September 2021, preferential dues and redundancy/terminal dues.”

10. It is a common ground herein that the 79 grievants are members of the Claimant Trade Union.
11. On the first issue, Section 22 of the [Employment and Labour Relations Court Act](#) provides as follows:-
- “In any proceedings before the Court or a Subordinate Employment and Labour Relations Court, a party to the proceedings may act in person or be represented by an advocate, an office bearer or official of the party’s trade union or employers’ organization and, if the party is a juristic person, by a director or an employee specifically authorised for that purpose.”
12. Under Section 27(1) of the Trade Unions Act, a registered trade union may sue and may be sued, and may be prosecuted in its registered name.
13. The Court of Appeal stated as follows in *Modern Soap Factory – vs – Kenya Shoe and Leather Workers Union – Civil Appeal No. 37 of 2019 (Mombasa) [2020] eKLR*:-

“ 16. Article 41 of [the Constitution](#) of Kenya on Labour Relations protects the right of every person to fair labour practices and the right, amongst others, to join a trade union, which in turn has the right to determine its activities. Article 258 of [the Constitution](#) on enforcement of [the Constitution](#) provides in Article 258(2)(d) that an association acting in the interest of one or more of its members may institute proceedings where [the Constitution](#) is contravened or threatened with contravention. In the same spirit, Section 22 of the [Employment and Labour Relations Court Act](#) provides that:

“In any proceedings before the Court or a Subordinate Employment and Labour Relations Court, a party to the proceedings may act in person or be represented by an advocate, an office bearer or official of the party’s trade union or employers’ organization and, if the party is a juristic person, by a director or an employee specifically authorised for that purpose.”

14. The Court of Appeal further stated in the *Modern Soap Factory Case (Supra)*:-

“ 17. We can see no reason therefore to fault the conclusion by the Judge that the Respondent has locus standi to institute the claims on behalf of its members. That said, whether an employee is a member of a Union is a question of fact. Where there is a contest as to whether an employee is a member of a union, evidence would be required to settle that question. It is not a matter that is amenable for determination on the basis of a preliminary objection. (See



Mukisa Biscuit Manufacturing Co. Ltd – vs – West End Distributors Ltd
[1969] E.A 696.”

15. In Aga Khan University Hospital – vs – Kenya Private Universities Workers Union (Civil Appeal No. 372 of 2019) [2024] KECA 1950 (KLR), the Court of Appeal stated as follows:-

“ 23. The Supreme Court further noted that the right to representation is a cornerstone of labour relations and is crucial for ensuring that workers have a voice in negotiations and disputes with their employers. The Court’s decision reinforced the principle that Unions play a vital role in advocating for workers’ rights and that their ability to represent their members should not be hindered by procedural technicalities such as the absence of a recognition agreement.”

16. In the present case, the Claimant Trade Union instituted the suit herein “in the interest of its 79 members” who had been employed by the 1st Respondent (according to the Claimant’s pleadings). The Claimant’s members, or any part of them, cannot purport to “take over the suit” from the Claimant and “to prosecute the same”; neither can they seek to file another Memorandum of Claim within the already instituted suit. Any one or more persons in whose interest the suit herein is instituted, and who may have lost interest in pursuing his or her right or rights which informed institution of the suit by the Trade Union, may simply renounce their interest in the suit, but cannot legally purport to “oust” the Claimant Trade Union from the suit.

17. As stated by Rika, J in the case of Kenya Shoe & Leather Workers Union – vs – Falcon Tanners Ltd [2013] eKLR:-

“ 3. Trade Union are formed for various purposes. Their objectives can be read from their internal Constitutions, Labour Laws, Industrial Relations Charter and the National Constitution. Their objectives imbue them with different capacities, aimed at attainment of various levels of associational freedoms. A trade union may act in any one, or more, of the following capacities in any dispute to which its member is a party:-

- a. In its own interest.
- b. On behalf of its members; and
- c. In the interest of its members.”

18. The present suit was instituted by the Claimant Trade Union in the interest of its 79 members in issue. It is only the Claimant, in its capacity as the 79 grievants’ trade union, that can prosecute the suit to its conclusion.

19. Any of the 79 grievants wishing to renounce its interest in the present suit and to institute a different/fresh suit, either in person or by a duly appointed advocate, may proceed to do so, but should be aware of the provisions of the law on limitation of actions, in this case Section 89 of the [Employment Act](#) which provides as follows:-

“Notwithstanding the provisions of Section 4(1) of the [Limitation of Actions Act](#), no civil action or proceedings based on or arising out of this Act or a contract of service in general shall lie or be instituted unless it is commenced within three years next after the act, neglect



or default complained or in the case of continuing injury or damage within twelve months next after the cessation thereof.”

20. In sum, and having considered the submissions filed, I find and hold that the Chamber Summons application dated 29th November, 2024 is frivolous and devoid of merit. The Orders sought are not capable of being granted.
21. The application is hereby dismissed. Each party shall bear its own costs of the same.
22. The suit shall be fast-tracked, and shall forthwith be set down for pre-trial directions.
23. Orders accordingly.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 28TH DAY OF NOVEMBER 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.

Appearance:

Mr. Makale for the Claimant

Mr. Otieno for the 1st Respondent

Mr. Ochieng for the Intended Claimants

Mr. Ondati for the 2nd Respondent and 3rd and 4th Intended Respondents

