

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT

NAIROBI

CAUSE NO. E514 OF 2025

JOSHUA KURIA GITAU..... CLAIMANT/RESPONDENT

VERSUS

TRUSTEES OF EAGLES FAITH MINISTRIES

GEORGE MUHORO MATHU.....1ST RESPONDENT/APPLICANT

ELIZABETH KURIA GITAU.....2ND RESPONDENT/APPLICANT

RULING

1. What is before this court for determination is the Respondents/Applicants' Notice of Motion dated 12th August 2025, in which they seek orders to strike out their names from these proceedings on the ground of misjoinder.
2. The Motion is premised on the grounds stated on its face and by the Supporting Affidavit sworn on 12th August 2024 by **Elizabeth Kuria Gitau**, the 2nd Respondent/Applicant.

3. Grounds in support of the Motion are that "Eagles Faith Ministry" is registered as a society under the Societies Act, and not as a Trust under the Trustees (Perpetual Succession) Act.
4. The Applicants contend that a registered society is not a body corporate and therefore cannot sue or be sued in its own name, and that any proceedings involving a society must be instituted against its officials in their official capacity.
5. Ms. Njoroge avers that the designation "Trustees of Eagles Faith Ministry" is not recognized in law with respect to a registered society and does not denote a legal entity capable of being sued. She asserts that they have been improperly sued and described in the pleadings as "Trustees of Eagles Faith Ministry" whereas they are merely officials of "Eagles Faith Ministry", an entity registered under the Societies Act.
6. She states that, on the advice of her advocates on record, Section 9 of the Societies Act requires that proceedings by or against a registered society be brought against its officials in their official capacity.

7. Ms. Njoroge further avers that, based on the said legal advice, allowing the suit to proceed against herself and the 1st Applicant in its current form would occasion prejudice, as they would be compelled to defend claims that cannot be lawfully sustained against them.
8. In response to the Motion, the Claimant filed a Replying Affidavit dated 18th August 2025 in which he avers that the term "trustees" was used to refer to the society's officials, who are correctly identified as George Mathu, the 1st Respondent, and Elizabeth Njoroge, the 2nd Respondent. He states that he was fully aware that the said entity is a society and therefore cannot sue or be sued in its own name.
9. He asserts that the documents filed in support of his case clearly demonstrate his intention to sue the officials of EFCC, and that the use of the word "trustee" was a bona fide error on the part of his advocate.
10. The Claimant further avers that his witness statement expressly refers to the Respondents as officials of EFCC, confirming his intention to sue the said officials.
11. In the Claimant's view, the Claim raises triable issues that ought to be determined on their merits, and that such a genuine mistake should not bar him from accessing justice on the basis of technicalities.

12. He adds that, based on the advice of his advocate on record, which he believes to be sound, pleadings close 14 days after the filing of a Defence. As the Respondents have not filed any response, he still has an opportunity to amend the pleadings to substitute the term "Trustee" with "Officials" given that his intention was to sue the proper officials of EFCC, who are already correctly listed in the Claim.

Submissions

13. The Motion was canvassed through written submissions, which the Court has duly considered.

Analysis and Determination

14. Flowing from the record, the Court has singled out the following issues for determination:

a) Whether the Claimant's Replying Affidavit dated 11th

August 2025 is defective; and

b) Whether the names of the Applicants should be struck out

from the suit on grounds of misjoinder.

Competence of the Claimant's Replying Affidavit dated 18th August 2025

15. The Applicants submit that the Claimant's Replying Affidavit dated 18th August 2025 is defective for contravening **Section 4(1) of the Oaths and**

Statutory Declarations Act, as it was commissioned by the Claimant's own advocate on record.

16. It is evident from the Claimant's Replying Affidavit that it was drawn and filed by Wanza Ochieng Advocates and commissioned by Laviness Ochieng. The Claimant has conceded in his submissions that his advocate on record commissioned the affidavit, describing this as an oversight that was neither deliberate nor intended to mislead the Court.

17. Section 4(1) of the Oaths and Statutory Declaration Act provides as follows:

"A commissioner for oaths may, by virtue of his commission, in any part of Kenya, administer any oath or take any affidavit for the purpose of any court or matter in Kenya, including matters ecclesiastical and matters relating to the registration of any instrument, whether under an Act or otherwise, and take any bail or recognizance in or for the purpose of any civil proceeding in the High Court or any subordinate court:

Provided that a commissioner for oaths shall not exercise any of the powers given by this section in any proceeding or matter in which he is the advocate for any of the parties to the proceeding or

concerned in the matter, or clerk to any such advocate, or in which he is interested".

18. In **James Francis Kariuki & Another v. United Insurance Co. Ltd**,
Civil Appeal No. 1450 of 2000, the Court held as follows:

“That the verifying affidavit sworn by the Plaintiff is incurably defective as the Commissioner for Oaths while exercising the powers given, offended the mandatory proviso of Section 4(1) of the Oaths and Statutory Declarations Act. The simple facts this case are that the Plaintiffs are, according to the Plaint represented by Njenga Mwaura and Company, Advocates. Mr. Njenga Mwaura is a partner in the firm of Njenga Mwaura and Company Advocates who are the advocates representing the Plaintiffs. The verifying affidavit has been sworn before Njenga Mwaura and Commissioner for Oaths. It will be clear from the above that Mr. Njenga Mwaura, being an advocate in the firm that is acting for the Plaintiff should not have allowed the verifying affidavit to be sworn before him as in any event, is an interested party”.

19. Similarly, in the case of **Kenya Federation of Labour & another v Attorney General & 2 others [2012] KEIC 12 (KLR)**, it was held:-

“The short answer to that is that it would be against the provisions of the Oaths and Statutory Declarations Act. A Lawyer cannot commission a document drawn by his/her firm. Indeed, the further affidavit by the claimants was defective in form as the jurat was not in conformity with the Oaths and Statutory Declaration Act.”

20. It should be appreciated that the aforesaid **Section 4(1) of the Oaths and Statutory Declarations Act** is a statutory requirement that is couched in mandatory terms. As such, it cannot be treated as a mere technicality, nor can it be cured under Article 159 of the Constitution as suggested by the Claimant.

21. Accordingly, since Laviness Ochieng is the Claimant's advocate on record, she was unauthorized to commission the Replying Affidavit drawn by the same firm.

22. In the premises, the Claimant's Replying Affidavit, sworn on 18th August 2025, is incompetent and is hereby struck out.

Whether the names of the Applicants should be struck out from the suit on grounds of misjoinder.

23. The main contention in the Applicants' Notice of Motion is that, since Eagles Faith Ministry is registered as a society, and the Claimant has sued them as "Trustees of Eagles Faith Ministry," the proceedings have been instituted against non-existent legal entities.

24. It is undisputed that Eagles Faith Ministry is registered as a society under the Societies Act. However, the Statement of Claim identifies the Applicants as "Trustees of Eagles Faith Ministry".

25. Notably, the 2nd Applicant has admitted in her supporting affidavit that they are officials of Eagles Faith Ministry with the 1st Applicant. Her sole contention is that Eagles Faith Ministry is a society rather than a trust.

26. The question that therefore arises for determination is whether the misdescription of the officials of Eagles Faith Ministry is fatal, thereby justifying the striking out of the Applicants' names on the grounds of misjoinder.

27. Order 1 rule 9 of the Civil Procedure Rules provides that a lawsuit cannot be dismissed or defeated by virtue of misjoinder. This provision ensures that the Court focuses on substantive issues rather than procedural technicalities.

28. Further, Article 159(2)(d) of the Constitution provides that justice shall be administered without undue regard to procedural technicalities.

29. In addition to the foregoing, judicial authority supports the principle that courts should generally sustain suits rather than dismiss them on technicalities, unless the case is clearly hopeless and beyond remedy (**see DT Dobie Company (Kenya) Ltd v Joseph Muchina & Another [1980] eKLR**). This approach reflects the need to ensure substantive justice, which can only be achieved if cases are allowed to proceed.

30. In the present case, the Court finds that the misdescription of the Applicants cannot be said to render the suit hopeless. The matter can be remedied by amending the Memorandum of Claim, which is permissible at any time before judgment.

31. It should also be noted that Section 2 of the Employment Act defines "Employer" broadly to include **any person, public body, firm, corporation or company who or which has entered into a contract of service to employ any individual and includes the agent, foreman, manager or factor of such person, public body, firm, corporation or company.**

32. In interpreting Section 2 of the Employment Act, the Court in **Daniel Mutisya Masesi v. Romy Madan & Another [2013] eKLR** held that the focus is on the entire economic enterprise, rather than the legal or business reincarnations entities behind the enterprise.

33. It is therefore evident that, in as much as the Applicants were sued as "Trustees" of Eagles Faith Ministry rather than as "officials", this does not negate their capacity to be sued, in light of the broad statutory definition of the term "Employer" under Section 2 of the Employment Act.

34. Further, the misdescription of the Applicants' capacity cannot justify striking out the entire suit, as the Applicants have sought to do in this case. This is particularly so given that striking out a suit is a draconian measure that arbitrarily drives a party away from the seat of justice.

35. All in all, the Court finds no merit in the Applicants' Notice of Motion dated 12th August 2025, and accordingly, the same is dismissed with costs.

DATED, SIGNED and DELIVERED at NAIROBI this 11th day of December 2025.

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STELLA RUTTO

JUDGE

In the presence of:

Ms. Ochieng for the Claimant/Respondent

No appearance for the Respondents/Applicants

Mohammed Court Assistant

ORDER

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court had been guided by Article 159(2)(d) of the Constitution which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of the Constitution and the provisions of **Section 1B** of the **Civil Procedure Act (Chapter 21 of the Laws of Kenya)** which impose on this court the duty of the court, inter alia, to use suitable technology

to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

STELLA RUTTO

JUDGE

ORIGINAL