



**Mumo v Ten Senses Africa Limited (Cause E560 of 2022)
[2025] KEELRC 3535 (KLR) (11 December 2025) (Ruling)**

Neutral citation: [2025] KEELRC 3535 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E560 OF 2022
CN BAARI, J
DECEMBER 11, 2025**

BETWEEN

LILIAN MUMO CLAIMANT

AND

TEN SENSES AFRICA LIMITED RESPONDENT

RULING

1. This ruling relates to a Notice of Preliminary Objection by the Respondent dated 12th June 2025. The Objection is that the Claimant is guilty of non-joinder of Parties, as she has alleged sexual harassment, yet she has failed to sue the individual she accuses of sexually harassing her, and that in the event she succeeds in proving the allegations of sexual harassment, the Order would be unenforceable as the person accused of the same is not a Party to this Claim.
2. The Respondent claims that for reason of the non-joinder, this Claim is an abuse of the Court process, misconceived, defective, incompetent, and a complete nullity; and hence the Court should therefore strike out the Claim with costs to the Respondent.
3. Parties canvassed the objection by way of written submissions.

The Respondent's Submissions

4. The Respondent submits that the Claimant levels the allegations of sexual harassment against a known specific individual, but has not joined the said individual in this suit, which failure it submits is fatal since the Respondent, being unable to commit the said acts by itself, cannot be asked to respond to the claims. The Respondent further submits that the Claimant has not in her Claim indicated any failure by the Respondent in its anti-sexual harassment policy to prevent acts of sexual harassment.
5. It is the Respondent's submission that the failure by the Claimant to report any of the claims of sexual harassment to her employer then or to the police, made it impossible for the Respondent to be



aware of the allegations and technically excluded it from taking any actions on the allegations, and also disciplinary procedures on any accused.

6. The Respondent submits that the non-joinder in this matter is fatal because it makes it impossible for this court to wholly and effectively adjudicate this matter. It submits that the Court would require the correct party alleged to have committed the said acts to respond to the issues raised and rebut the accusations.
7. It is the Respondent's submission that the Preliminary Objection as raised is meritorious as regards suing the proper parties, and urges the court to find and hold that the same raises a weighty legal question, and allow the same.

The Claimant's Submissions

8. The Claimant submits that the law clearly dictates that a Preliminary Objection should be based on a pure point of law, not facts, and further that non-joinder cannot be used as a ground to defeat a suit. The Claimant had reliance in the case of *Mukisa Biscuit Manufacturing Company Limited v West End Distributors Limited (1969) EA* to buttress this position.
9. It is the Claimant's submission that Order 1 Rules 9 and 10 of the Civil Procedure Rules are clear that no suit shall be defeated by reason of misjoinder or non-joinder of parties, and the court may in every suit deal with the matter in controversy so far as regards the rights and interests of the parties actually before it.
10. The Claimant sought to rely in *Maureen Onsongo v EOH Limited an EOH/Copy Cat Limited Company (2021) eKLR* for the holding that: -

“The effect of misjoinder or non-joinder of parties is provided for by Order I Rule 9 of the Civil Procedure Rules, 2020, which makes it patently clear that misjoinder or non-joinder of parties cannot be a ground to defeat a suit.”
11. The Claimant further submits that the issue of sexual harassment is yet to be determined, which is therefore not a point of law, but a disputed fact to be determined by this Honourable Court based on the evidence to be adduced. She submits that based on the foregoing legal authorities, the Respondent's Preliminary Objection is clearly defective and an abuse of the court process, thus ought to be dismissed with costs to the Claimant.

Determination

12. I have considered the Preliminary Objection and the rival submissions. The issue for determination is whether the Claimant's suit should be struck out for non-joinder.
13. In the case of *Mukisa Biscuit Manufacturing Co. Ltd –vs West End Distributors Ltd (1969) EA 696*, the court had this to say on what constitutes a preliminary objection: -

“a Preliminary Objection consists of a point of law which has been pleaded or which arises by clear implication out of pleadings and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the jurisdiction of the Court or a plea of limitation or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration... a Preliminary Objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts



pleaded by the other side are correct. It cannot be raised if any fact had to be ascertained or if what is sought is the exercise of judicial discretion.”

14. Further, the Supreme Court in Independent Electoral & Boundaries Commission -vs- Jane Cheperenger & 2 others Civil Application No. 36 of 2014 [2015] eKLR held that a preliminary objection should be founded upon a settled and crisp point of law.
15. The Respondent’s position is that the Claimant did not join the individual she accuses of sexual harassment in this suit, which assertion raises questions as to whether the alleged acts occurred, whether the Respondent can be held liable for the actions of its Chief Executive Officer (CEO), and/or whether the Claimant triggered internal reporting mechanisms on her complaints.
16. Without doubt, the issues that arise in this case on the necessity for the joinder are all issues of fact and not pure and crisp points of law.
17. Guided by the principle set out in Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd (1969) EA, a Preliminary Objection is not the proper procedural tool for raising the issues that the Respondent raises.
18. Further Order 1 Rule 9 of the Civil Procedure Rules provides that no suit shall be defeated by reason of misjoinder or non-joinder of parties, and Rule 10 allows the court to add or remove parties at any stage of the proceedings.
19. Court decisions such as the case of Maureen Onsongo v EOH Ltd (2021) eKLR, which was also cited by the Claimant, affirm that non-joinder is not fatal to a suit, and therefore, even if the individual alleged to have committed the acts is not a party to the suit, that alone does not render the Claim defective or incompetent.
20. In the end, I find and hold that the Respondent’s Preliminary Objection is not based on a pure point of law, nor is non-joinder a ground to defeat a suit.
21. The Notice of Preliminary Objection dated 12th June 2025 is devoid of merit and is hereby dismissed with costs in the cause.
22. The matter shall proceed to hearing on the merits.
23. Orders accordingly.

SIGNED, DATED, AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS 11TH DAY OF DECEMBER, 2025.

C. N. BAARI

JUDGE

Appearance:

Mr. Thuo present for the Claimant

Mr. Musyoka present for the Respondent

Ms. Esther S -C/A

