

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT NAIROBI**

CAUSE NO. E481 OF 2025

**LYDIA AQUINO ADHIAMBO
CLAIMANT**

v

**DIVYA DHINGRA BECTOR
RESPONDENT**

1st

**TRUSHAR PATEL
RESPONDENT**

2nd

**DINESH VARMA
RESPONDENT**

3rd

**(Sued as office bearers of Nairobi
Gymkhana occupying the respective positions
of Chairman, Honorary Secretary and Honorary
Treasurer)**

RULING

1. The Claimant sued the Respondents on 28 May 2025, asserting unfair termination of employment.
2. When served, the Respondents raised a Notice of Preliminary Objection on 29 July 2025, contending that:

NAIROBI

- (a) The Claim filed is bad in law and amounts to an abuse of the court process.
- (b) The Claimant's claim against the Respondents is a no-starter and does

not lie due to the misjoinder of the Respondents.

- (c) That only the trustees of the Nairobi Gymkhana (the club) have the power to sue and be sued on behalf of the Club.

3. The Claimant filed a replying affidavit in opposition to the Preliminary Objection on 1 October 2025, deponing that the Objection was not predicated on a pure point of law and that Nairobi Gymkhana was registered as a society and not a trust.

4. The Court gave directions on the Preliminary Objection on 2 October 2025 and 18 November 2025.

5. The Respondents filed their submissions on 23 October 2025, urging that the Preliminary Objection raised a pure point of law in that Gymkhana Club was registered under the Trustees (Perpetual Succession) Act, and it was the Trustees who could sue and be sued (*John Githinji*

Wang'ondu v Raphael Gitau Njau & Ors (1997) LLR 6700 (CAK) and *Voi Jua Kali Association v Sange & Ors* (2002) 2 KLR 474).

6. According to the Respondents, since they lacked the capacity to be sued, the Cause was an abuse of the court process.

7. The Claimant filed her submissions on 30 October 2025. She reiterated in the submissions that the Preliminary Objection did not raise a pure point of law and required an examination of documents to be determined.

8. The Claimant also contended that if there was a misjoinder, it could be cured through an amendment as contemplated by Order 1 Rule 10 of the Civil Procedure Rules (*Gladys Nduku Nthuki v Letshego Kenya Ltd, Mueni Charles Maingi (Intended Plaintiff)* (2022) KEHC 2227 (KLR)).

9. The Court has considered the Notice of Preliminary Objection, affidavit and submissions and makes the following determinations.

10. One, there is no evidence before the Court that Gymkhana Club is registered under the Trustees (Perpetual Succession) Act and, therefore, that the Act applies to it.

11. Two, there is material before the Court that the Gymkhana Club is registered under the Societies Act

12. As such, it can be sued under the name of its officials.

13. Three, under the definition of *employer* in section 2 of the Employment Act, 2007, the Respondents can be sued as agents and or managers of the Gymkhana Club for breach of the Act, and for unfair termination of employment.

14. Lastly, a Cause cannot be defeated merely on account of misjoinder and more so where pleadings have not closed, and it is open to the Claimant to amend her pleadings.

15. The delivery of this Ruling was brought forward with notice to the parties.

Order

16. The Notice of Preliminary Objection is found frivolous and without merit. It is dismissed with costs to the Claimant.

17. The Respondents are ordered to file and serve Responses, documents and witness statements within the next 10 days.

Delivered virtually, dated and signed in Nairobi on this 26th day of January 2026.

EMPLOYMENT AND LABOUR RELATIONS COURT



**Radido Stephen, MCI Arb
Judge**

Appearances

For Claimant

Macharia, Burugu &
Co. Advocates

For Respondents
Advocates

Bob & Bob

NAIROBI

Court Assistant

Wangu