



**Wanyonyi & 53 others v Cement & another (Cause E049 of 2024)
[2026] KEELRC 104 (KLR) (23 January 2026) (Ruling)**

Neutral citation: [2026] KEELRC 104 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MACHAKOS
CAUSE E049 OF 2024
SC RUTTO, J
JANUARY 23, 2026**

BETWEEN

COSMAS MAKARI WANYONYI & 53 OTHERS & 53 OTHERS APPLICANT

AND

EAST AFRICA PORTLAND CEMENT 1ST RESPONDENT

CYKA MANPOWER SERVICES LIMITED 2ND RESPONDENT

RULING

1. Before this Court for determination is a Notice of Motion dated 3rd February 2025, by which the 2nd Respondent/Applicant seeks to be struck out of the proceedings herein.
2. The Motion is premised on the grounds set out on its face and is supported by the Affidavit of Roselyne Ominde, the 2nd Respondent's Acting Legal Services Manager. The grounds in support thereof are that no employment relationship exists or has ever existed between the Claimants and the 2nd Respondent.
3. The 2nd Respondent further avers that the Statement of Claim, as filed, discloses no reasonable cause of action against it.
4. That further, the 2nd Respondent has been improperly and prematurely enjoined in this suit, having no direct nexus with the Claimants. It is further contended that from the pleadings on record, it is evident that the Claimants were employees of the 1st Respondent and not the 2nd Respondent.
5. The Claimant opposed the Motion by way of a Replying Affidavit sworn by Kevin Amwoga Luvanda, the 19th Claimant herein.
6. Mr. Amwoga avers that, contrary to the 2nd Respondent's denial, the Claimants were deployed by the 1st Respondent to perform their daily duties directly at the 2nd Respondent's premises, under the instructions and supervision of the 2nd Respondent's personnel.



7. He further avers that the work performed by the Claimants, including cement loading, packing, shift coordination, belt operations, and housekeeping, was in furtherance of the 2nd Respondent's core operations and carried out under its operational control.
8. Mr. Amwoga adds that, in its letter dated 16th March 2024, the 1st Respondent expressly confirmed that the Claimants were its employees seconded to the 2nd Respondent. The 1st Respondent also attributed responsibility to the 2nd Respondent for the abrupt termination of its contract without notice, which directly resulted in the Claimants' unlawful termination.
9. He further avers that the Claimants, through their advocates, wrote to the 2nd Respondent on several occasions, including on 11th April 2024, seeking clarification regarding the issues raised by the 1st Respondent and putting the 2nd Respondent on notice of potential litigation. Despite this, the 2nd Respondent deliberately failed to respond or clarify its position.
10. According to Mr. Amwoga, the Memorandum of Claim sufficiently discloses a cause of action against the 2nd Respondent, specifically its direct involvement in the unlawful termination of the Claimants by abruptly ending the 1st Respondent's contract, failing to ensure proper transition mechanisms, and causing significant employment loss.

Submissions

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

Analysis and Determination

12. At the heart of the instant Motion is the contention that the Claimants have no employer-employee relationship with the 2nd Respondent and that the claim, as filed, fails to disclose any reasonable cause of action against it.
13. This position has been contested by the Claimants, who contend that they were deployed by the 1st Respondent to carry out their daily duties directly at the 2nd Respondent's premises, under the instructions and supervision of the 2nd Respondent's personnel.
14. According to the Claimants, the work they performed was in furtherance of the 2nd Respondent's core operations and carried out under its operational control.
15. In the Memorandum of Claim, the Claimants plead that they were employed by the 1st Respondent and seconded to the 2nd Respondent.
16. It is apparent from the pleadings that the Claimants have not alleged that they were employees of the 2nd Respondent.
17. Further, it is notable that in its Response to the Claim, the 1st Respondent has admitted that it was the employer of the Claimants.
18. It is also evident from the record that the Claimants' employment was terminated by the 1st Respondent. Indeed, the 1st Respondent reported the terminations on the grounds of redundancy to the County Labour Office and subsequently corresponded in that regard.
19. Accordingly, based on the material on record, I am led to conclude that an employment relationship existed between the Claimants and the 1st Respondent.



20. If I may say, the arrangement that existed between the 1st and 2nd Respondents is akin to the outsourcing of labour, which is now an accepted business strategy.
21. In such an arrangement, one company, commonly referred to as the client enterprise, contracts out the provision of services to another company known as the outsourcing company, which performs the work using its own employees. In these circumstances, the outsourcing company assumes responsibility for recruiting, employing, and managing the workers, while the client enterprise receiving the services focuses on its core business operations.
22. Accordingly, it was not unusual for the 1st Respondent to be contracted by the 2nd Respondent under a similar arrangement. Thus, while the Claimants were engaged to render their services to the 2nd Respondent in its premises, they remained employees of the 1st Respondent. By all means, the secondment did not, in any way, alter the employment relationship between the Claimants and the 1st Respondent.
23. The Court having found that the Claimants were employees of the 1st Respondent, their case against the 2nd Respondent fails at this stage.
24. In the final analysis, the Court finds the Motion dated 3rd February 2025 by the 2nd Respondent to be meritorious and accordingly allows it, with the effect that the 2nd Respondent is struck out of the proceedings herein.
25. There will be no orders as to costs.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 23RD DAY OF JANUARY 2026.

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STELLA RUTTO

JUDGE

In the presence of

For the Claimant Mr. Ng'eno

For the 1st Respondent Mr. Karwanda

For the 2nd Respondent Mr. Simon Peter

Court Assistant Catherine

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.

