

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS
COURT AT KISUMU

CAUSE NO. E098 OF 2025

(Before Hon. Justice Dr. Jacob Gakeri)

KENYA ENGINEERING WORKERS
UNION.....CLAIMANT

VERSUS

MORAL BUSINESS CONSULTING.....
RESPONDENT

RULING

The claimant union filed the instant suit vide a Memorandum of Claim dated 5th November 2025 alleging that the respondents had refused to sign a Recognition Agreement on the ground that in December 2024, it had recruited 25 employees as its members and forwarded check off forms on 18th January 2025 vide letter 14th December 2024 and a copy of the Recognition Agreement via letter dated 17th April 2025 and despite a reminder, no action was taken and a meeting proposed for 26th June 2025 did not materialize.

That the respondents contested the alleged simple majority and conciliation proceedings yielded no results, necessitating the instant suit.

The claimant prayed for an Order that the parties sign a Recognition Agreement and costs of the suit.

After entering appearance on 5th December 2025, the 2nd respondent filed a Notice of Motion dated 4th December 2025 praying for Orders that:

- 1. The 2nd respondent be struck out from the suit.*
- 2. Costs of the Application be borne by the claimant.*

The Notice of Motion is expressed under Order 1 Rule 10(2) of the Civil Procedure Rules and is based on the grounds enumerated on its face and the Supporting Affidavit of Miriam Mwaro sworn on 4th December 2025 deposing that the respondent had an outsourcing contract and the 2nd respondent's outsources labour from the 1st respondent who is therefore the employer and the claimant was not privy to the outsourcing contract and could not demand a copy.

That the claimant had no cause of action against the 2nd respondent and the conciliation made no finding against the 2nd respondent.

Response

By a Replying Affidavit sworn by Wycliffe Nyamwata on 15th December 2025, the affiant deposes that there need not be an employer/employee relationship for the claimant to sue as it was acting at the behest of its members and the applicant had not provided evidence of any contract between them for a determination by the court and the allegations by Miriam Mwaro could only be established evidentiary.

The affiant deposed that the claimant had the right to the contract between the respondents as it affected its members and the claim against the 2nd respondent was proper as the salary paid to employees came from the 2nd respondent.

On its part, the 1st respondent filed a Verifying Affidavit dated 7th December 2025 but did not contest the Notice of Motion.

Applicant's submissions

As to whether the 2nd respondent ought to be enjoined in the suit, reliance was placed on the sentiments of the court in **Kilonzo Avacare (K) Ltd & 2 others; Pharmaceutical Society of Kenya & another Interested Party** [2023] KEELRC 1839 (KLR) on the essence of an employer/employee relationship which cited the Court of Appeal decision in **National Social Security Fund Board of Trustees V Kenya Tea Growers Association & 14 others** [2023] KECA 80 (KLR).

Reliance was also placed on the sentiments of the court in **Sheraco Co-operative Savings and Credit Society Ltd V Karaturi Ltd (Under Receivership) & another** [2021] KEELRC [1303] (KLR) to urge that there was no evidence of an employer/employee relationship between the claimant and the 2nd respondent and as a consequence the 2nd respondent should be struck out of the suit.

1st Respondent's submissions

In support of its Notice of Preliminary Objection, the Industrial Relations Officer of the 1st respondent submitted that he did not represent or hold himself out as an Advocate/Lawyer and the term counsel used by the claimant had many synonyms.

Reliance was placed on Section 22 of the Employment and Labour Relations Court Act on how a party in proceedings may act, including through a director or employee, in the case of a juristic person to urge that he previously acted having been authorised from 28th April 2014.

That the issue in dispute was based on Section 54 of the Labour Relations Act and Article 36 and 41 of the Constitution of Kenya and the check off Forms on record was not in compliance with the provisions of Section 48 of the Labour Relations Act and the foundation of the case was flawed.

Reliance was placed on the decisions in **Kenya Plantation & Agricultural Workers Union V Roseti Flowers Ltd** [2021] eKLR and **KUDHEIHA Workers Nairobi Hospital** [2020] eKLR.

The Industrial Relations Officer the 1st respondent urged the court to allow the Notice of Preliminary Objection.

Analysis

The only issue for determination is whether the 2nd respondent's name should be struck out of the instant suit.

The principles that govern joinder of parties in a suit are well settled.

Under Order 1 Rule 3 of the Civil Procedure Rules,

All persons may be joined as defendants against whom any right to relief in respect of or arising out of the same act or transaction or series of acts or transactions is alleged to exist, whether jointly, severally or in the alternative, where, if separate suits were brought against such persons any common question of law or fact would arise.

Similarly, under Order 1 Rule 7

Where the plaintiff is in doubt as to the persons from whom he is entitled to obtain redress, he may join two or more defendants in order that the

question as to which of the defendants is liable, and to what extent, may be determined as between all parties.

Finally, under Order 1 Rule 9:

No suit shall be defeated by reason of the 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.

The foregoing provisions establish beyond peradventure that any person may be joined as a defendant or respondent in a suit and it is for the court to determine any disputes arising there from.

The substratum of 2nd respondent's case is that the 1st and 2nd respondents had a commercial agreement for outsourcing of services so that the 1st respondent outsources its employees to the 2nd respondent and the 1st respondent was invariably the employer.

However, the applicant adduced no credible evidence of the alleged commercial contract and as correctly deposed by the Mr. Wycliffe Nyamwata, whether the 1st

and 2nd respondent had an agreement or not was an evidential issue provable by availment of evidence for determination during the hearing.

Although the claimant union has not demonstrated the redress it seeks from the 2nd respondent, the court is not persuaded that it would be opportune to strike out the 2nd respondent's name from the suit at this stage, more so because the relationship between the 1st and 2nd respondents has not been demonstrated.

The interests of justice is tilted in favour of retaining the 2nd respondent in the suit.

Equally, it is trite that the 2nd respondent's presence is essential in ensuring that all disagreements and contentious matters between the claimant union and the respondents are effectively addressed and resolved.

The other issue for determination is whether the court has jurisdiction to hear and determine the instant suit in the presence of the 2nd respondent.

The question of jurisdiction of the Employment and Labour Relations Court has been addressed in a catena of

decisions from the High Court, to the Court of Appeal and the Supreme Court of Kenya.

I will revert to the case law after highlighting the constitutional and statutory perspective.

While the existence of an employer/employee relationship is one of the foundational pillars of the court's jurisdiction, it is not the only issue the court considers. This is because Article 162(2)(a) of the Constitution of Kenya empowered parliament to establish a court with the status of the High Court to hear and determine disputes relating to "employment and labour relations"

The preambular provision of the Employment and Labour Relations Court Act provides that it is:

"An Act of Parliament to establish the Employment and Labour Relations Court to hear and determine disputes relating to employment and labour relations and for connected purposes".

Clearly, the court has jurisdiction to hear and determine disputes relating to employment and also labour relations

as is the instant case where a registered trade union is suing on behalf of its members and undoubtedly, no employer/employee relationship ought to exist between a registered trade union and an employer bearing in mind that the claimant union is blaming both respondents for the absence of Recognition Agreement.

Similarly, under Section 12(1) of the Employment and Labour Relations Court Act, the Employment and Labour Relations Court has exclusive original jurisdiction to hear and determine all disputes relating to employment and labour relations over and above the ten (10) categories of disputes enumerated by the provision and most significantly under Section 12(2) of the Act, which provides:

An application, claim or complaint may be lodged with the court by or against an employee an employer, a trade union, an employers organisation, a federation, the Registrar of Trade Unions, the Cabinet Secretary or any office established under any written law for such purpose.

This provision lays it bare that a registered trade union has *locus standi* to institute proceedings on behalf of its members.

As adverted to elsewhere in this ruling, courts have not been left behind in setting the beacons of the jurisdiction of the Employment and Labour Relations Court.

In **Stanley Mungai Muchai V National Oil Corporation** [2012] eKLR, the Court of Appeal held:

“The jurisdiction of the Employment and Labour Relations Court extends to all disputes relating to employment and labour relations. Personal jurisdiction is no longer confined to employers and employees but to all persons implicated in an employment and labour relations dispute”.

See also **Paramount Bank Ltd V Vaqvi Qamara Syed & another** [2017] eKLR.

In **Hassan Magiya, Kiage V Attorney General & another** [2017] KECA 203 (KLR), the Court of Appeal held as follows:

“From the foregoing, it is clear to us that the ELRC is clothed with jurisdiction to entertain not only employment and labour disputes but also any incidental issues(s) that may arise or is connected to employment and labour relations. This is in turn ensures the economic use of judicial time and resources”.

See also in this regard **United States International University (USIU) V Attorney General** [2012] eKLR, **Attorney General & 2 others V Okiya Omtata & 14 others** [2020] eKLR, **Kenya Tea Growers Association & 2 others V National Social Security Fund & 13 others** [2023] KESC 63 (KLR) and **Daniel Mugendi V Kenyatta University & 3 others** [2013] eKLR.

In sum, the court has jurisdiction to hear and determine the instant suit.

Flowing from the foregoing, it is clear that the applicant's Notice of Motion dated 4th December 2025 is for dismissal and it is accordingly dismissed.

Parties shall bear their own costs.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT
KISUMU ON THIS 5TH DAY OF FEBRUARY, 2026.**

**DR. JACOB GAKERI
JUDGE**

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 has 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.

DR. JACOB GAKERI
JUDGE