



REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS

COURT OF KENYA AT KISUMU

CAUSE NO. E101 OF 2025

KENYA ENGINEERING WORKERS UNION.....**CLAIMANT**

VERSUS

MORALS BUSINESS CONSULTING LTD.....**1ST**

RESPONDENT

ROK INDUSTRIES LTD.....**2ND**

RESPONDENT

AND

GEORGE OKOTH & 5 OTHERS.....

GRIEVANTS

RULING

1. Through a Notice of Motion dated 4th December 2025, the 2nd Respondent seeks to be struck out from these proceedings. It also seeks costs of the application. The application is supported by an affidavit sworn by Ms. Miriam Mwaro its Human Resource Officer. The 2nd Respondent contends that there neither exists employer-employee nor union-employer relationship between itself and the Claimant. It asserts that there exists a commercial outsourcing contract between the Respondents, which designates the 1st Respondent as the employer for purposes of this suit. On this basis, the 2nd Respondent asserts that there is no privity of contract between it and the Claimant and, consequently, that it is under no obligation to furnish the Claimant with the contract between the Respondents. It further argues that no valid cause of action has been disclosed against it and that there is no finding against it arising from any conciliation process. The 2nd Respondent therefore urges the Court to allow the application in the interest of justice.

2. The Claimant opposes the application through a replying affidavit sworn by Mr. Wycliffe Amakombo Nyamwata, its

General Secretary. The Claimant argues that the existence of an employer-employee relationship is immaterial, as it is entitled to institute proceedings to protect the interests of its members. It further asserts that the contract between the Respondents is critical in shedding light on the applicable terms and conditions of employment, and that the Court could only reach an informed determination after interrogating the same. The Claimant also maintains that the claim is anchored on section 54 of the Labour Institutions Act, and contends that the grievants worked for and were remunerated by the 2nd Respondent. On this basis, and on the premise that the 2nd Respondent was the primary employer, the Claimant urges the Court to dismiss the application with costs, arguing that the participation of the 2nd Respondent in the proceedings is necessary.

3. The application was canvassed by way of written submissions.

2nd Respondent's Submissions

4. The 2nd Respondent submitted that a review of the pleadings and documents filed by the Claimant disclosed no evidence

of an employer-employee or labour relationship between itself and the Claimant. It submitted that, in the absence of such a relationship, no valid cause of action lies against it, and that its continued inclusion in the proceedings would occasion unnecessary costs, prejudice, and reputational harm. In support of its position, it cited the case of **Kilonzo v Avacare (K) Limited & 2 others; Pharmaceutical Society of Kenya & another (Interested Parties) (Cause 611 of 2019) [2023] KEELRC 1839 (KLR) (13 July 2023) (Ruling)**, where it was held that the Employment and Labour Relations Court only has jurisdiction over a matter stemming from an employer-employee or labour relationship. The 2nd Respondent further cited the decision in the case of **Sheracco Cooperative Savings and Credit Society Limited v Karuturi Limited (Under Receivership) & another [2021] KEELRC 1303(KLR)**, where the Court struck out a party upon finding that no employer-employee relationship had been demonstrated. It therefore urged the Court, in the interest of justice, to allow the application and strike it out of the proceedings as prayed.

Claimant's Submissions

5. The Claimant submitted that the inclusion of the 2nd Respondent in the suit was informed by its remittance of union dues in respect of employees who were ostensibly employees of the 1st Respondent. It explained that after recruiting the 1st Respondent's employees and forwarding check-off forms to the 1st Respondent, it emerged that the deduction and remittance of union dues was being effected by the 2nd Respondent. In light of the foregoing, the Claimant contended that the suit against the 2nd Respondent was justified under section 5 of the Labour Institutions Act, which provides that:

"Where the immediate employer of an employee is himself in the employment of another person and that employee is employed on the premises of that other person, that other person is for the purposes of this part deemed to be the employer of that employee jointly with the immediate employer."

6. The Claimant further submitted that the question of whether the 2nd Respondent ought to be struck out could only be resolved after a full hearing and the taking of evidence, particularly given that the Claimant was not privy to the contract between the Respondents. In conclusion, the Claimant urged the Court to find the application devoid of merit and to dismiss it with costs.

Disposition

7. The Court is being asked to determine *in limine* the relationship between parties before it. The 2nd Respondent asserts it has no employer-employee relationship with the Claimant's members. In aid, the 2nd Respondent cites 2 cases being **Kilonzo v Avacare (K) Limited & 2 others; Pharmaceutical Society of Kenya & another (Interested Parties)** (*supra*) and **Sheracco Cooperative Savings and Credit Society Limited v Karuturi Limited (Under Receivership) & another** (*supra*) asserting improper joinder to this suit. The Claimant on its part asserts that the 2nd Respondent is a necessary party to the suit. It cites section 5 of the Labour Institutions Act and asserts the

relationship of parties herein cannot be determined without interrogation of facts and the taking of evidence.

8. Under the laws on employment, the narrow interpretation of the term employer in the cited cases does not hold much water. Section 2 of the Employment Act defines an employer as follows:

“employer” means 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;

9. Further, section 5 of the Labour Institutions Act makes provision as follows:

"Where the immediate employer of an employee is himself in the employment of another person and that employee is employed on the premises of that other person, that other person is for the purposes of this part deemed to be the employer of that employee jointly with the immediate employer."

10. The 2nd Respondent could well be an agent or factor of the 1st Respondent or put conversely - the Grievants may be employees in a layered engagement which would require an analysis of the control test and only taking of evidence will reveal if there is a relationship that places the 2nd Respondent in the prism of an employer as defined in section 2 of the Employment Act as well as the provisions of section 5 of the Labour Institutions Act. As such the motion is misplaced and is dismissed with costs to the Claimant. Directions on disposal of the suit to follow this Ruling.

It is so ordered.

Dated and delivered at Kisumu this 17th day of February

2026

**Nzioki wa Makau, MCI Arb.
JUDGE**