



Mwaure & Mwaure Waihiga & Co & another v Mutinda (Cause E021 of 2025) [2026] KEELRC 331 (KLR) (6 February 2026) (Ruling)

Neutral citation: [2026] KEELRC 331 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E021 OF 2025
AK NZEI, J
FEBRUARY 6, 2026**

BETWEEN

MWAURE & MWAURE WAIHIGA & CO 1ST CLAIMANT

**DAVID MWAURE WAIHIGA T/A MWAURE MWAURE WAIHIGA &
CO 2ND CLAIMANT**

AND

WINFRED MUTINDA RESPONDENT

RULING

1. Vide a Memorandum of Claim dated 7th January, 2025, the Claimant sued the Respondent seeking the following reliefs:-
 - a. A declaration that the Respondent’s unfair termination of employment was illegal and unlawful.
 - b. A declaration that the Claimant’s right to fair labour practices has been breached.
 - c. Payment as follows:-
 - i. Salary for one month in lieu of notice Kshs.124,177/=
 - ii. Claim for 11 days leave taken Kshs.45,532/=
 - iii. Statutory general damages Kshs.50,000/=
 - iv. Less statutory payableKshs.48,817/=
 - Total = Kshs.171,292/=.
 - d. Costs of the suit to be borne by the Respondent.



- e. Interest at Court rates.
 - f. Any other order that the Court may deem fit to grant in the circumstances.
2. The Claimant pleaded, inter-alia, that the parties herein had, on 22nd December, 2023 entered into a contract of service whereby the Respondent was appointed to the position of Deputy Managing Partner at the Claimant Law Firm with no impediments, commencing 8th January, 2024. The Claimant further pleaded:-
- a. that the Respondent took 11 days' leave during the period that she worked at the Claimant firm.
 - b. that on 30th September, 2024, the Respondent failed to report to the office as usual and later that day sent an email to the Claimant indicating that she had resigned with immediate effect for personal reasons.
 - c. that the Respondent did not issue any termination notice prior to her resignation, and did not make any payment in lieu of notice.
 - d. that the Respondent's act of terminating the employment in flagrant contempt of the employment contract amounted to an unfair labour practice; which is unlawful, unfair and inhumane.
3. On 28th January, 2025, the Respondent filed a Notice of Motion dated 20th January, 2025 seeking the following Orders:-
- a. Spent.
 - b. Spent.
 - c. Spent.
 - d. That the Memorandum of Claim dated 7th January, 2025 be struck off with costs.
 - e. That the suit be dismissed with costs for want of Jurisdiction, lack of locus standi, and for being scandalous, frivolous, vexatious and an abuse of the Court.
 - f. That costs of the suit and application be borne by the Claimant.
4. The application sets out on its face the grounds on the basis of which it is brought, and is based on the Respondent's supporting affidavit sworn on 24th January, 2025. The creed of the said supporting affidavit is that the Respondent was not an employee of the Claimant Law Firm, but a partner in the firm. A letter of appointment, appointing the Respondent to the position of a Partner (with an official designation of Deputy Managing Partner) dated 21st December, 2024 is annexed to the supporting affidavit.
5. The Respondent opposed the application vide a replying affidavit of David Mwaure Waihiga sworn on 21st February, 2025. Documents annexed to the supporting affidavit include copies of the Respondent's appointment letter duly executed on 22nd December, 2023, the Respondent's payslips issued by the Claimant law firm, the Respondent's resignation email dated 30th September, 2024 and the Claimant's Certificate of Registration.
6. The Claimant filed an emended statement of claim dated 7th April, 2025, upon which the Respondent filed a second Notice of Motion dated 28th January, 2025 seeking the following Orders:-



- a. Spent.
 - b. That the application be heard together with the pending strike out application dated 20th January, 2025.
 - c. That the Claimant's amended Memorandum of Claim dated 7th April, 2025 be struck out with costs.
 - d. That costs of the suit, the application dated 20th January, 2025 and of the instant application be borne by the Claimant.
7. The application is supported by the Respondent/Applicant's supporting affidavit sworn on 28th April, 2025, and is opposed by the Claimant/Respondent vide a replying affidavit of David Mwaure Waihiga sworn on 19th May, 2025. The two applications, dated 20th January, 2025 and 28th April, 2025 respectively, are before me for determination. Both parties filed written submissions on the said two applications pursuant to the Court's directions in that regard. I have considered both the affidavits filed and the parties' written submissions.
8. According to the Court's record, the Claimant filed an amended Memorandum of Claim dated 7th April, 2025. The Court has not been told that pleadings had closed as at the time the said amended Memorandum of Claim was filed, and that it was filed without leave.
9. Rule 34 of the *Employment and Labour Relations Court (Procedure) Rules 2024* provides as follows:-
- “A party may amend pleadings before service or before the close of pleadings:
- Provided that after the close of pleadings, the party may only amend pleadings with the leave of the Court on oral or formal application, and the other party shall have a corresponding right to amend its pleadings.”
10. The foregoing provision does not specify or limit the nature and/or type of amendments which a party can effect. In my view, any limitation would have been an impediment to substantive justice. Indeed, Order 8 Rule 3(3) & (4) of the *Civil Procedure Rules 2010*, which is good law and one that the Court cannot ignore while drawing procedural parallels, provides that an amendment of pleadings may be allowed:-
- “... notwithstanding that it is alleged that the effect of the amendment will be to substitute a new party if the Court is satisfied that the mistake sought to be corrected was a genuine mistake and was not misleading or such as to cause any reasonable doubt as to the identity of the person intending to sue or intended to be sued.
- (4) An amendment to alter the capacity in which a party sues (whether as plaintiff or as defendant by counter-claim) may be allowed under subrule (2) if the capacity in which the party will sue is one in which at the date of filing of the plaint or counter-claim, he could have sued.”
11. In the present case, the suit herein was initially instituted by Mwaure & Mwaure Waihiga & Co as the Claimant. The Amended Memorandum of Claim dated 7th April, 2025 names the Claimants as:-
1. Mwaure & Mwaure Waihiga & Co; and
 2. David Mwaure Waihiga t/a Mwaure & Mwaure Waihiga & Co.



12. As already stated elsewhere in this Ruling, the documents annexed to David Mwaure Waihiga's replying affidavit sworn on 21st February, 2025 include a Certificate of Registration of a Change of Particulars of Mwaure & Mwaure Waihiga & Co, issued under the *Registration of Business Names Act*, and dated 30th June, 2004. David Mwaure Waihiga is named in the said Certificate of Registration as one of the proprietors of Mwaure & Mwaure Waihiga & Co. The 2nd Claimant named in the amended memorandum of claim (David Mwaure Waihiga), therefore had capacity to sue in the suit herein when the suit was first instituted in January 2025.
13. The issue of whether or not the Respondent/Applicant was an employee can only be determined upon taking evidence in a trial.
14. Having said that, and having considered the written submissions filed on behalf of the parties herein, I decline to strike out the amended Memorandum of Claim dated 7th April, 2025 and to dismiss the suit herein. The applications dated 20th January, 2025 and 28th April, 2025 respectively are hereby dismissed with no order as to costs.
15. The suit herein shall be fast-tracked, and shall be fixed for hearing.
16. Orders accordingly.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 6TH DAY OF FEBRUARY 2026

AGNES KITIKU NZEI

JUDGE

ORDER

This Ruling has been delivered via Microsoft Teams Online Platform. A signed copy will be availed to each party upon payment of the applicable Court fees.

AGNES KITIKU NZEI

JUDGE

Appearance:

Miss Okondo for the Claimant

Miss Mutinda for the Respondent/Applicant

