

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT
NAIROBI
CAUSE NO. E384 OF 2025

PATRICIA KERUBO NYANGATARE.....CLAIMANT/RESPONDENT
VERSUS
SANDINO
LIMITED.....RESPONDENT/APPLICANT

RULING

1. What comes up for determination before this Court is the Respondent/Applicant's Notice of Motion dated 3rd July 2025, in which it seeks the following orders:
 - a) *That this Honourable Court be pleased to grant leave to the Respondent's Advocates to take out Witness Summons and serve them upon PZ Cussons East Africa Ltd.*
 - b) *That in the alternative, the Honourable Court be pleased to order PZ Cussons East Africa Ltd to file an Affidavit confirming the status of Employment of the Claimant herein with it.*
 - c) *That the costs of this Application be provided for.*

2. The Motion is premised on the grounds set out on its face and the Supporting Affidavit sworn on 3rd July 2025 by **Azim Deen**, the Applicant's Chief Executive

Officer. The grounds in support of the Motion are that, in the Claim dated 28th April 2025, the Claimant wrongly alleges that the Applicant terminated her employment unfairly.

3. Mr. Deen deposes that in November, less than four months after commencing employment with the Applicant, the Claimant absconded from her duties. He avers that the Applicant made all reasonable efforts to ascertain her whereabouts, but she intentionally failed to report to work.
4. He further states that the Claimant publicly announced on LinkedIn, via the URL <https://www.linkedin.com/company/pz-cussons/people/>, that she had commenced a new role with PZ Cussons East Africa Ltd, despite still being employed by the Applicant and without notifying or consulting the Applicant.
5. It is averred that the Applicant's defence to the Claim is that the Claimant absconded from her employment to take up a position with PZ Cussons East Africa Ltd. That the Applicant further counterclaims against the Claimant for, inter alia, financial losses caused by her abandonment of employment and breach of the Employment Contract.

6. The Applicant avers that to corroborate the LinkedIn posts, it is essential that this Honourable Court allow the Application, as failure to do so would diminish the probative value of the Applicant's counterclaim and its response to the Claim.
7. The Applicant further avers that there is a reasonable apprehension that, upon sight of this Application, the Claimant may delete the LinkedIn post. Accordingly, the only effective way for the Applicant to advance its case is for PZ Cussons East Africa Ltd to be called to testify regarding the Claimant's employment status and the veracity of the LinkedIn post.
8. The Claimant has opposed the Notice of Motion by way of a Replying Affidavit sworn on 23rd July 2025, in which she denies any connection with the LinkedIn profile referenced in Mr. Azim Deen's supporting affidavit.
9. She avers that the profile indicates employment at Royal Mabati Factory from January to November 2024, which is inconsistent with her actual employment history, as she was employed by the Applicant during that period. She therefore contends that the information on the profile is immaterial and irrelevant to the present proceedings. She further asserts that the profile is neither verified nor authenticated and should be treated as inadmissible and irrelevant.

10. The Claimant contends that the profile may have been staged or manipulated by third parties unknown to her, with the intention of delaying the Court process and creating a misleading narrative that could influence this Honourable Court's decision.

11. She maintains that no credible evidence before this Court directly links her to the account, and as such, the allegations based on the profile are speculative.

12. She further avers, on the advice of her Advocates, which she verily believes to be true, that the Applicant's attempt to summon PZ Cussons East Africa Ltd is both legally and factually baseless because:

- a) *PZ Cussons East Africa Company is not a party to her contract of employment;*
- b) *She is not employed by PZ Cussons East Africa.*
- c) *The suggestion that PZ Cussons East Africa Company can confirm her employment status is speculative, unnecessary, and a delay tactic; and*
- d) *Therefore, the said LinkedIn profile shared carries no weight to warrant the prayers sought in the instant application.*

13. The Claimant avers that she is advised by her Advocates, which she verily believes to be true, that the instant Application is misconceived and constitutes an abuse of the Court process. She contends that the Application is intended to shift responsibility and frustrate the proceedings, contrary to the principles of a fair trial and the expeditious disposal of disputes.

14. In a rejoinder, the Applicant filed a Further Affidavit sworn on 29th September 2025 by Mr. Azim Deen. He deposes that the Claimant has not demonstrated that she would suffer any prejudice should PZ Cussons be called to swear an affidavit or testify regarding the veracity of the Applicant's averments concerning her engagement.

15. Mr. Deen further avers that, as anticipated, the Claimant, upon becoming aware of the contents of the instant Application, removed the LinkedIn post annexed to the Supporting Affidavit. He submits that this act suggests an attempt to conceal her actions, which, in his view, can only be addressed by summoning PZ Cussons to testify.

16. He further deposes that the Claimant also deleted a social media post on her TikTok account that narrated the circumstances leading to her receipt of the offer

letter from PZ Cussons and her subsequent abandonment of employment with the Applicant. Mr. Deen adds that he was able to preserve screenshots of these posts prior to their deletion.

17. He is advised by the Applicant's Advocates that the Applicant has established a prima facie case justifying the summoning of PZ Cussons East Africa Ltd.

Submissions

18. Both parties filed written submissions, which the court has duly considered.

Analysis and Determination

19. The sole issue for determination is whether the Claimant's Notice of Motion dated 3rd July 2025 is meritorious, specifically whether the Court should grant the Respondent/Applicant leave to issue and serve Witness Summons on a representative from PZ Cussons East Africa Ltd.

20. Pursuant to **Rule 58 of the Employment and Labour Relations Court (ELRC) Rules, 2024**, the Court is empowered to summon any person for examination who possesses information relevant to the issues before it. The primary consideration under this Rule is that the witness must hold information relevant to the issues under the Court's consideration.

21. In the present case, the Applicant contends that its defence to the Claim is that the Claimant absconded her employment after securing another role with PZ Cussons East Africa Ltd while under its employment. The Applicant further states that the only viable way to substantiate its defence is by calling PZ Cussons East Africa Ltd to testify regarding the Claimant's employment status and the authenticity of the LinkedIn post relied upon.

22. The Claimant, on the other hand, vehemently denies the Applicant's assertions, maintaining that she is not employed by PZ Cussons East Africa Ltd and that the said company is not a party to her contract of employment. She contends that the Applicant's proposal to summon PZ Cussons East Africa Ltd is speculative, unnecessary, and intended solely to delay the proceedings.

23. In support of its Application, the Applicant relies on an excerpt from a LinkedIn post which it asserts belongs to the Claimant and purportedly confirms that she commenced employment at PZ Cussons East Africa Ltd while under its employment.

24. The Claimant denies any connection with the LinkedIn profile cited by the Applicant and argues that the profile may have been staged or manipulated by

third parties unknown to her, with the intention of delaying the court process and creating a false narrative. She further relies on WhatsApp messages exchanged with one **Joe Kahuko**, in which he states that the “boss” had instructed him to remove her from all WhatsApp groups.

25. In the Memorandum of Claim, the Claimant pleads that on 25th November 2024, she attempted to access the Applicant’s systems and found that she had been removed from all working systems, including the WhatsApp group. Upon enquiry with the Applicant’s Head of Operations, she was informed that her employment had been terminated with immediate effect.

26. In its Response to the Memorandum of Claim, the Applicant concedes that the Claimant was removed from the company WhatsApp group and denied access to the working systems in November 2025 and not November 2024, after it discovered that she had secured employment elsewhere. The Applicant asserts that this removal did not constitute termination of employment.

27. From the foregoing, it is evident that the parties have taken divergent positions regarding the termination of the employment relationship, specifically with respect to the timing and manner in which the employment ended.

28. Further, it is unclear when the Claimant allegedly posted on LinkedIn that she had commenced employment with PZ Cussons East Africa Ltd.

29. Further, the WhatsApp messages annexed to the Claimant's Replying Affidavit do not clarify the precise date on which she was removed from the Applicant's WhatsApp groups. In this regard, there exists a discrepancy between the parties, with the Applicant asserting that the removal occurred in November 2025, while the Claimant maintains it was on 25th November 2024.

30. In light of the foregoing, it is apparent that a key issue for determination in the main claim is whether the employment relationship was terminated when the Claimant was removed from the Applicant's working systems, and if so, whether she absconded from work and took up employment elsewhere while still employed by the Applicant.

31. Consequently, there is need for clarity regarding the timeline and circumstances surrounding the termination or cessation of the Claimant's access to the Applicant's systems.

32. Having considered the contentious issues in this matter and in the interest of arriving at a fair and just determination, it is evident that the Court requires the testimony of a witness who can assist in proving or disproving the disputed facts.

33. Accordingly, the Court is inclined to grant the Applicant's application to summon a representative of PZ Cussons East Africa Ltd to testify, for the purpose of clarifying the disputed matters before the Court.

34. To this end, the Applicant is granted leave to issue Witness Summons and serve it on the person responsible for the management of Human Resources at PZ Cussons East Africa Ltd.

35. Costs shall be in the cause.

DATED, SIGNED and DELIVERED at NYERI this 17th day of February 2026.

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STELLA RUTTO

JUDGE

In the presence of:

For the Claimant/Respondent	Ms. Wahito
For the Respondent/Applicant	Mr. Torotwa
Court Assistant	Ndati

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.

STELLA RUTTO

JUDGE