

REPUBLIC OF KENYA
IN THE EMPLOYMENT & LABOUR RELATIONS
COURT AT NAKURU

ELRC PETITION NO. 18 OF 2019
(Before Hon. Lady Justice Anna Ngibuini Mwaure)

EKIRU ELIGOI ELPA & 212

OTHERS.....PETITIONERS

/APPLICANTS

VERSUS

**MAJANI MINGI GROUP OF
COMPANIES LIMITED
RESPONDENT**

AND

**KENYA PLANTATION & AGRICULTURAL
WORKERS UNION..... 1ST
INTERESTED PARTY**

**NATIONAL HOSPITAL INSURANCE
FUND BOARD OF MANAGEMENT... 2ND INTERESTED
PARTY**

**NATIONAL SOCIAL SECURITY FUND
BOARD OF TRUSTEES..... 3RD
INTERESTED PARTY**

**COMMISSIONER OF DOMESTIC
TAXES..... 4TH INTERESTED
PARTY**

RULING

Introduction

1. The Petitioners/Applicant filed a Notice of Motion dated 9th February 2024 under Certificate of Urgency asking for the following orders that:

a. Spent

b. This Honourable Court be pleased to grant leave to the petitioners to amend the Amended petition dated 20th May 2022 to substitute the deponent of the affidavit in support of the petition, of the supplementary affidavit herein and any other affidavits in the matter from Joseph Atulo Abwabo to Samuel Mitee Tuwee (98th petitioner), the above said person having been authorized by the rest of the petitioners vide the authority to act as per authority filed herein.

c. This Honourable court be pleased to grant leave to the petitioners to amend the Amended Petition dated 20th May 2022 to correct the names as per the petitioners' identity cards and remove from the petitioners list of duplicated names.

d. This Honourable court be pleased to grant leave to the petitioners to amend the Amended Amended Petition dated 20th May

2022 to include the particulars of the petitioners.

e. This Honourable Court be pleased to grant leave to the petitioners to amend the Amended Petition dated 20th May 2022 to include an additional 83 intended petitioners in terms of draft further amended Amended Petition.

f. That the draft further amended Amended Petition herein be deemed duly filed upon payment of the court filing fees.

g. The Honourable court grants leave that the Amended Amended Petition be served upon all the parties within fourteen (14) days of filing.

h. Costs of the application be in the cause.

Petitioners/Applicants' case

2. The application is supported by the affidavit of Samwuel Mitee, the 98th Petitioner, sworn on even date of the application.
3. The Petitioners/Applicant aver that they are seeking leave of this Honourable Court to amend the Amended Petition dated 20th May 2022 in several respects. First, they request substitution of the

deponent of the supporting and supplementary affidavits from Joseph Atulo Abwabo to Samuel Mitee Tuwee, the 98th petitioner, who has been duly authorized by the rest of the petitioners.

4. The Petitioners/Applicants avers that they also seek to correct the Petitioners' names in line with their identity cards and remove duplicated entries from the list. Further, they seek to include the particulars of the petitioners and add an additional 83 intended petitioners as reflected in the draft further amended petition.
5. The Petitioners/Applicant aver that they pray that the draft further amended petition be deemed duly filed upon payment of the requisite court filing fees.

Respondent's replying affidavit

6. The Respondent opposed the application vide a replying affidavit sworn by Florence Sirma, the Respondent's Human Resource Manager dated 22nd January 2025.
7. The Respondent avers that the petition is vexatious, incompetent, misconceived, and an abuse of the court process.
8. The Respondent avers that several issues were raised including many petitioners have not signed

the authority to act or disclosed identification details; there are duplications and irregular inclusions of names; and the attempt to add 83 more Petitioners is opposed given existing complications.

9. The Respondent further avers that the Petitioners/Applicants have not disclosed any specific employment grievances or particulars of claim, making the application prejudicial to it.
10. The Respondent avers that the allegations of failure to provide safety gear or a safe working environment are dismissed as false and unsupported by evidence, with no records of work-related injuries filed.
11. The Respondent concludes that the Petitioners/Applicants have not demonstrated violation of the cited constitutional provisions, and the draft further amended petition is defective.
12. Accordingly, the Respondent urges the court to dismiss the application as unmerited and abusive of the judicial process.

Petitioners/Applicant's supplementary affidavit

13. The Petitioners/Applicants filed a supplementary affidavit dated 25th November 2025.

14. The Petitioners/Applicants aver that the amendments sought substituting the deponent, correcting names, removing duplicates, and adding 83 petitioners are intended to ensure accuracy, clarity, and procedural integrity, not to prejudice the Respondent.
15. The Petitioners/Applicants emphasize that errors in names were administrative and that the authority to act was properly filed after the demise of the previous deponent, Joseph Atulo Abwabo.
16. The Petitioners/Applicants aver that the number of Petitioners should not bar joinder, as the new Petitioners share identical grievances with those already before the court, making collective litigation efficient and just.
17. The Petitioners/Applicants dismisses the Respondent's claims of lack of particulars as disingenuous, noting that the grievances relate to systemic employment conditions.
18. The Petitioners/Applicant further contends that allegations about workplace safety are matters for the main petition, not the application.

19. The Petitioners/Applicants aver that the amendments are procedural, necessary to prevent miscarriage of justice, and will not prejudice the respondent, urging the court to allow the application in the interest of justice.

20. Parties canvassed the application by way of written submissions.

Petitioners/Applicants' written submissions

21. The Petitioners/Applicants submitted that these amendments are made in good faith to ensure substantive justice and relied on the case of ***Eastern Bakery v Castelino [1958] EA 461***, where the court held as follows:

“Amendments should be freely allowed if the other party will not suffer an injustice.”

22. The Petitioners/Applicant also relied on the case of ***Central Kenya Ltd v Trust Bank Ltd & 5 Others [2000] KECA 367 (KLR)***, where the court stated as follows:

“All amendments should be freely allowed and at any stage of the proceedings, provided that the amendment or joinder will not result in prejudice or injustice to

the other party which cannot properly be compensated for in costs.”

23. On joinder, the Petitioners/Applicants invoke **Order 1 Rule 10 of the Civil Procedure Rules**, stressing that the additional Petitioners share common grievances and facts, and relied on the case of ***Harit Sheth and Richard Kariuki T/A Harit Sheth Advocates v Nic Bank Limited [2014] KEHC 6383 (KLR)***, where the court held that amendment powers are discretionary but must be exercised judicially to determine the real issues in controversy. They further rely on the Supreme Court decision in ***Wamwere & 5 others v Attorney General [2023] KESC 3 (KLR)***, which affirmed that there is no limitation period for constitutional rights violations.
24. The Petitioners/Applicants urged the court to allow the application as prayed.

Respondent’s written submissions

25. The Respondent submitted that the application is vexatious and an abuse of process, as the intended petitioners have not shown any common question of law or fact or a cause of action to justify their joinder. The principles on joinder are settled under

Order 1 Rule 10(2) of the Civil Procedure Rules, 2010, which allows the Court to add parties necessary for effectual and complete adjudication. In **Departed Asians Property Custodian Board v Jaffer Brothers Ltd [1999] 1 EA 55 (CAK)**, the Court of Appeal held that a party may be joined if their presence is necessary for complete adjudication of all matters in dispute. Similarly, in **Joseph Leboo & 2 others v Director Kenya Forest Services & another [2013] KEELC 41 (KLR)**, the court outlined guiding principles as follows:

- “(i) He must be a necessary party;**
- (ii) He must be a proper party;**
- (iii) In the case of the defendant there must be a relief flowing from that defendant to the plaintiff;**
- (iv) The ultimate order or decree cannot be enforced without his presence; and**
- (v) His presence is necessary to enable the Court to effectually and completely adjudicate upon and settle all questions involved in the suit.”**

26. This test was reaffirmed in **Civicon Limited v Kivuwatt Limited & 2 others**

[2015] KECA 588 (KLR), where the Court of Appeal stated as follows:

“Again, the power given under the Rules is discretionary which discretion must of necessity be exercised judicially. The objective of these Rules is to bring on record all the persons who are parties to the dispute relating to the subject matter, so that the dispute may be determined in their presence at the time without any protraction, inconvenience and to avoid multiplicity of proceedings... In the same vein, a party seeking joinder who fails to establish any right over or interest in the subject matter cannot be enjoined.”

27. Firstly, the Respondent submitted that the intended Petitioners disclose no cause of action, relying on **Anarita Karimi Njeru v Republic**

[1979] KEHC 30 (KLR), where the court stressed:

“We would, however, again stress that if a person is seeking redress from the High Court... he must set out with a reasonable degree of precision that of which he complains, the provisions said to be

infringed, and the manner in which they are alleged to be infringed.”

28. The Respondent argued that the intended petitioners merely described themselves as “former employees” without providing particulars of violations, harm, or injury, thereby introducing unverified claims outside the scope of the proceedings. Second, the Respondent submitted that their inclusion does not disclose a common question of law or fact, citing ***Wanjiru Mwangi v Wanjiru Mwangi & Another [2018] KEELC 908 (KLR)***, where the court held: ***“The common test to apply in determining an application for joinder of parties is that a common question of fact or law would arise between the existing and intended parties. Ordinarily joinder of parties would be declined where the cause of action proposed or being sought is completely incompatible to or totally different from the existing cause of action or the relief.”***

29. Thus, the intended Petitioners fail both the precision requirement and the commonality test, making their joinder untenable.

30. The Respondent submitted that the proposed joinder of 83 new Petitioners would prejudice the Respondent, complicate proceedings, and undermine the efficient administration of justice. The Respondent relied on ***Matemu v Trusted Society of Human Rights Alliance & 5 others [2014] KESC 6 (KLR)***, where the Court stated:

“The purpose of joinder is to ensure that all matters in controversy are determined in one suit. However, where the intended joinder would convolute the proceedings with new matters and delay the expeditious disposal of the case, the Court will properly decline the application.”

31. The Respondent also relied on ***Central Kenya Ltd v Trust Bank Ltd & 4 Others (Supra)***, the court stated that when pleadings are amended, the changes must not unfairly disadvantage or surprise the other party. In other words, an amendment should not cause prejudice or embarrassment by introducing issues the opposing party could not reasonably prepare for, and any inconvenience caused should be something that can be compensated by costs.

32. The Respondent submitted that adding the petitioners would introduce new claims, cause undue burden and cost, prejudice the respondent, and potentially be time-barred since the claims arose before 2019 but the joinder was sought in 2024. The Respondent relied on **section 90 of the Employment Act** which provides as follows:

“Notwithstanding the provisions of section 4(1) of the Limitation of Actions Act (Cap. 22), no civil action or proceedings based or arising out of this Act or a contract of service in general shall lie or be instituted unless it is commenced within three years next after the act, neglect or default complained or in the case of continuing injury or damage within twelve months next after the cessation thereof.”

33. The Respondent emphasized that employment-related disputes are subject to a statutory limitation period of three years, meaning any claims arising on or before 2019 were extinguished by law by 2022. The attempt to revive such claims through a joinder application in 2024 is described as misconceived and an abuse of court process. It further notes that the intended petitioners have disguised their claims as constitutional matters to circumvent limitation

statutes, a practice consistently rejected by courts. Reliance is placed on ***Josephat Ndirangu v Henkel Chemicals (EA) Ltd [2013] KEELRC 890 (KLR)***, where the court held that litigants cannot bypass employment statutes by directly invoking constitutional provisions such as Article 41 on fair labour practices, since these rights are already given effect through the Employment Act and Labour Relations Act.

34. In conclusion, the Respondent submitted the Petitioners/Applicants' claims remain statute-barred and urged that their application for joinder should be dismissed with costs.

Analysis and determination

35. The court has considered the application, supporting affidavit, responses thereto, supplementary affidavit and the rival submissions.

(1) *The issue for court's determination is whether the application deserves to be granted.*

(2) *Is the intended joinder time barred?*

36. **Order 8 Rule 3 of the Civil Procedure Rules** provides as follows:

“(1) Subject to Order 1, rules 9 and 10, Order 24, rules 3, 4, 5 and 6 and the following provisions of this rule, the court may at any stage of the proceedings, on such terms as to costs or otherwise as may be just and in such manner as it may direct, allow any party to amend his pleadings.

(2) Where an application to the court for leave to make an amendment such as is mentioned in subrule (3), (4) or (5) is made after any relevant period of limitation current at the date of filing of the suit has expired, the court may nevertheless grant such leave in the circumstances mentioned in any such subrule if it thinks just so to do.

37. An amendment to correct the name of a party may be allowed under subrule (2) 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 counterclaim) 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 counterclaim, he could have sued.

(5) An amendment may be allowed under subrule (2) notwithstanding that its effect will be to add or substitute a new cause of action if the new cause of action arises out of the same facts or substantially the same facts as a cause of action in respect of which relief has already been claimed in the suit by the party applying for leave to make the amendment.”

38. Also, ***Order 8 Rule 5(1) of the Civil Procedure Rules*** provides as follows:

“For the purpose of determining the real question in controversy between the parties, or of correcting any defect or error in any proceedings, the court may either of its own motion or on the application of any party

order any document to be amended in such manner as it directs and on such terms as to costs or otherwise as are just.”

39. The court is in agreement with the averment of ***Eastern Bakery v Castelino(Supra)*** and ***Central Kenya Ltd v Trust Bank Ltd & 5 others (supra)*** which allows amendment of pleadings at any stage provided that it does not bring injustice to the other party.

40. ***Order 1 Rule 10(1) and (2) of the Civil Procedure Rules*** provides as follows:

“(1) Where a suit has been instituted in the name of the wrong persons as plaintiff, or where it is doubtful whether it has been instituted in the name of the right plaintiff, the court may at any stage of the suit, if satisfied that the suit has been instituted through a bona fide mistake, and that it is necessary for the determination of the real matter in dispute to do so, order any other person to be substituted or added as plaintiff upon such terms as the court thinks fit.

(2) The court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all questions involved in the suit, be added.”

41. Order 24 Rule 3(1) & (2) of the Civil Procedure Rules states:

(1) Where one of two or more plaintiffs dies and the cause of action does not survive or continue to the surviving plaintiff or plaintiffs alone, or a sole plaintiff or sole surviving plaintiff dies and the cause of action survives or continues, the court, on an application made in that behalf, shall cause the legal representative of the deceased

plaintiff to be made a party and shall proceed with the suit.

(2) Where within one year no application is made under subrule (1), the suit shall abate so far as the deceased plaintiff is concerned, and, on the application of the defendant, the court may award to him the costs which he may have incurred in defending the suit to be recovered from the estate of the deceased plaintiff: Provided the court may, for good reason on application, extend the time.”

42. The court also is guided by the case of ***Civicon Limited v Kivuwatt Limited & 2 others(supra)*** and ***Matemu v Trusted Society of Human Rights Alliance & 5 others(supra)*** on the joinder of parties.

43. In this instant case, the Petitioners/Applicants seek leave to amend their Amended Petition dated 20th May 2022 in several respects. They propose substituting the deponent of the supporting and supplementary affidavits from Joseph Atulo Abwabo(deceased) to Samuel Mitee Tuwee, the 98th Petitioner, who has been duly authorized by the

others. The first Petitioner Joseph Atulo Abwabo is deceased – hence the prayer for amendment. Additionally, they wish to correct the petitioners' names to match their identity cards, remove duplicate entries, include missing particulars, and add 83 new intended petitioners as shown in the draft further amended petition. They also request that the draft be deemed duly filed upon payment of the required court fees.

44. The Petitioners therefore wish to enjoin other 83 proposed Petitioners as they share identical grievances with those already before the court, making collective litigation efficient and just.

45. The court has considered the pleadings, statutes, case laws and respective submissions. These support the approval for amendment in order to regularize the pleadings to facilitate and expedient the case at the earliest time possible. Also enjoining the 83 proposed Petitioners will be beneficial to avoid duplicity of suits.

46. The Petition is brought claiming breach of the Petitioner's rights and since the hearing has not commenced, it is difficult to ascertain if there are violations or otherwise of Petitioners Constitutional right to determine the case in its entirety. Hence the

court finds joinder is not time barred if the claim is to determine constitutional violation.

47. In light of the foregoing, the court finds that the application dated 9th February 2024 is allowed as prayed on the following terms:

a. The court grants leave to the petitioners to amend the amended Amended petition dated 20th May 2022 to substitute the deponent of the affidavit in support of the petition, of the supplementary affidavit herein and any other affidavits in the matter from Joseph Atulo Abwabo (deceased) to Samuel Mitee Tuwee (98th petitioner), authorized by the rest of the petitioners vide the authority to act filed herein.

b. The court grants leave to the petitioners to amend the amended Amended Petition dated 20th May 2022 to correct the names as per the petitioners' identity cards and remove from the petition list of duplicated names.

c. The Honourable court be pleased to grant leave to the petitioners to amend the Amended Amended Petition dated 20th

May 2022 to include the particulars of the petitioners.

d. The court grants leave to the petitioners to amend the amended Amended Petition dated 20th May 2022 to include an additional 83 intended petitioners in terms of draft further amended Amended Petition.

48. Costs of the application will be in the cause.

49. The amended Amended claim to be filed within 14 days and served.

Orders accordingly.

Dated, Signed and Delivered virtually at Nakuru this 12th Day of March, 2026.

**ANNA NGIBUINI MWAURE
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.

A signed copy will be availed to each party upon payment of Court fees.

ANNA NGIBUINI MWAURE
JUDGE