

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT NAIROBI
CAUSE NO. E334 OF 2025

**KENYA SHIPPING CLEARING, FREIGHT LOGISTICS AND
WAREHOUSE WORKERS UNION.....CLAIMANT/RESPONDENT**

VERSUS

VOLT MANAGEMENT SERVICES LIMITED
RESPONDENT

**KEITT FRESH LTD.....1ST INTERESTED
PARTY/APPLICANT**

RAAYAN EXPORTERS LTD.....2ND INTERESTED PARTY/APPLICANT

RULING

1. Through a Memorandum of Claim dated 4th April 2025, the Claimant instituted these proceedings on behalf of four grievants against the Respondent and the Interested Parties. The Claimant's case is that the grievants were issued with new employment contracts on 1st January 2017, which were renewable up to 31st December 2023, when the Respondent declined to renew the contracts without providing any reasons. On this basis, the Claimant seeks specified monetary remedies on behalf of each grievant.

2. Upon being served with the Memorandum of Claim, the Interested Parties filed a Notice of Motion dated 12th November 2025 seeking to be struck out of the Claim on the ground that the Claim is time-barred by dint of Section 90 of the Employment Act.
3. The Motion is supported by the grounds set out on its face and the Supporting Affidavit of **Uzai Ul Hassan**, sworn on 12th February 2025.
4. The Interested Parties contend that once the grievants were issued with employment contracts by the Respondent effective 1st January 2017, they ceased to be employees of either of them.
5. They further assert that any cause of action relating to the 1st and 2nd Interested Parties accrued on or before 1st January 2017, when the employment relationship between them and the grievants came to an end.
6. The Claimant opposed the Motion through a Statement of Response dated 17th November 2025, arguing that there exists a *prima facie* case that the Interested Parties and the Respondent operated as a joint employer, thereby making the Interested Parties necessary to these proceedings.
7. The Claimant asserts that the operational reality shows that the Interested Parties exercised substantial control, owning the premises, machinery,

materials, and the overall enterprise, while also directly supervising the grievants' daily work.

8. It is further contended that the Respondent's own contractual documents reinforce this connection, expressly identifying the "Client" as the "owner of the work" and making employment conditional upon the Client's continued project involvement.
9. According to the Claimant, the conditional nature of the employment contracts created a precarious and dependent relationship, demonstrating that the Respondent lacked meaningful operational independence and functioned merely as a labour conduit for the Interested Parties.
10. The Claimant also contends that the Interested Parties have failed to produce critical documents, such as the service or lease agreement with the Respondent, which would clarify the true nature of their relationship and whether it was genuinely at arm's length.
11. The Claimant maintains that removing the Interested Parties at this preliminary stage would cause significant prejudice to the Grievants by preventing a full and fair inquiry into the actual employment relationships and the proper allocation of liability.

12.The Respondent indicated that it does not oppose the Motion filed by the Interested Parties.

Submissions

13.The Motion was disposed of through written submissions. Both the Claimant and the Interested Parties filed their respective submissions, which the Court has duly considered.

Analysis and Determination

14.It is evident that the sole issue for determination is whether the suit against the Interested Parties is statute-barred pursuant to Section 89 (formerly Section 90) of the Employment Act.

15.The gist of the Interested Parties' Motion is that the grievants became employees of the Respondent with effect from 1st January 2017 upon being issued with new employment contracts. They contend that, upon this engagement, the grievants ceased to be employees of either the 1st or 2nd Interested Party. Consequently, any cause of action relating to the Interested Parties is said to have accrued on or before 1st January 2017, when their employment relationship with the grievants ended.

16. The Claimant disputes this position, asserting that there exists a *prima facie* case that the Interested Parties and the Respondent operated as a joint employer, making the Interested Parties necessary parties to these proceedings.
17. To resolve this contention, it is necessary to revisit the record.
18. The 1st Grievant, **Beth Ayicha Adhiko**, states that she was initially employed by the 1st Interested Party and subsequently by the Respondent from 1st January 2017 until 31st December 2023, when she was verbally instructed not to report to work.
19. The 2nd Grievant, **Linnet Bonchere Onyancha**, states that she was employed by the 1st Interested Party in 2010 and, on 1st January 2017, received an employment contract bearing the Respondent's name. She avers that on 31st December 2023, she was similarly instructed not to report to duty.
20. The 3rd Grievant, **Rose Awinja Kote**, avers that she initially worked for the Interested Parties from 2014, later received an employment contract under the 2nd Interested Party, and on 1st January 2017 received a new employment contract issued by the Respondent.

21. What can be discerned from the foregoing is that all the Grievants were initially employed by the Interested Parties and that, with effect from 1st January 2017, their employment shifted to the Respondent.

22. It is similarly clear that the last employment contracts forming the subject matter of this suit were those issued by the Respondent.

23. It therefore follows that any employment contracts or relationships between the Grievants and the Interested Parties came to an end on or before 1st January 2017.

24. Section 89 of the Employment Act prescribes that a claim arising out of a contract of service must be instituted within three (3) years from the date the cause of action arose. The provision is couched as follows: -

[89] 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. Underlined for emphasis

25. The effect of Section 89 aforementioned is that a claim becomes statute-barred if it is not instituted within three (3) years from the date the cause of action arose.

26. In the present case, the record demonstrates that the employment contracts originally subsisting between the Grievants and the Interested Parties terminated on or before 1st January 2017 when they were employed by the Respondent.

27. Accordingly, applying Section 89 of the Employment Act, any cause of action the Grievants may have had against the Interested Parties lapsed three (3) years after they transitioned into the Respondent's employment.

28. Since the Claimant lodged the instant Claim on 17th April 2025, the Court finds that it was filed outside the three-year limitation period following the cessation of the employment relationship with the Interested Parties. As such, no sustainable cause of action can now lie against the Interested Parties with respect to the past employment contracts.

29. The Court further notes that the Claimant's assertion that the Respondent and the Interested Parties operated as a joint employer is unsupported by the evidence on record.

30. Additionally, the Claimant's reliance on Section 54 (1) of the Labour Institutions Act is misplaced, as that provision pertains to criminal liability of an agent or employer, and has no relevance to civil liability in proceedings such as these.

31. In the final analysis, the Court finds that the Notice of Motion dated 12th November 2025 is merited, and the Interested Parties are hereby struck out from the suit.

32. There shall be no order as to costs.

DATED, SIGNED and DELIVERED at MERU this 13th day of March 2026.

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STELLA RUTTO

JUDGE

In the presence of:

For the Claimant/Respondent Mr. Mutongoi

For the Respondent Mr. Ondego

For the Interested Parties/Applicants Mr. Omondi instructed by Mr. Otieno

Court Assistant Qabale

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