



**Mohamed v Ndungu & another (Cause E004 of 2025)
[2026] KEELRC 883 (KLR) (25 March 2026) (Ruling)**

Neutral citation: [2026] KEELRC 883 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT VOI
CAUSE E004 OF 2025
M MBARŪ, J
MARCH 25, 2026**

BETWEEN

MBARAK IBRAHIM MOHAMED CLAIMANT

AND

JOSEPH KAMAU NDUNGU 1ST RESPONDENT

AFRIKA LODGES LIMITED 2ND RESPONDENT

RULING

1. The 1st respondent, Joseph Kamau Ndungu filed an application dated 11 February 2026 under the provisions of article 50(1) and 159 of *the constitution*, Rules 33 and 47 of the Employment and Labour Relations Court (Procedure) Rules and seeking orders that the court be pleased to find that there exists no employer-employee relationship between him and the claimant and the claim against him is in bad faith. The suit against him should be dismissed with costs.
2. The 1st respondent filed his Supporting Affidavit, in which he avers that he is an employee of the 2nd respondent and has no employment relationship with the claimant. The allegation assaulted him while at work, which is the subject of ongoing criminal proceedings at Voi. The claimant made a complaint in Voi MCCR E265 of 2025, where he is the accused person/ the claim is also an accused person jointly with him in Voi MCCR E410 of 2025, Republic v Mubark Ibrahim and Joseph Kamau. There are Warrants fo Arrest against the claimant for failure to attend court.
3. The 1st respondent avers that the suit angers him because the claimant has filed it in bad faith, in an attempt to intimidate and harass him, and thus seeks the urgent intervention of the court to protect him from suffering at the hands of the claimant. The court has inherent powers to order and direct that the claim against the 1st respondent be dismissed with the court.

There is no Replying Affidavit by the claimant.



4. The counsel for the claimant submitted that the 1st respondent is a necessary party to these proceedings, as the claim arises from an altercation between him and the claimant, which led to the termination of employment. The claimant's case is based on threats issued by the 1st respondent against him that, following an assault case, he would ensure he lost his employment. Thus, to fully adjudicate on the suit herein, his attendance is necessary.

The 2nd respondent supported the 1st respondent's application.

5. The claimant submitted that he found the claimant at his workstation, in the kitchen, as a chef and demanded food. As part of the health and safety measures, the claimant was not permitted to enter the kitchen. He demanded food and refused to pay. The claimant made efforts to address the matter, but the claimant became aggressive and abusive and assaulted him. The matter is pending police investigations and there is an ongoing criminal case. The claimant has been charged, and has failed to attend court, and a Warrant of Arrest has since been issued.

Determination

6. The claimant's case is that he was employed by the 2nd respondent on 5 April 2024 as a waiter. The 1st claimant is also employed by the 2nd respondent as a chef. Following an altercation on 27 June 2025, a report was made to the Voi police station, but on 28 June 2025, the 2nd respondent issued him a termination notice.
7. All the orders sought relate to the 2nd respondent. None is directed at the 1st respondent.

Is the 1st respondent a necessary party in these proceedings?

8. A respondent is aptly defined under *the Constitution* of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013, to include:

“respondent” means a person who is alleged to have denied, violated or infringed, or threatened to deny, violate or infringe a right or fundamental freedom

9. A respondent is defined under Rule 2 of the Employment and Labour Relations Court (Procedure) Rules:

“respondent” means a person against whom a suit has been instituted in the Court or who replies to any proceedings in Court;

The constitutional threshold is more apt.

10. A proper respondent is one who is alleged to have violated or infringed a right, and against whom there is a specific claim. In *Langat v Bett* (Sued as the Personal Representative of the Estate of Daniel Kipkemoi Rotich (Deceased)) [2025] KEELC 18251 (KLR), the court made a distinction between filing suit against various persons, some of whom are not necessary, and those who are proper respondents against

To whom should relief be sought?

11. Upon the 2nd respondent supporting the 1st respondent's application, being the employer, whatever grievances relating to his employment may be, the claimant should retain the 2nd respondent only. Filing a claim against the 1st respondent, a fellow employee against whom he has not sought any specific orders, is an abuse of the court process.



12. The 1st respondent has also addressed the claimant's habit of tracing him to his workplace and making threats. There are ongoing criminal proceedings on reports made to the Voi Police Station. Whereas the claimant should not threaten the 1st respondent, the 2nd respondent has a duty to ensure the safety of its employees while on the shop floor. The 2nd respondent owes the 1st respondent a legal duty to provide a conducive work environment, and any injury to the 1st respondent's person gives rise to liability. It is imperative that the 2nd respondent take proactive steps to secure its employee, the 1st respondent.
13. As much as the claimant is before this court, urging his case, he must come to court with clean hands. This shall suffice.
14. Accordingly, the application dated 11 February 2026 is with merit and is hereby allowed. The 1st respondent is hereby removed as a respondent. The claimant shall meet his costs assessed at Ksh. 15,000 to be paid within 30 days.

DELIVERED IN OPEN COURT AT MOMBASA, THIS 25TH DAY OF MARCH 2026.

M. MBARŪ

JUDGE

In the presence of:

Court Assistant: Omar

..... and

