

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT NAIROBI

CAUSE NO. E404 OF 2025

(Before Hon. Lady Justice Agnes Kitiku Nzei)

EMMAH WANJIRU NDINGURICLAIMANT

VERSUS

LUCA SAFARI LIMITED1ST RESPONDENT

LUCA BELPIETRO2ND RESPONDENT

RULING

1. The Claimant sued the Respondents herein vide a Statement of Claim dated 2nd May, 2025 and sought the following reliefs:-

(a) *Sums equivalent to 12 months of the Claimant's salary for unlawful and unprocedural termination amounting to **Kshs.4,260,000/=**.*

(b) *An award of 12 months' salary amounting to **Kshs.4,260,000/=** for the unlawful and*

unprocedural redundancy measures taken against the Claimant.

- (c) An award of **Kshs.17,476,923/=** for overtime, working on rest days and on public holidays over a period of 2 years and 6 months.*
- (d) Future loss of salary: An award of 5 years' salary amounting to **Kshs.12,780,000/=** for the loss of future earnings due to unlawful termination and owing to promise of promotion.*
- (e) General damages of **Kshs.5,000,000/=** for sexual harassment and exposure to a hostile work environment.*
- (f) Compensation for breach of data privacy in the sum of **Kshs.2,000,000/=**.*
- (g) Compensation for defamation to the tune of **Kshs.2,000,000/=**.*
- (h) A valid certificate of service and Stellar Recommendation Letter from the employer, reflecting the Claimant's hard work, dedication and professional conduct.*
- (i) Costs of the suit.*

(j) Any further reliefs that the Court may deem fit and just to grant.

2. The Claimant pleaded, ***inter-alia***:-

(a) that she was employed by the 1st and 2nd Respondents on 1st November, 2021 in the position of an Assistant Camp Manager and Personal Assistant to the Managing Director at **Camp ya Kazi** situated in Makueni County (with a subsidiary office in Nairobi) at a monthly salary of **Kshs.175,000/=**, which was subsequently increased to **Kshs.355,000/=** upon the Claimant's promotion to the position of a Camp Manager.

(b) that the Claimant was, during the period of employment, subjected to long working hours, frequently working upto 14 hours per day without compensation and without rest days.

(c) that the Claimant worked at odd hours of the night, on holidays and on weekends, [being] in

tourism industry, and had to sleep in the camp on most occasions so as to cater for guests.

(d) that during the period of employment, the Claimant was subjected to continuous sexual harassment and hostile work environment by the 1st and 2nd Respondents.

(e) that due to lack of policies, procedures and measures regarding employee accommodation while on duty, the 2nd Respondent compelled the Claimant to share/continue sharing a room with the 2nd Respondent's daughter who was also an employee of the 1st Respondent, and whom he knew was unwell, leading to long term health complications on the part of the Claimant; which required treatment at the Claimant's expense.

*(f) that on **18th May, 2024**, the Claimant was sexually assaulted by the 2nd Respondent in the presence of the Claimant's [work] colleagues, **Mr. Shilen Shah** and **Carole Mercier**; and that on **1st June, 2024**, the Claimant and **Mr. Shilen Shah** were abruptly terminated from employment under the pretext of redundancy.*

- (g) *that termination of the Claimant's employment under the pretext of redundancy was a retaliatory measure against her by the 2nd Respondent for rejecting his advances and for raising a complaint against him.*
- (h) *that the alleged redundancy was a mere pretence as it was directed at specific employees instead of their roles, and no positions were rendered redundant.*
- (i) *that the 1st Respondent issued the Claimant with a Certificate of Service with outdated company contact information, potentially hindering the Claimant's future employment opportunities.*

3. The 1st Respondent defended the suit vide a Statement of Response dated 27th May, 2025; vide which it denied the Claimant's claim and pleaded that the Claimant's termination **had been carried out in accordance with applicable provisions of the law, the contractual terms of employment, and the Respondent's Human Resource Policy.**

4. On his part, the 2nd Respondent defended the suit vide his Statement of Response also dated 27th May, 2025. He denied the Claimant's claim and pleaded that the Claimant had **no** cause of action against him as there did not exist an employer-employee relationship between the two. That the 2nd Respondent was non-suited.
5. Each of the two Respondents has raised a Preliminary Objection to the Claimant's suit. In its Preliminary Objection dated **19th May, 2025**, the 1st Respondent objects to the Claimant's suit on the following grounds:-
- (a) *The suit offends the principles expounded in **Salmon - vs - Salmon & Company Limited (1897) A. C. 22 HL**, and the 2nd Respondent's name ought to be struck out from these proceedings.*
 - (b) *The suit herein offends **Halsbury's Laws of England 4th Edition Vol. 7(1)**.*
 - (c) *The Claimant's claim on Data Privacy offends the provisions of **Sections 3(c), (d), (e), (f), 56 and 57 of the Data Protection Act, 2019**.*

6. In his Preliminary Objection dated 21st May, 2025, the 2nd Respondent objects to the Claimant's suit on the following grounds:-

(a) The Court lacks Jurisdiction to entertain the claim against the 2nd Respondent by dint of Section 12 of the Employment and Labour Relations Court Act 2011, as read with Article 162(2)(a) of the Constitution.

(b) The Court further lacks Jurisdiction to hear and to determine the matter considering that there is no employer-employee relationship between the Claimant and the 2nd Respondent.

7. On 31st July, 2025, I ordered that the two foregoing preliminary objections be determined together, and directed parties herein to file written submissions thereon.

8. Issues falling for determination from the foregoing two preliminary objections, in my view, are as follows:-

(a) Whether this Court has jurisdiction to determine the Claimant's suit herein.

(b) Whether the suit herein offends the law.

9. Before delving into the foregoing issues, it is worthy noting that from the pleadings filed herein, it is a **common ground** that the 2nd Respondent was a Director/the Managing Director of the 1st Respondent. The Claimant **pleads** that she was employed by the 1st and 2nd Respondents, which pleading the 2nd Respondent denies and pleads that there was **no** employer/employee relationship between himself and the Claimant.
10. The Claimant has, in her pleadings, made serious allegations against the 2nd Respondent, **including allegations of sexual harassment**, during the period of her employment, and seeks compensation against both the 1st and the 2nd Respondents. The 2nd Respondent **denies** these allegations.
11. The Claimant has also made allegations of **unfair termination of employment**, among other allegations, and seeks compensation. The 1st Respondent **denies** these allegations and pleads that termination of the Claimant's employment was carried out in accordance with the

applicable provisions of the law, her contractual terms of employment and the Respondent's Human Resource Policy.

12. It is clear from all the foregoing that **the suit herein must go for trial**, and that evidence **must** be taken to enable the Court to determine **all** the issues involved in the dispute.

13. Turning to the first issue, that is, whether this Court is seized of jurisdiction to entertain and to determine the suit herein, it is clear from the pleadings filed by the parties herein that the dispute and/or cause of action herein arose from an employer-employee relationship. **Section 12(1)(a) of the Employment and Labour Relations Court Act** provides as follows:-

“(1) The Court shall have exclusive original and appellate Jurisdiction to hear and determine all disputes referred to it in accordance with Article 162(2) of the Constitution and the provisions of this Act or any other written law which extends Jurisdiction to the Court relating to

employment and labour relations including

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(a) disputes relating to or arising out of employment between an employer and an employee.”

14. As to who is an **employer**, Section 2 of the Employment Act defines the term **“employer”** as follows:-

“ “employer” means any person, public body, firm, corporation or company who or which has entered into a contract of service to employ any individual and includes the agent, foreman, manager or factor of such person, public body, firm, corporation or company.”

15. The **Black’s Law Dictionary (10th Edition)** defines **“a factor”** as:-

“Someone who acts for another . . . and differs from a broker because the factor possesses or controls the property . . .”

16. In employment law, in my view, an employing company's Director and/or a Managing Director, Manager etc falls in the category of **"a factor"** of the employing company. The 2nd Respondent herein, having been the 1st Respondent's/employing company's Managing Director at the material time, can be sued **jointly** with the employing company, **and especially if he is being accused of having personally committed acts which are actionable in law; like the alleged sexual harassment, which he denies.** As to whether or not the 2nd Respondent is liable, **evidence will tell once a full trial is conducted.**
17. The dispute herein relates to, and arises out of employment between an employer and an employee, and therefore falls within the purview of this Court's Jurisdiction. I find and hold that this Court is seized of Jurisdiction to entertain, to hear and to determine the suit herein.
18. Indeed, the preamble to the Employment and Labour Relations Court Act states as follows:-

"An Act of Parliament to establish the Employment and Labour Relations Court to hear

and determine disputes relating to employment and labour relations and for connected purposes.”

19. It is to be noted that jurisdiction to hear and to determine **all disputes relating to and connected to employment and labour relations resides in this Court**, save where such jurisdiction is expressly ousted by the statute over **specific matters expressly specified in the ousting statute**. The practice of raising **“preliminary objections”** and purporting to **“challenge”** this Court’s jurisdiction left right and centre even where such purported objections are clearly unnecessary simply delays trial of cases and creates case backlog in our Courts.

20. The Court stated as follows in the case of **Abraham Nyambane Asiago - vs - Barclays Bank of Kenya Limited [2013] eKLR:-**

“16. The question then is what constitutes a dispute relating to or arising out of employment between an employer and an employee. Is it confined to issues that are

ordinarily found in employment contracts or does it extend to all matters emanating from the employment relationship? Counsel for the Respondent asked the Court to down its tools in this matter because the subject matter is land and not employment. With much respect to the learned Counsel, that is a very narrow interpretation of what constitutes an employment and labour relations matter and the consequential Jurisdiction of the Industrial Court.

17. By its nature, the employment relationship generates a multiplicity of rights and obligations, some of which are not to be found in the express provisions of the employment contract. In my view, all these fall under employment and labour relations as intended by the law makers. To rule otherwise would be to create a situation where an employer or an employee traverses different Courts to enforce different rights arising from the same employment

relationship. That in my view could not have been the intention of the legislators. . . .

19. In the case before me, it is not in contest that the Claimant was granted a staff housing loan because he was an employee of the Respondent. It is also factual that the reason why the Respondent has recalled the loan is that the Claimant's employment has been terminated, which termination is contested by the Claimant. It cannot therefore be that the Employment and Labour Relations Court has no jurisdiction to adjudicate on a matter arising from the staff housing loan. . . ."

21. Regarding what a preliminary objection ought to be for record purposes, it was stated as follows in the case of **Mukisa Biscuits Manufacturing Co. Ltd - vs - West End Distributors Limited [1969] E.A. 696:-**

“. . . a preliminary objection consists of a point of law which has been pleaded, or which arises by clear implication out of pleadings and which if

argued as a preliminary point may dispose of the suit. Examples are an objection to jurisdiction of the court, or a plea of limitation, or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration.”

22. The Court (**Sir Charles Newbold**) further stated:-

“. . . A preliminary objection is in the nature of what used to be called a demurrer. It raised a pure point of law, which was argued on assumption that all the other facts pleaded by the other party were correct. It cannot be raised if any fact had to be ascertained or if what is sought is the exercise of Judicial discretion. . . .”

23. The Respondents’ preliminary objections **are heavily founded on matters of fact**; matters regarding which evidence **must** be taken and considered before a determination can be made.

24. On the second issue, the Respondents have not demonstrated **how** the Claimant's suit contravenes the law, to a point of being untenable.
25. In view of all the foregoing, and having considered written submissions filed on behalf of the parties herein, I come to the unavoidable conclusion that the Respondents' preliminary objections **dated 19th May, 2025 and 21st May, 2025** respectively are devoid of merit. Consequently, the said preliminary objections are hereby dismissed with costs to the Claimant.
26. The suit shall be fast-tracked, and shall be fixed for hearing.
27. Orders accordingly.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS
24TH DAY OF MARCH 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 Lewinsky for the Claimant

Miss Talu for the 1st and 2nd Respondents