

REPUBLIC OF KENYA
IN THE EMPLOYMENT & LABOUR RELATIONS COURT AT
NAIROBI
CAUSE NUMBER E435 OF 2023

KENYA ENGINEERING WORKERS UNION.....

.....CLAIMANT

VERSUS

EAST AFRICAN CABLES

LIMITED.....RESPONDENT

RULING

- 1.** Before the court is the Claimant's application dated 19th August, 2025, wherein the Claimant/Applicant seeks the following orders: -
 - i. THAT, the Honourable Court be pleased to order that Equity Bank (K) Limited/Administrators be enjoined in ELRCC No. E435 of 2023 as the intended 2nd Respondent.
 - ii. THAT the Honourable Court to order the 1st Respondent namely East Africa Cables Limited to be responsible for the debt owed to the grievants by the 1st Respondent after the suit before the Honourable Court which is yet to be heard and determined.
 - iii. Costs of this application be provided for.

- 2.** The Applicant's application is supported by the grounds thereof and the supporting affidavit of one Wycliffe Nyamwata, sworn on 19th August, 2025.

- 3.** The Applicant argues that joining the Intended 2nd Respondent to this suit is necessary and fair, as it will not cause any prejudice or embarrassment to any party. It argues that the joinder is in the interest of justice, is brought in good faith and without delay, and within the Court's powers to grant.
- 4.** The Applicant further contends that the 2nd Respondent may be responsible for settling the grievants' debt after the determination of the case, and that their inclusion is necessary to fully present the issues, especially before any property sale.
- 5.** The Respondent opposed the application vide grounds of opposition dated 28th November, 2025.
- 6.** The Respondent argues that it is under administration by Equity Bank (K) Limited under the Insolvency Act, and that the appointed administrators from PricewaterhouseCoopers now manage its affairs.
- 7.** It contends that Equity Bank has no direct interest in the matter and should not be enjoined as a party. The Respondent further submits that the Claimant's application is legally untenable as it contravenes provisions of the Insolvency Act, and that any remedy available to the Claimant lies within the framework provided under the Act, particularly Section 560(1)(d).

Determination

8. Two issues arise for my determination: -
 - i. Whether Equity Bank (K) Limited ought to be joined as the 2nd Respondent in this suit; and
 - ii. Whether the Court can issue anticipatory orders on liability.
9. Order 1 Rule 10(2) of the Civil Procedure Rules empowers the Court to join a party to the suit whose presence is necessary for the effective and complete adjudication of the issues in dispute. In ***Departed Asians Property Custodian Board v Jaffer Brothers Ltd, [1999] 1 EA 55***, the Court held that a party may be joined if they are a necessary party, there is a relief flowing from them, and their presence is essential for complete adjudication of the case before the court.
10. Similarly, in ***Civicon Limited v Kivuwatt Limited & 2 Others (2015) eKLR***, the Court emphasized that joinder should not be used to introduce unnecessary parties or to embarrass proceedings, but only where a party has a direct and identifiable stake in the dispute.
11. It is not disputed that the Respondent is under administration pursuant to Section 534(1) of the Insolvency Act, and that administrators have been appointed to manage its affairs.
12. Under Section 560(1)(d) of the Insolvency Act, no legal process may be commenced or continued against a company under administration without the consent of the administrator or leave of the Court. In ***Re Nakumatt***

Holdings Limited (2017) eKLR, the Court held that once a company is under administration, a statutory moratorium arises, and all claims must be pursued within the insolvency framework unless leave of the Court is obtained.

- 13.** Further, in ***Kenya Airways Limited v Aviation & Allied Workers Union Kenya & 3 Others***, the Court underscored that insolvency proceedings create a structured process for dealing with creditors, and individual claims cannot circumvent that statutory regime.
- 14.** The Applicant/Union seeks to enjoin Equity Bank (K) Limited, the appointing creditor, together with the Administrators to this proceeding. It is evident from the court record that Equity Bank is merely a secured creditor that triggered the administration process. The management and control of the company now vest in the appointed administrators by virtue of the insolvency notice issued on 16th June, 2023.
- 15.** Further, the Applicant has not pleaded any specific cause of action or relief against Equity Bank as to warrant joinder. In ***Agricultural Finance Corporation v Lengetia Limited & Jack Mwangi [1985] KECA 58 (KLR)***, the Court held that a party cannot be bound by proceedings where no cause of action is disclosed against them.
- 16.** In light of the foregoing, I find and hold that Equity Bank Limited does not meet the threshold of a necessary party, and its joinder would therefore be legally untenable.

17. On whether the administrators should themselves be joined to the suit, it is not lost on the court that the administrators' role is only to manage the affairs of the company by acting as agents of the company and cannot therefore be held as being personally liable parties.
18. Administrators, in my view, cannot be joined personally to suits unless misconduct or personal liability is alleged, which is not the case in this matter.
19. The prayer for joinder is therefore devoid of merit and is declined.

Whether the Court can issue anticipatory orders on liability.

20. The Applicant herein further seeks an order that the 1st Respondent be held responsible for the debt before the suit is heard. This prayer is premature and misconceived.
21. In ***Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd [1989] KECA 48 (KLR)***, the Court emphasized that a Court must act within proper procedural bounds and cannot determine substantive issues before hearing evidence.
22. Liability can only attach upon a full hearing and determination of the suit on the merits.

- 23.** In the end, the Court finds and holds that, since the Respondent is under administration, any proceedings must comply with Section 560(1)(d) of the Insolvency Act.
- 24.** By this provision, this court pauses this matter pending the insolvency proceedings. The Claimant/Applicant is, however, at liberty to submit its claim to the administrators of the Respondent's company.
- 25.** The Claimant's application dated 19th August 2025, therefore, lacks merit and is hereby dismissed.
- 26.** I make no orders on costs.
- 27.** Orders accordingly.

SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS 30TH DAY OF APRIL, 2026.

**C. N. BAARI
JUDGE**

Appearance:

Mr. Araka present for the Claimant/Applicant

Ms. Musau for the Respondent

Ms. Esther S -C/A