

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT ELDORET

CAUSE NO. E053 OF 2025

(Before Hon. Lady Justice Maureen Onyango)

KENYA UNION OF COMMERCIAL

FOOD AND ALLIED WORKERS

CLAIMANT

VERSUS

NANAK ENGINEERING WORKS

RESPONDENT

RULING

1. Before me for determination is a Preliminary Objection filed by the Respondent challenging the jurisdiction and competence of this Court to hear and determine the claim herein. In the Notice of Preliminary Objection dated 1st December 2025, the Respondent raised the following grounds: -

- i. That the claim is not properly before this Honourable Court as the Court lacks jurisdiction to hear and determine the same by virtue of Gazette Notice No. 6024 of 10th June 2018.

- ii. That the claim is incompetently before this Honourable Court and ought to be struck out with costs or, in the alternative, transferred to the Chief Magistrate's Court at Eldoret.
 - iii. That there is no entity known as Nanak Engineering Works and the claim is therefore incompetent.
2. Pursuant to directions of the Court, the Preliminary Objection was disposed of by way of written submissions. The Respondent's submissions are dated 12th February 2026 while the Claimant's submissions are dated 12th March 2026.
3. In its submissions, the Respondent identified the following issues for determination: -
 - i. Whether the suit is a nullity ab initio for having been instituted against a non-existent legal entity.
 - ii. Whether the Claimant Union possesses the requisite locus standi and sectoral mandate to represent the Grievant under the provisions of the Labour Relations Act, 2007.

- iii. Whether this Honourable Court has pecuniary jurisdiction to hear and determine the claim in light of Gazette Notice No. 6024 of 2018.
4. On the first issue, the Respondent submitted that the Claimant sued Nanak Engineering Works as though it were a corporate entity capable of suing and being sued independently while as demonstrated in the Witness Statement of Manpreet Singh and the Certificate of Registration of Business Name, the Respondent is in fact a partnership.
5. The Respondent therefore argued that Nanak Engineering Works is merely a business name under which natural persons trade and lacks independent legal personality or corporate existence capable of being sued in its own name.
6. It is the Respondent's case that the instant suit as filed is directed against a non-existent entity incapable of sustaining proceedings before this Court. In support of this position, reliance was placed on the case of ***Benjamin Leonard Macfoy v United Africa Co. Ltd [1961] 3 All***

ER 1169 and Joseph Kobia Nguthari v Kiegoi Tea Factory Company Limited & 2 others [2016] eKLR

7. On the second issue, the Respondent submitted that the Claimant is registered and constitutionally mandated to recruit and represent employees within the commercial, food, distributive, laundry and bottling sectors only, pursuant to Section 14 of the Labour Relations Act, 2007 and the Respondent operates an engineering workshop engaged in machine fabrication and repair and therefore falls outside the sectors covered by the Claimant Union. Relying on Section 31(1) of the Labour Relations Act, the Respondent argued that a trade union cannot recruit or represent employees outside its registered sectoral mandate. Reliance was placed on the case ***Kenya Union of Commercial, Food and Allied Workers v Shade Net Limited (2017) eKLR***
8. It is the Respondent's submission that the Claimant's purported representation of the Grievant, who is employed in the engineering sector, amounted to an unlawful expansion of the Claimant's constitutional mandate. The Respondent contends that such representation falls

outside the scope of the Claimant's registered constitutional mandate and is therefore ultra vires its constitution. It is therefore the Respondent's submission that the Claimant lacks the requisite locus standi to institute and maintain the present proceedings before this Court.

9. On the issue of pecuniary jurisdiction, the Respondent submitted that the Grievant's claim is quantified at Kshs. 393,438/=. The Respondent while acknowledging that this Court enjoys unlimited original jurisdiction under Article 162(2) of the Constitution and the Employment and Labour Relations Court Act, argued that, as a matter of judicial policy and statutory intent, disputes falling within the pecuniary limits of subordinate courts ought to be filed before such courts in the first instance.
10. In this regard, the Respondent submitted that Gazette Notice No. 6024 of 10th June 2018 clothed Magistrates of the rank of Senior Resident Magistrate and above with jurisdiction to hear and determine employment and labour relations disputes within prescribed pecuniary limits, with

the intention of decentralizing and easing the burden on the Employment and Labour Relations Court.

11. It is therefore the Respondent's submission that the Claimant improperly bypassed the subordinate court established for such disputes.
12. In the end, the Respondent urged the Court to down its tools and either strike out the suit or transfer it to the Chief Magistrate's Court at Eldoret for determination.

The Claimant's submissions

13. In its submissions, the Claimant submitted that the issue of pecuniary jurisdiction as raised by the Respondent, falls outside the scope of matters contemplated under Gazette Notice No. 6024 of 2018 because the matter herein had undergone conciliation under the Labour Relations Act, 2007 before being filed before this Court.
14. According to the Claimant, the Gazette Notice expressly excludes matters arising under the Labour Relations Act from the jurisdiction conferred upon subordinate courts. It is therefore the Claimant's submission that the dispute herein having been subjected to conciliation at the

Ministry of Labour prior to the institution of these proceedings, the same is properly within the jurisdiction of this Court.

15. The Claimant further relied on Section 12 of the Employment and Labour Relations Court Act and Article 162(2) of the Constitution and submitted that this Court has exclusive original and appellate jurisdiction to hear and determine all disputes relating to employment and labour relations. In support of this position, the case of ***Nyambu v Fanaka (Cause E005 of 2025) [2026] KEELRC 82 (KLR)*** was cited.
16. Regarding the averment made by the Respondent that Nanak Engineering Works is not a legal entity capable of being sued, the Claimant submitted that this was the Claimant's mistake and thus the Grievant should not be punished for an error that is not his. In support of this position, the Claimant relied on Article 159(2)(d) of the Constitution and the decision in ***James Mangeli Musoo V Ezeetec Limited [2014] eKLR*** and ***Gitau v Kenya Methodist***

University (KEMU) (Petition 5 of 2020) [2021] KEHC 322 (KLR).

17. On the issue raised by the Respondent regarding the Claimant's locus standi to institute the instant claim and its sectoral mandate to represent the Grievant, the Claimant submitted that Article 41(2)(c) of the Constitution as read together with Section 4(1)(a) and (b) of the Labour Relations Act guarantees every employee the right to form, join and participate in the activities of a trade union of their choice.
18. The Claimant further submitted that the Respondent's employees voluntarily subscribed to membership in the Claimant Union and that there exists no other union representing employees at the Respondent's establishment. It was argued that the Respondent cannot purport to dictate the union to which its employees may belong as such conduct would amount to interference with constitutionally guaranteed freedom of association.
19. The Claimant additionally submitted that the Respondent is engaged not only in engineering works but also in the commercial activity of selling spare parts to its clients and

that such activities bring the Respondent's employees within the scope of representation by the Claimant Union.

20. The Court was therefore urged to find that the Claimant acted within its constitutional mandate and dismiss the Preliminary Objection with costs.

Determination

21. I have considered the preliminary objection, the rival submissions and the authorities cited by the parties. The issues that arise for determination are:-

- i. Whether the suit as filed against Nanak Engineering Works is incompetent for having been instituted against a non-existent entity.
- ii. Whether the Claimant Union has the locus standi and sectoral mandate to represent the Grievant.
- iii. Whether this Court lacks jurisdiction to hear and determine the claim by virtue of Gazette Notice No. 6024 of 2018.

22. It is now settled that a preliminary objection must raise a pure point of law capable of disposing of the suit without the necessity of ascertaining contested facts or exercising

judicial discretion. The principles governing preliminary objections were succinctly set out in ***Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd*** where the Court stated that a preliminary objection consists of a pure point of law which is argued on the assumption that all the facts pleaded by the opposite party are correct.

Whether the suit as filed against Nanak Engineering Works is incompetent for having been instituted against a non-existent entity

23. The Respondent contends that Nanak Engineering Works is merely a business name and not a legal entity capable of suing or being sued in its own name. The Respondent maintains that the business is in fact a partnership and therefore the proceedings, as instituted, are a nullity ab initio.
24. I have considered the rival arguments on this issue. While it is true that a business name does not possess a distinct juristic personality separate from the persons carrying on business thereunder, the question that arises is whether

such defect is fatal to the proceedings or whether the same is curable by amendment.

25. In my view, the issue raised by the Respondent does not go to the root of the Court's jurisdiction but rather concerns the propriety of the manner in which the Respondent has been described in the pleadings. Such an error, where the identity of the parties is ascertainable and no prejudice to the Respondent is demonstrated, is curable through amendment.
26. Further, Article 159(2)(d) of the Constitution obligates courts to administer justice without undue regard to procedural technicalities. Similarly, this Court is enjoined under Section 3 of the Employment and Labour Relations Court Act to facilitate the just, expeditious and proportionate resolution of disputes.
27. I therefore agree with the Claimant's submission that the description of the Respondent in the instant suit is not sufficient to render the entire suit a nullity or incapable of being salvaged through amendment.
28. Further, section 2 of the Employment Act defines an employer to mean *"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”.

29. The definition is thus expounded to include entities that do not have legal personality but who never the less can be sued as employers in employment disputes. The Respondent as sued fits in the definition of “employer” in the Act. The same definition is used in all the labour Acts.
30. Consequently, I do not find merit in the Respondent’s argument that the proceedings are fatally defective because the suit was instituted against Nanak Engineering Works instead of the partners trading thereunder.

Whether the Claimant Union has the locus standi and sectoral mandate to represent the Grievant

31. The Respondent argues that the Claimant lacks the requisite sectoral mandate to represent the Grievant since the Respondent operates within the engineering and fabrication sector while the Claimant Union is registered to

represent employees in the commercial, food, distributive, laundry and bottling sectors.

32. In my view, the question whether the Respondent's operations fall within the sectors contemplated under the Claimant Union's constitution is not a point of law capable of determination without interrogation of evidence. Indeed, the Claimant has contended that the Respondent is engaged not only in engineering works but also in the commercial activity of selling spare parts to clients and that its employees voluntarily joined the Claimant Union.
33. The issue whether the Respondent's employees properly fall within the Claimant Union's sectoral scope would therefore require examination of the nature of the Respondent's operations, the categories of employees represented and the applicable constitutional and statutory instruments governing the union's mandate. Such matters cannot, in my view, be conclusively determined at the preliminary stage without the benefit of evidence.

34. I therefore find that the issue relating to the Claimant's locus standi and sectoral mandate does not raise a pure point of law capable of disposing of the suit at this stage.

Whether this Court lacks jurisdiction to hear and determine the claim by virtue of Gazette Notice No. 6024 of 2018

35. Under Gazette Notice No. 6024 of 22nd June 2018, Magistrates of the rank of Senior Resident Magistrates and above were appointed by the Chief Justice as Special Magistrates designated to hear and determine the following employment and labour relations cases within their respective areas of jurisdiction-

1. Disputes arising from contracts of employment (excluding trade disputes under the Labour Relations Act, 2007) where employees' gross monthly pay does not exceed KShs. 80,000.00 as commenced and continued in accordance with the Employment and Labour Relations Court (Procedure) Rules, 2016.
2. Matters relating to the following specific areas—
 - a. Offences under the Work Injury Benefits Act, 2007

- b. Offences under the Employment Act, 2007
 - c. Offences under the Labour Institutions Act, 2007
 - d. Offences under Occupational Safety and Health Act, 2007; and
 - e. Offences under the Labour Relations Act, 2007.
36. The Respondent urged the Court to decline jurisdiction on the basis that the Grievant's claim, being quantified at Kshs. 393,438/=, falls within the pecuniary jurisdiction of the Magistrate's Court pursuant to Gazette Notice No. 6024 of 2018.
37. There is no dispute that this Court derives its jurisdiction from Article 162(2)(a) of the Constitution and Section 12 of the Employment and Labour Relations Court Act. There is equally no dispute that subordinate courts have since been conferred jurisdiction to hear and determine certain categories of employment and labour relations disputes within prescribed pecuniary limits.
38. However, the conferment of jurisdiction upon subordinate courts did not oust or diminish the original jurisdiction of this Court in employment and labour relations disputes. The Gazette Notice merely expanded access to justice by

donating jurisdiction in the adjudication of certain disputes to subordinate courts.

39. In addition, the Claimant has contended, and rightly so, that the present dispute emanated from a conciliation process undertaken under the Labour Relations Act, 2007. Matters arising under the Labour Relations Act fall within the exclusive jurisdiction of this Court as clearly spelt out in Gazette Notice No. 6024 as set out herein above. The jurisdiction donated and/or extended to magistrate's courts expressly excluded matters arising under the Labour Relations Act.
40. I therefore find no merit in the Respondent's contention that this Court lacks jurisdiction on the basis that the monetary value of the claim falls within the pecuniary jurisdiction of the subordinate court.
41. Consequently, I find that the issues raised in the Preliminary Objection do not constitute pure points of law capable of determination without recourse to evidence and factual interrogation.

42. In the circumstances, the Preliminary Objection dated 1st December 2025 is hereby dismissed with costs to the Claimant.

**DATED, SIGNED AND DELIVERED AT ELDORET ON
THIS 7TH DAY OF MAY, 2026**

**MAUREEN ONYANGO
JUDGE**