



Kenya Shoe and Leather Workers Union v Jambo Boutique Limited (Cause E107 of 2024) [2025] KEELRC 545 (KLR) (27 February 2025) (Ruling)

Neutral citation: [2025] KEELRC 545 (KLR)

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
CAUSE E107 OF 2024
M MBARÚ, J
FEBRUARY 27, 2025

BETWEEN
KENYA SHOE AND LEATHER WORKERS UNION CLAIMANT
AND
JAMBO BOUTIQUE LIMITED RESPONDENT

RULING

1. The claimant filed the Memorandum of Claim on 6 November 2024, claiming that the respondent had refused to recognize, deduct, and remit union dues.
2. In response, the respondent denied the allegations, and the wrong entity was sued instead of Mudhir Said.
3. Both parties attended, and the respondent submitted that the claimant was not a representative of any employee of the respondent, as alleged. There is no recognition agreement between the parties or any employment relationship.
4. The respondent operated a shoe shop in Malindi, as evidenced by the Local Authorities' permit. One of the tenants, Valasco Wambua Kiswii (Kiswii), has a workshop beading leather products. Whenever the respondent needed work done, he would negotiate with Kiswii, who would, in turn, contact the services of several other third parties to do the work. The respondent was not involved in the employment relationship Kiswii engaged in. Kiswii was not an employee but a tenant subcontracted to provide products.
5. The respondent is not a registered company and, hence, a non-existent entity. In the case of *Kenya Power & Lighting Company Limited v Benzene Holdings Limited t/a Wyco Paints* [2016] eKLR, the court held that a company that has been dissolved cannot maintain an action and cannot be sued.



6. The claimant has not produced evidence of any employment relationship between its members and the respondent. The entity sued as being non-existent cannot enter into an employment relationship.
7. The respondent filed the Statement of Mudhir Siad, who avers that he was running a shop in Malindi and would source Kiswii to provide beaded leather products. The business permit was given to him and not the noted respondent, who was a trading name. Towards the 2022 General Elections, the claimant members misled Kiswii into signing forms on the pretext that they would be beneficiaries of election campaign funds. The claimant used these forms to claim membership and demand recognition, but these are not employees. The Minister addressed the issue through the conciliator, who established no employment relationship.
8. The claimant submitted that the fact that Mudhir Said has the check-off forms is sufficient evidence that he was the employer. Because of the existing employment relationship, the matter went for conciliation.
9. Mudhir Siad is the owner of the respondent entity, and therefore, he should recognize the claimant and proceed to deduct and remit trade union dues based on the check-off forms presented.

Determination

10. The respondent has challenged the claim because the wrong party is sued.
11. The respondent has admitted that Mudhir Said owned a shop in Malindi, but the name Jambo Boutique Limited is non-existent and cannot sue or be sued.
12. On the admission, the claimant insists that the person of Mudhir Said should recognize the claimant and proceed to deduct and remit union dues.
13. The respondent has attached the Municipal Council of Malindi Single Business Permit, 2016, issued to Mudhir Said. Similar permits were issued for various years going back to 2012. The County Government of Kilifi issued the last 20 March 2024 for Mudhir Said and not the respondent.
14. Mudhir Said has filed voucher payments to Kiswii for rent for various months and years.
15. The check-off forms the claimant relies upon to sue the respondent and claim recognition are issued to the respondent. No entity is under such title in law, and the claimant has not undertaken due diligence to establish the registration status of such an entity.
16. Upon being served with the response, the Counsel attending for Mudhir Said brought out the legal technicality of the respondent being sued as a non-existent entity. The claimant representative did not take the cue. He sought to urge the claimant's case despite evidence that the respondent is a non-existent entity.
17. In law, one cannot sue a non-existent entity. In the case of *Peter Ngugi Geoffrey & 3 others v Mithini SDA Church* [2019] KEELC 73 (KLR), the court held that a non-existent entity cannot maintain a cause of action and that the respondent is not a juristic person to maintain a suit. In the case of *Supreme Council of Kenya Muslims (SUPKEM) & another v Registrar of Societies; Omar & 2 others (Interested Parties)* [2024] KEHC 1320 (KLR), the court held that one must have a legal persona to sue and be sued. This position is reiterated in *Kenya Union of Commercial Food and Allied Workers v Nanak Engineering Works Limited* [2024] KEELRC 2728 (KLR). An error in naming the correct entity is not similar to suing the wrong party.
18. Despite the trade name, due diligence on a company's status must be established before filing suit. To state that one is limited is not synonymous with being a legal person.



19. In this case, a non-entity in the respondent is used. No cause of action can lie against such non-entity.
20. No employment relationship is established between the claimant, its members, and the respondent. The relationship between Kiswii and the respondent, through Mudhir Said, is that of a tenant relationship and cannot transfer into the employment of the claimant members.
21. Without any employment relationship, the matter was brought to the attention of the claimant, who insisted on proceeding, and the suit was dismissed with costs.
22. Before conclusion, the matter arose from Malindi as evidenced by the fact. This should have been filed at the Malindi ELRC registry.
23. Accordingly, the claim has no merit, which is dismissed with costs to Mudhir Said.

DELIVERED IN OPEN COURT AT MOMBASA ON THIS 27TH DAY OF FEBRUARY 2025.

M. MBARŪ

JUDGE

