



**Kenya Union of Sugar Plantation and Allied Worker v West Kenya Sugar Company Limited; Retail Management Solutions Limited & 2 others (Interested Parties); Platinum Outsourcing Logistics EA Limited & 2 others (Intended Interested Party) (Cause E006 of 2024) [2025] KEELRC 460 (KLR) (20 February 2025) (Ruling)**

Neutral citation: [2025] KEELRC 460 (KLR)

**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KAKAMEGA**  
**CAUSE E006 OF 2024**  
**DN NDERITU, J**  
**FEBRUARY 20, 2025**

**BETWEEN**

**KENYA UNION OF SUGAR PLANTATION AND ALLIED WORKER ..... APPLICANT**

**AND**

**WEST KENYA SUGAR COMPANY LIMITED ..... RESPONDENT**

**AND**

**RETAIL MANAGEMENT SOLUTIONS LIMITED ..... INTERESTED PARTY**

**HANDYMAN STAFFING LIMITED ..... INTERESTED PARTY**

**VINEYARD INTERNATIONAL LIMITED ..... INTERESTED PARTY**

**AND**

**PLATINUM OUTSOURCING LOGISTICS EA LIMITED .... INTENDED INTERESTED PARTY**

**CONSOLIDATED HR SOLUTION LIMITED .... INTENDED INTERESTED PARTY**

**VOLT MANAGEMENT SERVICES LIMITED .... INTENDED INTERESTED PARTY**



## RULING

### I. Introduction

1. The claimant (applicant) commenced these proceedings by way of a memorandum of claim dated 25<sup>th</sup> March, 2024, through its representative Jeremiah Ingalia Akhonya, (Mr. Akhonya) seeking for the following reliefs –
  - a. A declaration that the outsourcing policy and practice adopted by the respondent offends all the principles of a credible outsourcing process.
  - b. A declaration that the outsourced employees deployed in unionisable jobs listed in the CBA are eligible /entitled to all CBA benefits.
  - c. A declaration that the outsourcing arrangement between the respondent and interested parties, wherein outsourced employees are paid lower/inferior salaries/wage compared to permanent employees working in the same positions amounts to direct discrimination both in policy and practice on terms and conditions of employment.
  - d. An order directed to the respondent and the interested parties that the outsourcing arrangement between themselves, in which the employees are deployed in core functions of the respondent, is illegal and the same is struck out and the employees declared as direct employees of the respondent forthwith.
  - e. A permanent injunction restricting /restraining the respondent from further /future outsourcing of unionisable jobs that are enlisted in the CBA as core functions.
  - f. A permanent injunction restricting /restraining the respondent from further /future outsourcing of unionisable jobs that are enlisted in the CBA as core functions.
  - g. A permanent injunction against the respondents from using the present /future outsourcing arrangements /contracts to further discrimination in employment terms and conditions of unionisable employees.
  - h. That cost of this suit be borne by the respondent.
2. On 2<sup>nd</sup> September, 2024 the claimant filed a notice of motion (the application) dated 29<sup>th</sup> August, 2024. This ruling is in regard to that application wherein the claimant is seeking for the following orders –
  - a. That pending hearing and determination of this suit, the above outsourcing companies, namely – Platinum Outsourcing Logistics E.A Ltd, Consolidated HR Solution Ltd, and Volt Management Services Ltd be enjoined in these proceedings as 4<sup>th</sup>, 5<sup>th</sup>, and 6<sup>th</sup> interested parties respectively.
  - b. That this Honourable court be pleased to grant the applicant/claimant leave to amend the claim memorandum dated 25<sup>th</sup> March, 2024 in the manner and style of the draft amended memorandum.
  - c. That upon grant of prayer 2 above the draft amended claim memorandum be deemed as duly filed and served, upon payment of the prerequisite court fees.
  - d. That costs of this application be provided for.



3. The application is expressed to be based on Rule 17 of the Employment and Labour Relations Court (Procedure) Rules, Order 1 Rule 10 & Order 8 Rule 5 of the Civil Procedure Rules, Sections 1A, 2A & 3B of the *Civil Procedure Act*, Articles 27 & 159 of *the Constitution* & provisions of ILO conventions. It is founded on the grounds stated on the face of it and the depositions in the supporting affidavit and the annexures thereto.
4. The respondent is represented by O & M Law LLP while the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> interested parties entered appearance through Mauwa & Company Associates Advocates on 19<sup>th</sup> September, 2024.
5. The respondent filed a replying affidavit sworn by Duncan Abwawo, the human resource manager, sworn on 24<sup>th</sup> September, 2024.
6. The claimant, with the leave of the court, filed a further affidavit sworn by Mr. Akhonya on 26<sup>th</sup> November, 2024.
7. The claimant's representative and the respondent's counsel addressed the court by way of written submissions. Mr. Akhonya for the claimant filed written submissions on 29<sup>th</sup> November, 2024 while Mr. Attika, for the respondent, filed on 14<sup>th</sup> October, 2024.

## **II. The Evidence**

8. In the supporting affidavit by Francis Bushuru Wangara and further affidavit by Mr. Akhonya, it is deposed that the interested parties' contracts with the respondent were terminated and taken over by the intended interested parties from May 2024, after the present cause had been filed.
9. It is deposed that the respondent while engaging the intended interested parties failed to inform them that there existed a Collective Bargaining Agreement (CBA) that covers the terms of engagement of unionisable employees within its establishment. It is deposed that the outsourcing arrangement is a mischievous ploy to circumvent the court's ruling directing the respondent to pay employees as per the CBA. It is deposed that the respondent has filed to align the salaries with the terms of the CBA.
10. It is deposed that the respondent and the claimant have a recognition agreement dating back to 1997(JA-1) to the effect that the claimant will represent all workers within the respondent's establishment and thus the respondent is a necessary party to the proceedings.
11. It is deposed that the intended interested parties have duly taken over employment of the interested parties and thus mandated to deduct and remit union dues as already directed by the court in Kisumu ELRC No. E20 of 2020.
12. It is deposed that the respondent's use of outsourcing firms and transfer of employees to the said firms is a ploy to avoid paying accrued benefits and to prevent the employees from joining the union (JA-2a & 2b).
13. It is deposed that the issue of deduction and remission of union dues had gone for conciliation and a conciliator's report issued (FBW11) and hence it is in the interest of justice that the intended interested parties be enjoined in the present proceedings to avoid a vicious circle of litigation and conciliations.
14. It is deposed that the respondent engaged the services of the intended interested parties while the issue of salary/wage rates payable to outsourced employees is still under litigation.
15. It is further deposed that the intended interested parties have already been notified about deduction of union dues (FBW13) but they have ignored the same. It is deposed that the enjoinderment of the intended interested parties is necessary as the court's decision in the present proceeding will affect them.



16. It is deponed further that it is necessary that the claimant is afforded leave to amend its claim (FBW12) to fully present the history of the claim for the court to arrive at a fair and just conclusion of the cause.
17. It is further deponed that the interested parties' contracts having been terminated the prayers (d) and (e) in the application are overtaken by events and thus it is necessary to amend the claim to factor in the calculations.
18. It is deponed that pursuant to the ruling in ELRC Kisumu E20 of 2020 the interested parties were mandated to pay union dues in arrears of Kshs4,931,234/-, Kshs1,446,415.22, and Kshs765,381.44 respectively (FBW14a, b, c).
19. It is further deponed that following the ruling in ELRC Kisumu No. 258 of 2018 and the parties' agreement of 9<sup>th</sup> December, 2022 the respondent is under obligation to pay accrued salary arrears of Kshs202,318,635/= (FBW15).
20. It is deponed that the employees who were engaged by the interested parties have now been transferred to the intended interested parties after they had been declared to be members of the claimant by the court in Kisumu ELRCC NO. 388 of 2018 and the court had directed that union dues be paid (JA-3)
21. It is deponed that the respondent has tactfully engaged the outsourcing firms in a bid to force the claimant to continuously recruit the same persons over and over again (DA-1).
22. It is deponed that the respondent is not a stranger to the facts in the present proceedings, considering that the intended interested parties received a letter from the claimant to effect deduction of union dues (JA-4) and since their offices are within the respondent's premises the respondent is privy to the said notices.
23. It is in the foregoing state of affairs that the claimant seeks leave to amend its claim to enjoin the intended interested parties in the proceedings.
24. In the replying affidavit, it is deponed that there exists no employer-employee relationship between the respondent and the outsourced employees and as such the respondent is improperly enjoined in this cause.
25. It is deponed that there exists no recognition agreement in respect of the outsourced employees with the respondent prerequisite under Sections 54 & 74 of the Labour Relations Act 2007 to enable the claimant to pursue redress.
26. It is deponed that the respondent engages the outsourcing firms for labour (DA1) and the said interested parties are responsible for remunerating the employees. It is deponed that the respondent is not privy to the contracts between the interested parties and the outsourced employees.
27. It is further deponed that the interested parties' contracts lapsed on 31<sup>st</sup> March, 2024 and the parties had discharged their obligations thereunder. It is deponed that the respondent engaged the intended interested parties on new outsourcing contracts from 1<sup>st</sup> April, 2024 under which the respondent, upon being invoiced, made the requisite payments to the outsourcing firms (DA2).
28. It is contended that the mandate of deducting union dues is the responsibility of the outsourcing firms and thus the respondent is wrongly enjoined in these proceedings.
29. It is further deponed that under Section 48 of the Labour Relations Act, 2007 there exists no recognition agreement between the claimant and the interested parties for the deduction of union dues.
30. The court is urged to dismiss the application with costs.



### III. Submissions

31. On the one hand, the claimant's representative submitted globally on amendment of claims, joinder, and misjoinder of parties.
32. On amendment of pleadings, it is submitted that pursuant to Rule 34 of the Employment and Labour Relations Court (Procedure) Rules, 2024 a party may amend its pleadings with the leave of the court.
33. It is submitted that the intended amendments are meant to enable the court to effectively and conclusively determine the issues in controversy between the parties to avert and remedy alleged discrimination and unfair labour practices. Citing *Mose Nyambega Ondieki Vice Chancellor, Maasai Mara University & 3 others (2018) eKLR*, it is submitted that an amendment sought in good faith and no prejudice is occasioned to the other party should be freely allowed. The court is urged to find that the respondent and the interested parties will suffer no prejudice or harm if the leave sought to amend the claim is granted to the claimant, considering that the amendment is meant to aid the court in arriving at a just and fair decision.
34. On joinder and misjoinder of parties, it is submitted that the respondent has confirmed that the interested parties' contracts lapsed in March, 2024 after this cause was filed. It is submitted that the respondent has confirmed that the intended interested parties are now engaged by the respondent to supply labourers and the respondent as the principal employer has a recognition agreement with the claimant.
35. Citing *Trusted Society of Human Rights Alliance V Mumo Matemu and 5 others (2014) eKLR*, the court is urged to find that the intended entities are interested parties as they may be affected by the outcome in the proceedings although they are not parties to the cause. It is urged that the interested parties have a stake in the cause having inherited employees who are unionised members of the claimant.
36. It is submitted that the respondent having participated in ELRC 20/2020 and conciliator (FBW 10A & FBW11) is privy to the issues raised by the claimant. Citing *Nyambega V Vice Chancellor, Maasai Mara University & 3 other (2018) eKLR*, the court is urged to find that a misjoinder is not a ground to defeat a suit.
37. On the other hand, counsel for the respondents submitted on the following three issues – Whether the claimant/applicant has wrongly sued and/or improperly joined by the Respondent; Whether the intended interested parties should be joined in this instant claim; and, Whether the claimant/applicant should be granted leave to amend its memorandum of claim dated 25<sup>th</sup> March, 2024.
38. In regards to the first issue, counsel cited *Arisa V Kipkebe Limited (2023) eKLR* and *Maureen Onsongo v EOH Limited on EOH/Copy Cat Limited Company (2021) eKLR* where the court cited with approval the decision of the Court of Appeal's decision in *German School Society v Helga Ohany [2017] eKLR*. It is asserted that the respondent is wrongly sued as there exists no employer-employee relationship between the respondent and the outsourced employees.
39. It is submitted that the respondent only engaged the interested parties, whose contracts have since lapsed, for provision of labour and the same position applies for the intended interested parties. It is submitted that the intended interested parties are responsible for payment of wages and remittance of union dues for the outsourced employees and not the respondent and thus the respondent is wrongly enjoined in the cause.



40. It is further submitted that there exists no recognition agreement between the claimant and the respondent as relates to the outsourced workers and thus pursuant to Section 48 of the *Labour Relations Act* no union dues are to be remitted. It is submitted that by the fact that no recognition agreement exists between the respondent and the claimant the claimant cannot seek redress pursuant to Section 74 of the *Labour Relations Act*.
41. On the second issue, it is submitted that the claimant should not join an entity as an interested party unless such an entity itself applies to be so included as a party or the court suo motto includes such a party. In buttressing this assertion, the claimant relies on *Trusted Society of Human Rights Alliance V Mumo Matemu* (supra) and Rule 2 of *the Constitution* of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013. It is thus submitted that the application for joinder is procedurally irregular and that the prayer to add an interested party is not available to the claimant.
42. On the third issue on amendment of pleadings, it is submitted that since the joinder of the intended interested parties is defective, the court should not issue leave to amend the claim. It is concluded that the application is defective and does not warrant grant of leave to enjoin the intended parties or amend the pleadings.

#### **IV. Issues For Determination**

43. In the considered view of the court, there are two main issues for determination in this application –
- a. Whether the claimant deserves the grant of leave to amend its claim to enjoin the intended interested parties?
  - b. Whether the respondent is properly sued in the cause?
44. It is not in contention that this court has the power to grant leave for amendment of pleadings pursuant to Rule 34 of the Employment and Labour Relations Court (Procedure) Rules, 2024 which provides that –
- A party may amend pleadings before service or before the close of pleadings: Provided that after the close of pleadings, the party may only amend pleadings with the leave of the Court on oral or formal application, and, the other party shall have a corresponding, right to amend its pleadings.
45. The principles that guide the court in considering an application for amendment of pleadings were set out by the Court of Appeal in as follows –
- “A party is allowed to make such amendments as may be necessary for determining the real question in controversy or to avoid a multiplicity of suits, provided there has been no undue delay, that no new or inconsistent cause of action is introduced, that no vested interest or accrued legal right is affected and that the amendment can be allowed without injustice to the other side.” (Emphasis supplied).
46. Further in *Institute For Social Accountability & Another V Parliament of Kenya & 3 others* [2014] eKLR it was observed –
- The object of amendment of pleadings is to enable the parties to alter their pleadings so as to ensure that the litigation between them is conducted, not on the false hypothesis of the facts already pleaded or the relief or remedy already claimed, but rather on the basis of the



true state of the facts which the parties really and finally intend to rely on. The power of amendment makes the function of the court more effective in determining the substantive merits of the case rather than holding it captive to form of the action or proceedings.

47. It is abundantly clear from the foregoing and case law that the discretion of a trial court to allow or deny amendments of pleadings is wide and unfettered except that such discretion should be exercised judicially based on the foregoing delineated principles.
48. The claimant is seeking for leave to amend the claim to include issues relating to salary arrears and union dues which it claims flow from a conciliation exercise involving the respondent and the interested parties.
49. The respondent asserts that there exists no employer-employee agreement between it and the outsourced employees, but from the pleadings, the claimant refers to circumstances arising from an already pronounced court decision in – Cause No. 258 of 2018 relating to a CBA with the respondent.
50. The court finds and holds that there has been no inordinate delay in bringing this application for amendment as the same was filed five months after the cause was filed.
51. It is deponed in the supporting affidavit that the claimant became aware of a change in the employment dynamics involving the respondent, intended interested parties, and the interested parties after the claim had been filed and the leave sought is to take care of the new circumstances. The cause has not yet been settled for hearing. Therefore, unless it is demonstrated that the amendments sought shall cause injustice to the respondent, the interested parties, and or the intended interested parties, the court should freely allow the application.
52. The respondent has neither explained what prejudice it may suffer if the claim is amended as proposed. In any event, the respondent should have a corresponding leave to respond to the amended memorandum of claim and to test any evidence that may be adduced. The respondent has indeed confirmed that the position of the interested parties and the intended interested parties in employment relationship has changed and as such the amendments sought by the claimant seek to enjoin the intended interested parties to address issues affecting the employees, whether initially engaged by the interested parties or by intended interested parties who are allegedly members of the claimant.
53. The foregoing resolves the issue of whether the respondent is a necessary party to the cause as issues raised by the claimant call for a response from the respondent. As to whether there exists an employer-employee relationship between the respondent and the outsourced employees, the court cannot at this juncture venture into it without risking delving into the merits of the claim. Suffice to state that the court thus finds and holds that the respondent is a necessary party in this cause.
54. Odunga J (now JA) in Gladys Nduku Nthuki v Letshego Kenya Limited; Mueni Charles Maingi (Intended Plaintiff) [2022] KEHC 2227 (KLR) quoted with approval the decision in Departed Asians Property Custodian Board vs. Jaffer Brothers Ltd [1999] 1 EA 55 where the court held as follows –

A clear distinction is called for between joining a party who ought to have been joined as a defendant and one whose presence before the Court is necessary in order to enable the court effectually and completely adjudicate upon and settle all questions involved in the suit. A party may be joined in a suit, not because there is a cause of action against it, but because that party's presence is necessary in order to enable the court effectually and completely adjudicate upon and settle all the questions involved in the cause or matter...For a person to be joined on the ground that his presence in the suit is necessary for effectual and complete settlement of all questions in the suit, one of two things has to be shown. Either it has to be



shown that the orders, which the plaintiff seeks in the suit, would legally affect the interests of that person, and that it is desirable, for avoidance of multiplicity of suits, to have such a person joined so that he is bound by the decision of the Court in that suit. Alternatively, a person qualifies, (on an application of a Defendant) to be joined as a co-defendant, where it is shown that the defendant cannot effectually set a defence he desires to set up unless that person is joined in it, or unless the order to be made is to bind that person.

55. The intended interested parties are outsourcing firms that the claimant alleges have taken over the employment of its members from the interested parties whose contract with the respondent has since lapsed, a position confirmed by the respondent. The claimant's position is that the intended interested parties having taken over such engagement from the interested parties have an obligation to deduct union dues from their members for remittance to the claimant and adhere to minimum wage terms.
56. It is therefore clear that the presence of the intended interested parties in these proceedings is not only necessary to enable the court to effectually and completely adjudicate upon and settle all the questions involved in this cause. The orders that this Court may issue in this cause are likely to affect the said intended interested parties. Further, taking into account the relationship between the parties herein with the intended interested parties. The court finds that it is desirable, for avoidance of multiplicity of suits, to have the said parties joined to aid the court in arriving at a sound and conclusive decision.
57. For the foregoing reasons, the court finds that the application for leave to amend the claim to enjoin the intended interested parties is merited and allow it in terms of prayer 1 to 3.

#### **V. Orders**

58. The court makes the following orders –
  - a. The application dated 29<sup>th</sup> August, 2024 by the claimant is merited and leave be and is hereby granted to the claimant to enjoin the named intended interested parties – Platinum Outsourcing Logistics E. A Ltd, Consolidated HR Solution Ltd, and Volt Management Services Ltd as the 3<sup>rd</sup>, 4<sup>th</sup>, and 5<sup>th</sup> interested parties in this cause.
  - b. The claimant is granted leave and ordered to file and serve its amended memorandum of claim within 14 days from the date of this ruling.
  - c. The respondent and the interested parties are granted a corresponding leave to file their defence or responses within 14 days from the date of service of the amended memorandum of claim.
  - d. There is no order as to costs.

**DELIVERED VIRTUALLY, DATED, AND SIGNED AT KAKAMEGA THIS 20<sup>TH</sup> DAY OF FEBRUARY, 2025.**

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**DAVID NDERITU**

**JUDGE**

