



**Kitui v Winguard Services Ltd (Miscellaneous Application
E263 of 2024) [2025] KEELRC 962 (KLR) (27 March 2025) (Ruling)**

Neutral citation: [2025] KEELRC 962 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
MISCELLANEOUS APPLICATION E263 OF 2024**

**S RADIDO, J
MARCH 27, 2025**

BETWEEN

THEOPHILUS KIPKORIR KITUI CLAIMANT

AND

WINGUARD SERVICES LTD RESPONDENT

RULING

1. For determination is a Motion dated 6 September 2024 seeking orders:
 - (a) ...
 - (b)
 - (c) ...
 - (d) ...
 - (e) ...
 - (f) That the Honourable Court be pleased to order the consolidation of the following suits against the applicant herein
 - 1) Milimani ELRC E458 of 2022
 - 2) Milimani ELRC E1199 of 2022
 - 3) Milimani ELRC E1316 of 2022
 - 4) Milimani ELRC E1344 of 2022
 - 5) Milimani ELRC E1810 of 2022
 - 6) Milimani ELRC E1782 of 2022



- 7) Milimani ELRC E1349 of 2022
- 8) Milimani ELRC E1893 of 2022
- 9) Milimani ELRC E1 198 of 2022
- 10) Milimani ELRCE1319 of 2022
- 11) Milimani ELRCE1663 of 2022
- 12) Milimani ELRCE1356 of 2022
- 13) Milimani ELRCE1379 of 2022
- 14) Milimani ELRCE1346 of 2022
- 15) Milimani ELRCE1332 of 2022
- 16) Milimani ELRCE1220 of 2022
- 17) Milimani ELRCE1221 of 2022
- 18) Milimani ELRCE1213 of 2022
- 19) Milimani ELRC E1229 of 2022
- 20) Milimani ELRC E1806 of 2022
- 21) Milimani ELRCE1809 of 2022
- 22) Milimani ELRCE 1808 of 2022
- 23) Milimani ELRC E1807 of 2022
- 24) Milimani ELRCE 1662of 2022
- 25) Milimani ELRCE1375 of 2022
- 26) Milimani ELRC E1359 of 2022
- 27) Milimani ELRCE1357of 2022
- 28) Milimani ELRCE1351 of 2022
- 29) Milimani ELRC E1347of 2022
- 30) MilimaniELRCE1341 of 2022
- 31) MilimaniELRCE1340 of 2022
- 32) MilimaniELRCE1335 of 2022
- 33) MilimaniELRCE1330 of 2022
- 34) Milimani ELRC E1321 of 2022
- 35) MilimaniELRCE1320 of 2022
- 36) Milimani ELRC E1254 of 2022
- 37) Milimani ELRCE1251 of 2022



- 38) Milimani ELRCE 1250 of 2022
- 39) Milimani ELRC E1228 of 2022
- 40) Milimani ELRCE1218 of 2022
- 41) Milimani ELRCE1217 of 2022
- 42) Milimani ELRCE1214 of 2022
- 43) Milimani ELRC E1207 of 2022
- 44) Milimani ELRC E1206 of 2022
- 45) MilimaniELRCE1203 of 2022
- 46) Milimani ELRC E1202 of 2022
- 47) Milimani ELRC E1200 of 2022
- 48) Milimani ELRCE1201 of 2022
- 49) Milimani ELRCE1350 of 2022
- 50) Milimani ELRCE1343 of 2022
- 51) Milimani ELRCE1333 of 2022
- 52) Milimani ELRCE1216 of 2022
- 53) Milimani ELRCE1326 of 2022
- 54) Milimani ELRCE1219 of 2022
- 55) Milimani ELRCE1205 of 2022
- 56) MilimaniELRCE1196 of 2022
- 57) MilimaniELRCE1224 of 2022
- 58) MilimaniELRCE1334 of 2022
- 59) Milimani ELRC E1204 of 2022
- 60) Milimani ELRCE1215 of 2022
- 61) Milimani ELRCE1208 of 2022
- 62) Milimani ELRC E1376 of 2022
- 63) Milimani ELRCE1336 of 2022
- 64) Milimani ELRC E1887 of 2023
- 65) Milimani ELRCE1691 of 2022
- 66) Milimani ELRC E370 of 2022
- 67) Milimani ELRC 1253 of 2022
- 68) Milimani ELRC E2104 of 2022



- 69) Milimani ELRCE1362 of 2022
- 70) Milimani ELRCE1329 of 2022
- 71) Milimani ELRCE1838 of 2023
- (g) That the Honourable Court be pleased to select Milimani ELRC E1344 of 2022 as a test suit in the suits filed against the applicant.
- (h) The costs of this application be in the cause.
2. The reasons advanced in support of the Motion were that the Causes sought to be consolidated emanated from the termination of guarding contracts with the same third party; some of the Causes had been heard and determined by various Subordinate Courts and had yielded varying outcomes despite the similarity of facts and legal questions and that there was a need for consistency in judicial outcomes.
3. When the Motion was placed before this Court on 11 November 2024, it directed the applicant to serve all the concerned parties in the Causes sought to be consolidated.
4. One Benard Ochola, the Claimant in Nairobi MCELRC No. E458 of 2022 filed a replying affidavit opposing the Motion on 30 September 2024. The deponent averred that different questions of fact and law arose in the suits because there were distinct contracts with different salaries and workstations.
5. On 4 October 2024, Mr Wetaba Advocate filed a replying affidavit on behalf of nearly 60 Claimants opposing consolidation.
6. According to the affidavit, some of the Causes had been heard and determined; the Causes proposed to be consolidated were at different stages of the trial process; the applicant had not demonstrated the similarity of facts and law; the parties could attempt alternative dispute resolution and that the application was an abuse of the court process.
7. The applicant filed a supplementary affidavit on 8 November 2024 reiterating earlier averments.
8. On 3 February 2025, Mr Owade appeared for the applicant, Mr Wetaba for the Respondent, and Mr Waigwa and Mr Agwata for some of the parties in the Causes pending before the Subordinate Court.
9. The Court directed the filing and exchange of a further affidavit and submissions.
10. The applicant filed its submissions on 21 February 2025 (should have been filed and served before 14 February 2025). Bernard Ochola filed his submissions on 27 February 2025.
11. In its submissions, the applicant cited a passage from Petition No. 14 of 2013, *Law Society of Kenya v the Centre for Human Rights & Democracy* where the Supreme Court of Kenya stated:
- The essence of consolidation is to facilitate the efficient and expeditious disposal of disputes and to provide a framework for a fair and impartial dispensation of justice to the parties. Consolidation was never meant to confer any undue advantage upon the party that seeks it, nor was it intended to occasion any disadvantage towards the party that opposes it.
12. Bernard Ochola asserted in his submissions that the Motion was defective because the deponent to the supporting affidavit had not exhibited any authority from the applicant to swear the affidavit.



13. He further urged that the Motion was an abuse of the court process meant to delay the expeditious determination of the Causes and that the Causes did not have similarity of facts or the law as each accrued from a distinct contract.
14. Most of the Causes pending (and those already determined) before the Chief Magistrates Courts emanated from a single decision by the applicant to terminate the contracts of its employees upon the expiry or termination of a contract the applicant had with Kenya Revenue Authority.
15. These Causes are based on the same facts and raise similar questions of law.
16. In order to effectively and impartially dispense justice, the common factual and legal question of liability should be determined before the questions of appropriate remedies are assessed.
17. This course of action would save the different Magistrates now seized of the Causes from coming to conflicting and perhaps embarrassing conclusions as well as save precious judicial time.
18. The Court has been informed that some of the Claimants were dismissed after they had been redeployed from offering guarding services to the Kenya Revenue Authority. The full particulars were not disclosed but the applicant did not deny that such Causes were pending.
19. These particular Causes should proceed to hearing and determination without consolidation.

Orders

20. Flowing from the above, the Court orders:
 - i. The parties to prepare and file before the Chief Magistrates Court a schedule of all pending Causes and status before the Chief Magistrates Court within 15 days from today.
 - ii. The parties to agree on the test suit file/Cause before the Presiding Chief Magistrate within 15 days from today.
 - iii. All pending Causes and where a hearing has not started are consolidated for purposes of determining liability (whether there was unfair termination of employment and or breach of contract) in the test suit Cause.
 - iv. The Causes in (iii) above are stayed pending the determination of liability in the test suit Cause.
 - v. The Causes where the Claimants were not deployed to guard Kenya Revenue Authority premises to proceed apiece without consolidation.
 - vi. The parties to appear before the Presiding Chief Magistrate on 9 April 2025.
21. Costs of the application in the cause.

DELIVERED VIRTUALLY, DATED AND SIGNED IN NAIVASHA ON THIS 27TH DAY OF MARCH 2025.

RADIDO STEPHEN, MCI Arb

JUDGE

Appearances

For applicant Kathambi Rwito & Co. Advocates

For Respondent Wetaba Were & Associates Advocates

Interested Parties Joseph Agwata & Associates Advocates



Mr Waigwa

Court Assistant Wangu

