



**Bunde v Edu Plus Africa Limited & 2 others (Cause E691 of 2022)  
[2025] KEELRC 869 (KLR) (13 March 2025) (Ruling)**

Neutral citation: [2025] KEELRC 869 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E691 OF 2022  
MN NDUMA, J  
MARCH 13, 2025**

**BETWEEN**

**JOY LINDA BUNDE ..... CLAIMANT**

**AND**

**EDU PLUS AFRICA LIMITED ..... 1<sup>ST</sup> RESPONDENT**

**HUMPREY KASEMBELI MUCHUMA ..... 2<sup>ND</sup> RESPONDENT**

**INUA AI SOLUTION LIMITED ..... 3<sup>RD</sup> RESPONDENT**

**RULING**

1. By a Notice of Motion application dated 25/9/2024, the Claimant/Applicant prays for an order: -
  1. Spent
  2. That the court be pleased to allow the addition of Humphrey Kasembeli Muchuma and Inua AI Solutions Limited in the suit herein as the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents respectively and the statement of claim be amended accordingly.
2. The statement of claim was filed on 4<sup>th</sup> November 2022 and amended on 27/9/2024 and Respondent filed a statement of response dated 18/10/2022. The Claimant filed a reply to response to the statement of claim dated 4/10/2022 and the pleadings closed accordingly.
3. The application is premised on grounds (i) to (xiii) set out on the face of the Notice of Motion the nub of which is that the proposed 2<sup>nd</sup> Respondent had closed both the Kenya Shillings and Dollar accounts of the 1<sup>st</sup> Respondent and some of the withdrawn funds were directed to the 3<sup>rd</sup> proposed Respondent.
4. That the proposed 2<sup>nd</sup> Respondent had transferred all the employees of the 1<sup>st</sup> Respondent to the proposed 3<sup>rd</sup> respondent.



5. That the proposed 2<sup>nd</sup> Respondent also used the domain and email address of the 1<sup>st</sup> Respondent to register proposed 3<sup>rd</sup> Respondent accounts, making the proposed 3<sup>rd</sup> Respondent a subsidiary of the 1<sup>st</sup> Respondent.
6. That the proposed 2<sup>nd</sup> Respondent is the Sole Director/share holder of the 3<sup>rd</sup> proposed Respondent.
7. That these are fraudulent activities by the 2<sup>nd</sup> Respondent in his capacity as a Director and the MD of the 1<sup>st</sup> Respondent.
8. That these illegal activities are done with the sole intention of defeating this suit by rendering the 1<sup>st</sup> Respondent a shell.
9. That this application be allowed to prevent irreparable loss and damage being suffered by the Claimant/Applicant.
10. That these activities were discovered upon request by the Claimant on 17/9/2015 for the 1<sup>st</sup> Respondent Bank statement for NCBA Bank. These facts are supported by an affidavit of the Claimant sworn to in support of the application to which attachments have been placed in support of the aforesaid facts.
11. The proposed 2<sup>nd</sup> Respondent filed a replying affidavit sworn to on 16/10/2024 and deposes that the 2<sup>nd</sup> and 3<sup>rd</sup> proposed Respondent may only be joined to the suit if the Applicant demonstrates that the proposed Respondents are necessary and proper parties in terms of Order 1 RULE 1,2 & 10 of the Civil Procedure Rules. That the Applicant must also demonstrate that there is a relief flowing from her to the intended Respondent and the ultimate order or decree cannot be enforced without their presence in the matter.
12. That the Respondent is a corporate entity with a separate and distinct entity from its owners, shareholders or affiliates with the capacity to sue and be sued in its name. That the Claimant filed an amended statement of claim dated 4/11/2022 seeking the court to compel the Respondent to pay her inter alia salary arrears as at 30<sup>th</sup> July 2022 of Kshs. 13,141,140.00.
13. That the Applicant must demonstrate an employee-employer relationship between the Claimant and proposed Respondents to succeed in the application. That the application is anchored on unsubstantiated allegations of fraudulent transition of funds from the Respondent to the proposed 3<sup>rd</sup> Respondent by the 2<sup>nd</sup> proposed Respondent.
14. That the proposed Respondents have no demonstrable legal obligation to satisfy any judgment or decree in favour of the Claimant if successful in her suit.
15. That the alleged claims relied upon by the Claimant/Applicant in this application form the basis of the pending dispute in the High Court of Kenya at Milimani HCCOMC E290 of 2022 by Joy Linda Bunder and Edu Plus Africa Limited versus Humphrey Muchuga; That the sought joinder is an overreach on the part of the Applicant to have this court adjudicate over a commercial dispute whereas the suit before it is purely an employment dispute between the Claimant and the Respondent.
16. That the application is misconceived and an abuse of the court process and it be dismissed with costs.



## Determination

17. In the case of *Zephin Holdings Ltd versus Mimosa Plantation Ltd, Jeremiah Mezlagaro and Ezekiel Misango Mutisya* [2014] eKLR it was held that: -

“a proper party is one who is impleaded in the suit and qualifies the threshold of a plaintiff or defendant under Order 1 Rule 1 and 2 respectively or as a third party or as an interested party and whose presence is necessary or relevant for the determination of the real matter in dispute or to enable the court effectively and completely adjudicate upon and settle all questions involved in the suit.”

8. Furthermore, the High Court in Eldoret case Civil Case No. 136 of 2000: *Joseph Njiru Kingonri versus Robert Maina Chege and 3 others* [2022] eKLR per Nambuye J. as she then was, enumerated five aspects to look at before adding a party to a suit in terms of Order 1 Rule 10(2) of the Civil Procedure Rules as follows: -

- a. Is it a necessary party?
  - b. Is it a proper party?
  - c. Is there a relief flowing from him to the Plaintiff/Claimant? and
  - d. Will the ultimate order or decree be enforceable without the party's participation in the proceedings?
  - e. Is his presence necessary to enable the court to effectively and completely adjudicate upon and settle all question involved in the suit?
10. The court has carefully considered the facts deposed to by the Claimant/Applicant on the face of the Notice of Motion and supporting affidavit together with the annexes thereof including the statement of accounts of the Respondent requested by the Claimant/Applicant by a letter dated 17/9/2024 from NCBA Bank in her capacity as Director/CEO of the Respondent which statement have not been sufficiently traversed by the Respondent in the replying affidavit and the court is satisfied on a balance of probability that the movement of substantial money from the Respondent at the behest of the proposed 2<sup>nd</sup> Respondent to the proposed 3<sup>rd</sup> Respondent makes the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents necessary parties within the meaning of Order 1 Rule 10(2) of the Civil Procedure Rules as elaborated by the courts in the two cases cited above.
11. Accordingly, the application has merit and is granted and the court makes the following order:
1. The Claimant/Applicant is granted leave to amend the amended statement of claim in this suit and include the proposed 2<sup>nd</sup> and 3<sup>rd</sup> Respondents to the suit as prayed being Humphrey Kasembeli Muchune and Inua AI Solutions Limited respectively.
  2. Costs in the cause.

**DATED AT NAIROBI THIS 13<sup>TH</sup> DAY OF MARCH 2025**

**MATHEWS NDUMA**

**JUDGE**

Appearance:

Mr. Ochada for Claimant/Applicant



Mr. Nyamwamo for Respondent

Mr. Kemboi – Court Assistant

