



**Otieno v Stratostaff EA Limited & another (Cause E188 of 2024)
[2025] KEELRC 751 (KLR) (13 March 2025) (Ruling)**

Neutral citation: [2025] KEELRC 751 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E188 OF 2024
L NDOLO, J
MARCH 13, 2025**

BETWEEN

ALFRED OMONDI OTIENO CLAIMANT

AND

STRATOSTAFF EA LIMITED 1ST RESPONDENT

ENCOMM LIMITED 2ND RESPONDENT

RULING

1. This ruling flows from Notice of Motion dated 3rd September 2024, by which the 2nd Respondent asks that it be struck out from the suit. The Motion is supported by an affidavit sworn by the 2nd Respondent's Director, Jackton Ochieng Obuola and is based on the grounds that:
 - a. The claim before the Court as pleaded by the Claimant, is based on an alleged dispute relating to or arising out of employment between an employer and an employee;
 - b. At no point was the 2nd Respondent an employer of the Claimant and there has never existed an employer-employee relationship between the Claimant and the 2nd Respondent;
 - c. The pleadings in this matter do not disclose a cause of action as against the 2nd Respondent and consequently, the 2nd Respondent has been improperly joined as a party to this suit.
2. In his affidavit in support of the Motion, Jackton Ochieng Obuola points out that it has been pleaded by the Claimant that on 23rd November 2023, he entered into a contract of service with the 1st Respondent, agreeing to work as an outsourced employee of the 1st Respondent, for a fixed term based on its operational requirements.
3. Obuola depones that the 2nd Respondent has never issued a termination letter to the Claimant as alleged. He states that the termination letter produced by the Claimant in support of his claim, was



- issued by Encomm Power Rental Solutions Limited (Encomm Power), a separate legal entity from the 2nd Respondent.
4. Obuola concedes that he is a director and shareholder in both the 2nd Respondent (Encomm Limited) and Encomm Power Rental Solutions Limited.
 5. The 1st Respondent did not oppose the 2nd Respondent's application.
 6. The Claimant opposes the Motion by his replying affidavit sworn on 16th October 2024. He deposes that the 2nd Respondent has been adversely mentioned as being culpable of unfairly terminating his employment, while working in cahoots with the 1st Respondent.
 7. The Claimant maintains that the 2nd Respondent was his employer as evidenced by the letter of offer of employment dated 29th September 2023, WhatsApp conversations between himself and the 2nd Respondent's Director, who has sworn the affidavit in support of the application and the termination letter dated 13th December 2023.
 8. According to the Claimant, the question whether he has a cause of action against the 2nd Respondent is a matter to be determined at trial.
 9. The Claimant accuses the 2nd Respondent of engaging in diversionary tactics, to scuttle the matter at hand. He states that the 2nd Respondent opted to engage the 1st Respondent in the matter it did, so as to absolve itself from any claims or liabilities.
 10. In response to the Claimant's replying affidavit, Jackton Ochieng Obuola swore a further affidavit on 14th January 2025, reiterating the contents of his affidavit in support of the application.
 11. Obuola points out that the employment letter dated 29th September 2023, which the Claimant seeks to rely on, is not signed. He adds that the WhatsApp message screenshots produced by the Claimant, do not in any way support the existence of an employment relationship between the Claimant and the 2nd Respondent.
 12. The 2nd Respondent's application is premised on its assertion that there was no employment relationship between itself and the Claimant, to warrant its joinder in these proceedings.
 13. In its written submissions dated 12th February 2025, the 2nd Respondent advances the common law doctrine of privity of contract, citing the Court of Appeal decision in [*Mark Otanga Otiende v Dennis Oduor Aduol*](#) [2021] eKLR where it was held that a contract cannot confer rights or impose obligations on a person who is not a party to the contract.
 14. While the doctrine of privity of contract may apply neatly in commercial contracts, employment contracts are somewhat different. In this regard, the definition of the term 'employer' as contained in Section 2 of the [*Employment Act*](#) is instructive. This provision states as follows:

“employer means 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.”
 15. The Claimant's contract of service issued to him by the 1st Respondent, Stratostaff E.A. Ltd indicates that the Claimant was to work as an outsourced employee assigned to Encomm Power Rental Solutions Limited. His termination letter dated 14th December 2023 also issued by the 1st Respondent, refers to a contract signed by the Claimant, the 1st Respondent and Encomm Power Rental Solutions.



16. The Claimant also produced a letter dated 13th December 2023 issued to him by Encomm Power under reference ‘Termination of Employment-Unsuccessful Probation.
17. By his own admission, Jackton Ochieng Obuola is a director and shareholder in both Encomm Limited and Encomm Power Rental Solutions Limited. What emerges in this case is a complicated web between the Claimant and multiple entities under the control of one person.
18. As held by Rika J in *Kenya Hotels and Allied Workers Union v Diani Sea Resort t/a Carslake Nominee Limited* [2015] eKLR employees approaching this Court, for enforcement of their rights, ought not be hampered by multiple layers of business structures erected by employers.
19. In this case, for the Court to effectually adjudicate the dispute before it, all the named entities are necessary parties in the proceedings.
20. The 2nd Respondent’s application dated 3rd September 2024 therefore fails and is dismissed with costs in the cause.
21. Orders accordingly.

DELIVERED VIRTUALLY AT NAIROBI THIS 13TH DAY OF MARCH 2025

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JUDGE

Appearance:

Mr. Owino for the Claimant

Mr. Otiende for the 1st Respondent

Mr. Nyaribo for the 2nd Respondent

