



Kimanzi & 2 others (Suing on their own Behalf and on Behalf and Representatives of 32 other Claimants) v Kalu Works Limited (Cause E423 of 2024) [2025] KEELRC 1059 (KLR) (3 April 2025) (Ruling)

Neutral citation: [2025] KEELRC 1059 (KLR)

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E423 OF 2024
S RADIDO, J
APRIL 3, 2025

BETWEEN

KANYAMBA KIMANZI 1ST CLAIMANT

ELMADA OTIENO OBAT 2ND CLAIMANT

WPHANTUS KARIUKI MURAGURI 3RD CLAIMANT

SUING ON THEIR OWN BEHALF AND ON BEHALF AND REPRESENTATIVES OF 32 OTHER CLAIMANTS

AND

KALU WORKS LIMITED RESPONDENT

RULING

1. The 3 Claimants (and others named in paragraph 9 of the Statement of Claim) sued Kalu Works Ltd (the Respondent) on 1 June 2024, and they stated the Issue in Dispute as:

Refusal by the Respondent to pay gratuity determined by itself to the Claimants.

2. When served, the Respondent filed a Notice of Preliminary Objection on 9 November 2024, contending:
 - i. That the suit is an abuse of the Court process, a waste of judicial time and should thus be struck out as such.
 - ii. That this Honourable Court lacks the jurisdiction to entertain this matter as the cause of action in the suit should have been raised in Milimani High Court Commercial Insolvency Case No. E019 of 2021, In the Matter of Kaluworks Ltd (Under Administration).



- iii. That this matter is res judicata as it goes against the provisions of section 7 of the *Civil Procedure Act* and it ought to be struck out as the Claimants' employment was terminated on 31st May 2021 while the Respondent was under administration any liabilities or debts raised against the Respondent company at the time of administration should have been raised in Milimani High Court Commercial Insolvency Case No. E019 of 2021, *In the Matter of Kaluworks Ltd (Under Administration)*.
 - iv. That the suit is a waste of precious judicial time as it offends the provisions of sections 566, 570, 628 and 629 of the *Insolvency Act* as the Claimants being creditors of the company neglected/ failed/ignored to attend and/or lay claim during the meeting of creditors on 20th May 2022.
 - v. That the suit is a waste of precious judicial time as it offends the provisions of section 591 of the *Insolvency Act*, as if they had any grievance or if the actions of the administrator were done contrary to their interests, they would have moved the Court in High Court Commercial Insolvency Case No. E019 of 2021, *In the Matter of Kaluworks Ltd (Under Administration)*.
 - vi. That this suit is an abuse of the court process as it offends the provisions of section 630 of the *Insolvency Act*, as once the Respondent entered into a Company Voluntary Arrangement (CVA) the same is binding to the company and its creditors thus the Respondent its meeting its liabilities as per the CVA and the class of creditors.
 - vii. That this suit is an abuse of the court process as it offends the provisions of section 631 of the *Insolvency Act*, as if the Claimants, being creditors of the company, were aggrieved by the Company Voluntary Arrangement (CVA) they would have challenged the said CVA by moving the High Court appropriately under this section.
 - viii. That the suit is an abuse of the court process and as it offends the provisions of the Second Schedule Paragraph 3(1) and 3(2) of the *Insolvency Act*, as majority of the claims raised by the Claimants exceed the sum of Kenya Shillings Two Hundred Thousand Kshs 200,000/-.
 - ix. That the Claimants are precluded from instituting a further suit in respect of a cause of action that has already been determined before another Court of competent jurisdiction.
 - x. That the Claimants herein have no locus standi to bring this suit.
 - xi. That this suit is an abuse of the court process as it offends the doctrine of laches, as the Claimants were well aware that the Respondent company was under administration and should have raised any claims against the company during the meeting of creditors or while the administration was still going on.
 - xii. That the whole suit in its entirety ought to be struck out and all claims therein be dismissed with costs to the Respondent.
3. The 1st Claimant filed a replying affidavit opposing the Objection on 9 December 2024.
 4. The Court gave directions on the Notice of Preliminary Objection on 11 February 2025, The Respondent filed its submissions on 11 February 2025, and the Claimants on 25 February 2025.
 5. The Court has considered the Statement of Claim, Notice of Preliminary Objection, replying affidavit and submissions.
 6. The Court can make the following determinations based on the record.



7. One, the Claimants were dismissed on 31 May 2021 and, therefore, the cause of action accrued on that date.
8. Two, the Respondent was placed under administration on 27 May 2021. The administration was gazetted on 18 June 2021.
9. Three, on 2 September 2022, the Administrator issued a Gazette Notice that the administration had been terminated with effect from 25 August 2022 with the permission of the High Court.
10. The Respondent is, therefore, no longer under administration to claim the protections assured to companies under the *Insolvency Act*.
11. Four, in meetings held between the Respondent and a trade union representing the employees on 12 September 2023 and 19 April 2024, the Respondent acknowledged that it had not paid the employees (including the Claimants) gratuity.
12. Five, under section 522 of the *Insolvency Act*, a company is placed under administration to enable it to continue as a going concern and to achieve a better outcome for creditors, and to realise security to satisfy the claims of creditors, if at all.
13. During the administration, the Respondent continued to operate but under the limits set out in law. It did not die during the administration. It was, so to speak, ill and under medical care.
14. Six, the administration of the Respondent was terminated with effect from 25 August 2022, meaning that the Respondent recovered and was discharged from the hospital.
15. Seven, the Respondent continues to operate and is alive and kicking and cannot seek to hide under the cover of the *Insolvency Act*.
16. Eight, the Respondent did not place before this Court any material or evidence to support the contention that the action and claims advanced by the Claimants were res judicata or had been heard and determined conclusively by a court of competent jurisdiction.
17. These determinations lead to the conclusion that the Respondent cannot run away from its liabilities incurred before it was put under administration and surviving after the termination of administration.
18. It is not lost to the Court that the Claimants moved the Court on the very last day that the original cause of action was set to expire.

Orders

19. The Notice of Preliminary Objection is found without merit and is dismissed with costs.

DELIVERED VIRTUALLY, DATED AND SIGNED IN NAIROBI ON THIS 3RD DAY OF APRIL 2025.

Radido Stephen, MCI Arb

Judge

Appearances

For Claimants Omuma Advocates LLP

For Respondent Anne Wamithi & Co. Advocates

Court Assistant Wangu

