



Mulingata v Kenya Reinsurance Corporation Limited & another (Cause E1063 of 2024) [2025] KEELRC 1550 (KLR) (29 May 2025) (Ruling)

Neutral citation: [2025] KEELRC 1550 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E1063 OF 2024**

**L NDOLO, J
MAY 29, 2025**

BETWEEN

MARTIN MATI MULINGATA CLAIMANT

AND

KENYA REINSURANCE CORPORATION LIMITED 1ST RESPONDENT

PRICEWATERHOUSECOOPERS LIMITED 2ND RESPONDENT

RULING

1. This ruling dispenses with the Notice of Motion dated 14th February 2025, by which the 2nd Respondent seeks orders to strike out the Claimant’s claim as against it.
2. The Motion is supported by an affidavit sworn by the 2nd Respondent’s General Counsel, Elizabeth Njendu and is based on the following grounds:
 - a. There is no employer-employee relationship between the Claimant and the 2nd Respondent;
 - b. There is no employer-employee relationship between the 1st Respondent and the 2nd Respondent;
 - c. The Claimant’s claim for defamation, against the 2nd Respondent pleaded at paragraphs 38 to 40 of the Statement of Claim, did not arise from an employer-employee relationship;
 - d. This Court lacks jurisdiction under Section 12 of the *Employment and Labour Relations Court Act* to determine the Claimant’s claim, against the 2nd Respondent;
 - e. The present suit against the 2nd Respondent is an abuse of the court process.
3. The Claimant opposes the Motion by his replying affidavit sworn on 10th March 2025. He asserts that this Court has jurisdiction to determine his claim for defamation.



4. While admitting the absence of an employer-employee relationship between himself and the 2nd Respondent, the Claimant depones that this cannot be a defence for defamation.
5. The Claimant further admits the absence of an employer-employee relationship between the 1st and 2nd Respondents, but states that the two Respondents were in a contract for service relationship, for provision of forensic investigations against him.
6. The Claimant maintains that the claim for defamation against the 2nd Respondent arises from an employment relationship as the 2nd Respondent relied on falsehoods to accuse the Claimant to the 1st Respondent, which falsehoods the 1st Respondent relied on to terminate the Claimant's employment.
7. The Claimant accuses the 2nd Respondent of authoring a forensic report, containing offensive words set out in paragraphs 38 to 40 of the Statement of Claim. The Claimant therefore holds the 2nd Respondent liable for defamation.
8. The Motion was urged by way of written submissions. In its submissions dated 28th March 2025, the 2nd Respondent cites the decision in *Kaiga v Das* [2023] KEELRC 2194 (KLR) where it was held that the jurisdiction of this Court flowing from Article 162(2)(a) of *the Constitution* and Section 12 of the *Employment and Labour Relations Court Act* is premised on the existence of an employment relationship.
9. The 2nd Respondent submits that the claim for defamation raised by the Claimant is substantive in nature and cannot be said to be incidental.
10. In his submissions dated 2nd April 2025, the Claimant states that his dismissal by the 1st Respondent was based solely on the 2nd Respondent's report titled 'Final Report for the Review of Consultancy Services for Research and Development' dated 14th December 2023.
11. According to the Claimant, the report contained false and malicious statements that were defamatory of him. He points out that the 2nd Respondent has not proffered any defence to his claim for defamation.
12. The Claimant asserts that the claim for defamation relates to or arose out of the employment relationship between himself and the 1st Respondent. He relies on the Court of Appeal decision in *Kenya Medical Research Institute v Davy Kiprotich Koech* [2018] KECA 128 (KLR) where it was held that the Employment and Labour Relations Court is sufficiently empowered to award damages in a claim for defamation that is connected to wrongful termination of employment.
13. The Claimant further relies on the decision in *Paramount Bank Limited v Vaqui Syed Qamara & another* [2017] eKLR where the Court of Appeal stated the following:

“There cannot...be any doubt that, in addition to the claim for unfair termination, the claim relating to general damages for malicious prosecution and defamation, which flowed directly from the dismissal, was equally within the jurisdiction of the court. In the exercise of its powers under Section 12 of the *Employment and Labour Relations Court Act*, the court could entertain the dispute in all its aspects and award damages appropriately.”
14. The foregoing remains good law. However, the case presented in this Motion is different in that the party seeking to exit the proceedings had no employment relationship with the Claimant, either directly or indirectly.



15. The 2nd Respondent, was hired by the 1st Respondent to conduct a forensic investigation and produce a report. After receiving the report, the 1st Respondent, who was the Claimant's employer, was at liberty to take further action, for which it assumed full responsibility. This flow of events does not in my view, bring the 2nd Respondent within the quarters of any liability that can be the subject of an action before this Court, which exercises specialised jurisdiction.
16. As held by this Court in *Milkah Khakayi Kulati v Sandstorm (Africa) Limited* [2014] KEELRC 843 (KLR) an employer's duty to avail an employee a fair disciplinary process is not dependent on the action of a third party that is not privy to the employment relationship.
17. It means therefore that the 1st Respondent, as the Claimant's former employer, takes full responsibility for the use of the report produced by the 2nd Respondent on its behalf.
18. Consequently, I see no reason as to why the 2nd Respondent has been joined in these proceedings.
19. The application dated 14th February 2025 is therefore allowed, with the result that the Claimant's claim as against the 2nd Respondent is struck out, with costs to the 2nd Respondent.
20. Orders accordingly.

DELIVERED VIRTUALLY AT NAIROBI THIS 29TH DAY OF MAY 2025.

LINNET NDOLO

JUDGE

Appearance:

Mr. Gachuba for the Claimant

Mr. Gatwiri for the 1st Respondent

Mr. Nyangweso h/b for Mr. Gachuchi for the 2nd Respondent

