



Kamande & 2 others v Aee Power Limited; Kenya Power and Lighting Company Limited & another (Interested Parties) (Cause E366 of 2024) [2025] KEELRC 1316 (KLR) (9 May 2025) (Ruling)

Neutral citation: [2025] KEELRC 1316 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E366 OF 2024**

**AK NZEI, J
MAY 9, 2025**

BETWEEN

HANNAH WANGUI KAMANDE 1ST CLAIMANT

RAPHAEL AGO NYAGAKA 2ND CLAIMANT

MAGDALENE WAMBUI NGANATHA 3RD CLAIMANT

AND

AEE POWER LIMITED RESPONDENT

AND

KENYA POWER AND LIGHTING COMPANY LIMITED INTERESTED PARTY

AEE POWER SA INTERESTED PARTY

RULING

1. Vide a Memorandum of Claim dated 14th May, 2024 and filed in this Court on 16th May, 2024, the Claimants sued the Respondent and the 1st and 2nd Interested Parties herein and sought the following reliefs:-
 - a. A declaration that termination of the Claimants was unlawful.
 - b. An order that the 1st Interested Party do deduct and remit the claim herein from the proceeds due and owing to the Respondent and/or the 2nd Interested Party for work done under Last Mile Connectivity Project Lot 2 and Lot 4 Contracts.
 - c. Payment of terminal benefits in the sum of Kshs.7,400,327.50/=



- i. 1st Claimant Kshs.4,399,772.50/=.
 - ii. 2nd Claimant Kshs.1,587,800/=.
 - iii. 3rd Claimant Kshs.1,412,800/=.
 - d. Costs of the suit.
 - e. Certificates of service.
 - f. Any further relief that the Court may deem fit to grant.
2. The Claimants pleaded that they worked for the Respondent under contracts executed between the 1st and the 2nd Interested Parties on 10th December, 2015 under the Last Mile Connectivity Project Lots 2 and 4, and that their employer was EAA Power Limited (the Respondent herein). The Claimants further pleaded:-
- a. That they executed their contracts of employment with the Respondent who paid their salaries, and that the Respondent held out as an agent of the 2nd Interested Party.
 - b. That the Respondent, unlawfully and without following due process of the law, rendered (declared) the Claimants redundant in September 2023.
3. The 1st Interested Party, Kenya Power and Lighting Company Limited, entered appearance on 28th June, 2024, and on the same date filed a Notice of Motion dated 27th June, 2024 seeking the following Orders:-
- a. That the name of the 1st Interested Party/Applicant, Kenya Power and Lighting Company Limited, be struck off from the claim herein.
 - b. That costs of the claim be provided for.
4. The foregoing is the application before me for determination, and is expressed to be brought under Sections 1A, 1B, 3 and 3A of the *Civil Procedure Act* and Order 1 Rules 9 and 10 of the Civil Procedure Rules 2010. The application sets out on its face the grounds on which it is based, and is anchored on the supporting affidavit of Lynn Owano sworn on 27th June, 2024. It is deponed in the said affidavit:-
- a. that the Claimants have pleaded that they were the Respondent's employees; and that they were unlawfully terminated by the Respondent on 4th August, 2022 on account of redundancy.
 - b. that the Claimants have pleaded that the 1st Interested Party's involvement was that it had contracted the Respondent.
 - c. that the dispute herein emanates from the Claimant's employment with the Respondent, and that the Claimant cannot seek compensation against a party who is not privy to the employment contract.
 - d. that the 1st Interested Party has been wrongly enjoined in the suit herein, and it should be struck off from the suit.
 - e. that striking off the 1st Interested Party from the suit will not occasion any form of prejudice on determination of the issues between the Claimants and the Respondent.
5. The 1st Interested Party's application is not opposed, either by the Claimants or by any of the other parties to the suit; and therefore stands unopposed.



6. Employer-employee relationships are basically contractual, based on employment contracts. These contracts may be either written or unwritten/implied. For anyone to raise a valid claim based on alleged employment, therefore, such a person must demonstrate privity of contract between himself and the person sued.
7. The meaning and scope of the doctrine of privity of contract was highlighted in the case of Savings and Loan (K) Limited – vs – Kanyenje Karangaita Gakombe & Another [2015] eKLR, where the Court stated as follows:-

“In its classical rendering, the doctrine of privity of contract postulates that a contract cannot confer rights or impose obligations on any person other than the parties to the contract. Accordingly, a contract cannot be enforced either by or against a third party. In Dunlop Pneumatic Tyre Co. Ltd – vs – Selfridge & Company Limited [1915] AC 847, Lord Haldane, LC rendered the principle thus:

“My Lords, in the law of England, certain principles are fundamental. One is that only a person who is a party to a contract can sue on it.”
8. Quoting from Halsbury’s Laws of England, 3rd Edition Volume 8 paragraph 110, Hancox, JA (as he then was) stated as follows in Agricultural Finance Corporation – vs – Lengetia Limited [1985] eKLR:-

“As a general rule, a contract affects only the parties to it, it cannot be enforced by or against a person who is not a party, even if the contract is made for his benefit and purports to give him the right to sue or to make him liable upon it. The fact that a person who is a stranger to the consideration of a contract stands in such near relationship to the part from whom the consideration proceeds that he may be considered a party to the consideration does not entitle him to sue upon the contract.”
9. There having been no privity of contract between the Claimants and the 1st Interested Party (Kenya Power and Lighting Company Limited), there cannot be any cause of action on the part of the Claimants as against the 1st Interested Party based on contracts of employment that were between the Claimants and their admitted employer, the Respondent. The 1st Interested Party was wrongly enjoined in the suit herein. I find merit in the 1st Interested Party’s Notice of Motion dated 27th June, 2024, and the same is hereby allowed in terms that the 1st Interested Party’s name, Kenya Power and Lighting Company Limited, is hereby struck off and removed from the suit/claim herein; and the Claimants’ suit against the 1st Interested Party is accordingly struck off, with no order as to costs.
10. Orders accordingly.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 9TH DAY OF MAY 2025

AGNES KITIKU NZEI

JUDGE

