



Abura v Coast Water Works Development Agency & 11 others (Petition E009 of 2025) [2025] KEELRC 1977 (KLR) (3 July 2025) (Ruling)

Neutral citation: [2025] KEELRC 1977 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
PETITION E009 OF 2025**

**M MBARÚ, J
JULY 3, 2025**

BETWEEN

OUCHO JOHN ABURA PETITIONER

AND

**COAST WATER WORKS DEVELOPMENT AGENCY 1ST RESPONDENT
MINISTRY OF WATER, SANITATION AND IRRIGATION . 2ND RESPONDENT
MARTIN TSUMA 3RD RESPONDENT
KATANA DANIEL MWARINGA 4TH RESPONDENT
HAMID MBARAK 5TH RESPONDENT
MOHAMED MASOUDI MWAHMA 6TH RESPONDENT
JUDITH WABOSHA MWAMBURI 7TH RESPONDENT
GEORGE MAINA KARIUKI 8TH RESPONDENT
WALTER OSELU 9TH RESPONDENT
EDWIN MURIMI 10TH RESPONDENT
HAFSWA ABDALLA DELE 11TH RESPONDENT
STATE CORPORATION ADVISORY COMMITTEE 12TH RESPONDENT**

RULING

1. The ruling herein relates to Notice of Preliminary Objections filed by the petitioner dated 3 June 2025 on the grounds,



1. The State Corporation's engagement of external lawyers requires the written approval and concurrence of the Attorney General, who must first issue a Certificate for the Appointment of External Advocates, except in exceptional cases and subject to the Attorney General's consent.
 2. Notwithstanding the fact that the 1st respondent is a state corporation duly established under the *State Corporations Act*, the firm of Muturi Gakuo & Kibara Advocates pleaded itself on record as representing the respondents and 1st to 6th interested parties without the written consent and a Certificate of Appointment by the Attorney General.
 3. All the documents, including applications and affidavits, filed in the instant matter by the firm of Muturi Gakuo & Kibara Advocates without the written consent and a Certificate of Appointment by the Attorney General are hereby null and should be struck out in limine.
 4. The firm of Muturi Gakuo & Kibara Advocates should henceforth be barred from appearing, acting, and/or representing the respondents and the first to sixth interested parties in this matter.
2. The firm of Muturi Gakuo & Kibara and Company Advocates has since filed a Further Amended Notice of Appointment of Advocates dated 21 June 2025. The amendment is that the record should reflect that the firm acts for the 4th, 6th, 7th, 8th, 10th, and 11th respondents and the 1st to 6th interested parties.
 3. The office of the Attorney General has entered an appearance for the 1st, 2nd, 3rd and 12 respondents.
 4. The 7th interested party is attending through its internal counsel.
 5. The petitioner submitted that preliminary objections should be raised based on the facts pleaded and on questions of law as held in *Mukisa Biscuits Manufacturing Co. Ltd. Vs West End Distributors Ltd* [1969] EA 696.
 6. In the case of *John Njuguna Kimunya v Teresiah Wachuka Kimunya & another* [2016] eKLR, the court held that preliminary objections must stem from the pleadings filed by the parties. The objections in this case stem from the Supporting Affidavit by the petitioner dated 6 May 2025 in support of the application seeking to address contempt of court orders. In response, Muturi Gakuo & Kibara Advocates filed Notice of Appointment dated 23 May 2025 and the Replying Affidavits sworn by the 1st, 2nd, 3rd, 4th, 5th and 6th interested parties. The objections herein stand by the clear implication from these affidavits, the Amended Notice of Appointment and Replying Affidavits.
 7. The amended Notice of Appointment dated 23 May 2025 is explicit that the firm of Muturi Gakuo & Kibara Advocates represents the 4th, 6th, 7th, 8th, 10th, 11th and 12 respondents and the 1st to 6th interested parties. The 12th respondent's appointment of this firm is against settled principles that external lawyers by state corporations require a written approval and concurrence of the Attorney General, who must issue a Certificate of Appointment. The firm of Muturi Gakuo & Kibara Advocates does not contest this fact. No Certificate of Appointment has been filed.
 8. The 1st respondent is a state corporation under the *State Corporations Act*. The firm that has placed itself on record as representing this agency is without the authority of the Attorney General. The same firm purports to represent the 1st to 6th interested parties who are sued in their capacity as representing the officers of the 1st respondent.
 9. The records filed in this regard are invalid.



10. The documents filed in response stem from a meeting of the 1st respondent held on 2 February 2025 and a memorandum arising therefrom. The actions of the first to the sixth interested parties cannot be separated from their official roles in the 1st respondent. Therefore, by appointing their advocates, the office of the Attorney General should grant approval and authority. The affidavits in reply to the petition and application are invalid and should all be struck from the record.
11. The firm of Muturi Gakuo & Kbara Advocates submitted that they have been appointed to represent the 4th, 5th, 6th, 7th, 8th, 10th, and 11th respondents and the 1st to 6th interested parties. The Notice of Appointment has been amended to reflect this position. The petitioner's objections are not based on pure points of law that can be discerned from the pleadings and hence should be dismissed.
12. The State Counsel for the 1st, 2nd, 3rd and 12 respondents submitted that the objections on the engagement of external advocates by state corporations are in issue. The 1st respondent has since filed a Notice of Appointment of Advocates through the Attorney General before the petitioner filed the Notice of Preliminary Objections. From the pleadings, it was clear that the Attorney General had appointed the State Counsel to represent the noted respondents.
13. To this extent, the issues raised in the Notice of Preliminary Objections do not raise a pure point of law that can be discerned from the pleadings held in *Mukisa Biscuits Manufacturing Co. Ltd. Vs West End Distributors Ltd* [1969] EA 696. The fact of appointment of advocates by a party is privileged under the Advocate/client relationship, and the petitioner should not be invited to meddle with that relationship, as held in *John Nyamari Mogaka t/a Ouru Hyper Stores v Charles Matundura Mogaka & Another*, that everyone has a right to appoint their advocates of choice.
14. The 1st to 6th interested parties should be allowed the right to choose their advocates in this matter, and the objections raised should be dismissed.
15. The 7th interested party submitted that the objections before the court have been addressed upon clarification by the office of the Attorney General, and it is on record for the 12 respondents.

Determination

16. Indeed, preliminary objections should be raised on pure points of law based on the pleadings before the court, as held in *Mukisa Biscuits Manufacturing Co. Ltd. v West End Distributors Ltd* [1969] EA 696. Additionally, parties can amend their pleadings before judgment is given.
17. More fundamentally, in employment and labour relations disputes, parties are allowed to amend pleadings before closing under the Employment and Labour Relations Court (Procedure) Rules. Even so, upon request or application on good cause, the court should permit any party to amend its pleadings where this meets the ends of justice.
18. The petition is still in its preliminary stages. Various documents have been exchanged between the petitioner, the 12 respondents, and 7 interested parties.
19. The firm of Muturi Gakuo & Kibara Advocates, having noted the error apparent on the record and before pleadings could close, filed the Amended Notice of Appointment of Advocate and the Further Notice of Appointment of Advocate.
20. The office of the Attorney General has equally filed the Notice of Appointment of Advocate and confirmed that it appears for the 1st, 2nd, 3rd, and 12 respondents.



- 21. With the amendments to the Notice of Appointment of the firm of Muturi Gakuo & Kibara Advocates, and that it represents the 4th, 6th, 7th, 8th, 10th, and 11th respondents and the 1st to 6th interested parties, that clarity to the pleadings settles the representation of the 12 respondents.
- 22. In representing the 1st to 6th interested parties in the petition, the petitioners describe them as Deputy Directors of the 1st respondent. The need to sue them separately from the 1st respondent requires them to attend and defend themselves from any matter(s) raised against them in these proceedings. Under Section 20 of the *Employment and Labour Relations Court Act*, the interested parties have a right to attend in person or through the advocate of their choice. The court cannot dictate this.
- 23. The petitioner also objected to the records filed by the respondents and interested parties originating from the 1st respondent. Therefore, these state officers should be represented by the Office of the Attorney General and must obtain authority to appoint external advocates. The memo and logo on the letter seeking to appoint the firm of Muturi Gakuo & Kibara Advocates are those of the 1st respondent, who the Attorney General should typically represent. However, as stated above, the petitioner has brought the interested parties to court. They can select an advocate to represent them in these proceedings.
- 24. However, the records must be updated with the Further Amended Notice of Appointment of Advocate by the Muturi Gakuo & Kibara Advocates firm to prevent confusion and ensure accurate representation. The records related to the 4th, 6th, 7th, 8th, 10th, and 11th respondents, as well as the 1st to 6th interested parties, whether already filed or to be filed in future, shall be kept in a single, bound folder marked for these respondents and interested parties. Furthermore, the 4th, 6th, 7th, 8th, 10th, and 11th respondents and the 1st to 6th interested parties are required to comply with Rule 24(1) of the Employment and Labour Relations Court (Procedure) Rules and submit their hard copy bundles of records to the court for the respective respondents and interested parties.
- 25. Accordingly, the objections dated 3 June 2025 are without merit and are hereby dismissed. Costs to abide by the outcome of the petition.

DELIVERED IN OPEN COURT AT MOMBASA, THIS 3 JULY 2025.

M. MBARŪ

JUDGE

In the presence of:

Court Assistant: Japhet

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