



REPUBLIC OF KENYA



**KENYA LAW**  
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**Muia v Eni Kenya Limited (Cause E099 of 2024)  
[2024] KEELRC 978 (KLR) (11 April 2024) (Ruling)**

Neutral citation: [2024] KEELRC 978 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E099 OF 2024**

**JK GAKERI, J  
APRIL 11, 2024**

**BETWEEN**

**ANN MUOTI MUIA ..... CLAIMANT**

**AND**

**ENI KENYA LIMITED ..... RESPONDENT**

**RULING**

1. Before the court for determination is the Respondent's Notice of Motion dated 29<sup>th</sup> February, 2024 filed under Certificate of Urgency seeking Orders That;
  1. Spent.
  2. The Honourable Court be pleased to strike out the Claimant's Notice of Motion Application dated 2<sup>nd</sup> February, 2024 and the Memorandum of Claim of even date.
  3. The Honourable Court be pleased to strike out the Respondent's name from the suit.
  4. Costs of this application be provided for.
2. The Notice of Motion is expressed under Sections 12(2) and (3) (viii) of the *Employment and Labour Relations Court Act, 2011* and Rule 17 of the *Employment and Labour Relations Court (Procedure) Rules, 2016* and is based on the grounds set out on its face and supported by the Affidavit of Njuguna Martin Githua sworn on 29<sup>th</sup> February, 2024.
3. The affiant deposes that he is the Senior Legal Counsel of the Respondent, a global energy company.
4. That when the Claimant served the claim and Notice of Motion dated 2<sup>nd</sup> February, 2024, the affiant observed that the pleadings were to be served upon Mr. Angelo Mongioj identified as the Managing Director of the Respondent which is not the case.



5. The affiant deposes that Mr. Angelo confirmed that he knew the Claimant who was his Domestic House Manager from October 2023 to 22<sup>nd</sup> January, 2024.
6. That early this year, Mr. Angelo proposed to the Claimant to increase her working hours with a commensurate pay rise but the Claimant declined and her services were terminated and swore an affidavit to that effect.
7. The affiant deposes that the Claimant and the Respondent/Applicant have no employer/employee relationship.
8. That the court's jurisdiction cannot therefore be invoked as the Claimant has sued the wrong party and the claim and the Notice of Motion are void and should be struck out.
9. To buttress its case, the Respondent/Applicant attached an affidavit sworn by Mr. Angelo Mongioj on 29<sup>th</sup> February, 2024 who deposes that he is an Italian Citizen, Passport No. YC3032263, an employee of the Respondent.
10. Mr. Angelo deposes that the Claimant was his employee as a Domestic House Manager from 1<sup>st</sup> October, 2023 to 22<sup>nd</sup> January, 2024.
11. That he terminated the Claimant's employment as they could not agree on the terms of employment.
12. Mr. Angelo admits that the Claimant was not an employee of the Respondent.
13. That attempts to resolve the matter have fallen through.
14. On 13<sup>th</sup> March, 2024, Miss Wameyo who was holding brief for Mr. Deya informed the court that before the court, there were two applications by the Claimant and the Respondent dated 2<sup>nd</sup> February, 2024 and 29<sup>th</sup> February, 2024 respectively and hearing notice had been served.
15. The Claimant was absent. Counsel for the Respondent/Applicant suggested that as the matter was straight forward, there was no need for written submissions and the court was agreeable and set a ruling date with directions that counsel serves the ruling notice on the Claimant.
16. The principles governing the striking out of the name(s) of a party in a suit are well settled.
17. Under Order 1 Rule 3 of the [\*Civil Procedure Rules, 2010\*](#), persons against whom any right to relief is alleged to exist under Order 1 Rule 10(2);  

“The court may at any stage of the proceedings, either upon or without the application of either party, and on such term as may appear to the court to be just, order that the name of any party improperly joined whether as plaintiff or defendant be struck out and the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the court may be necessary in order to enable the court effectively and completely to adjudicate upon and settle all questions involved in the suit be added.”
18. This provision is explicit that the court may suo motu or on application strike out or add a person's name to a suit and the court's power is discretionary.



19. In *DT Dobie and Company (K) Ltd V Joseph Mbaria Muchina & another* (1982) KLR 1, Madan J. (as he then was) stated as follows;

“The power to strike out should be exercised only after the court has considered all the facts, but it must not embark on the merits of the case itself as this is solely reserved for the trial judge.

On an application to strike out pleadings, no opinion should be expressed as this would prejudice fair trial and would restrict the freedom of the trial.”
20. The court underscored the obligation of the court to exercise caution and act carefully as it must consider all facts without trying the case.
21. In the instant Notice of Motion, the Respondent/Applicant seeks the striking out of the Claimant’s Notice of Motion, the Memorandum of Claim and the Respondent’s name from the suit on the premise that the Claimant has sued the wrong party and was thus seeking reliefs against a person other than the employer.
22. From the pleadings filed by the Claimant, it is clear that the same were directed to one Mr. Angelo Mongioj of P.O. Box 2913-00621 Nairobi, Cell phone No. 0769179326, as opposed to the Respondent/Applicant company.
23. To buttress its case, the Respondent/Applicant has annexed a Certificate of Compliance dated 15<sup>th</sup> February, 2013 confirming that the Respondent company is incorporated in Netherlands and had complied with the provisions of Section 366 of the *Companies Act*, 2015.
24. The Respondent/Applicant denies having employed the Claimant.
25. It requires no emphasis that a company is a legal or juristic person, distinct and separate from its members and directors with distinct rights and obligations as held in the celebrated decision of the House of Lords in Salomon V Salomon & Co. Ltd (1897) A.C 78 that;

“. . . The company is at law a different person altogether from the subscribers to the memorandum . . .”
26. Equally, the Respondent/Applicant annexed the affidavit of one Mr. Angelo Mongioj who admits to have been the Claimant’s employer effective 1<sup>st</sup> October, 2023 to 22<sup>nd</sup> January, 2024, evidence the Claimant has not controverted or responded to.
27. From the foregoing, it is the finding of the court that the Respondent/Applicant was not the intended Respondent in this case and was improperly named by the Claimant.
28. Consequently, the Respondent/Applicant company’s name is struck out of the instant case.
29. As regards the Claimant’s Notice of Motion dated 2<sup>nd</sup> February, 2024, the Claimant sought reinstatement against the Respondent/Applicant Company.
30. The court considered the application on 15<sup>th</sup> February, 2024 and directed that it be served and placed before it on 14<sup>th</sup> March, 2024 for inter partes hearing on which day the Claimant/Applicant was absent and hearing of the two applications was adjourned to 13<sup>th</sup> March, 2024 but again the Claimant/Applicant did not attend the hearing.
31. The court gave a ruling date and directed counsel for the applicant to serve the ruling notice.



32. From the foregoing, it is clear that the Claimant appear to have lost interest in prosecuting the Notice of Motion dated 2<sup>nd</sup> February, 2024 and it is accordingly dismissed for non-attendance.
33. Finally, as regards the Memorandum of Claim on record, contrary to the Respondent's counsel's submission that it be struck out, the court is not persuaded that that is the most efficacious method to address the matter.
34. As the Claimant believes that she has a justiciable claim against the party that allegedly wronged her, it is only fair that she be accorded time to take the next step to take the matter to the next stage for purposes of its expeditious disposal.
35. In the upshot, the Respondent/Applicant's Notice of Motion dated 29<sup>th</sup> February, 2024 is merited and is substantially successful to the extent that the Respondent/Applicant's name is struck out of the instant suit and the Claimant's Notice of Motion dated 2<sup>nd</sup> February, 2024 is dismissed for non-attendance with no orders as to costs.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI ON THIS 11<sup>TH</sup> DAY OF APRIL 2024**

**DR. JACOB GAKERI**

**JUDGE**

**ORDER**

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15<sup>th</sup> March 2020 and subsequent directions of 21<sup>st</sup> April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the *Civil Procedure Rules*, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court has been guided by Article 159(2)(d) of the *Constitution* which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of the *Constitution* and the provisions of Section 1B of the *Civil Procedure Act* (Chapter 21 of the Laws of Kenya) which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

