



**Mbuthia & 45 others v Kenya National Farmers Federation [Sued Through
Its Chairman, Nduati Kariuki, Secretary Professor Kaburu M’ribiru and Its
Treasurer Grace Ngambi]; Kenfap Services Limited & another (Interested Parties)
(Cause 1593 of 2018) [2024] KEELRC 1437 (KLR) (14 June 2024) (Judgment)**

Neutral citation: [2024] KEELRC 1437 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 1593 OF 2018**

J RIKA, J

JUNE 14, 2024

BETWEEN

CHARLES MBUTHIA 1ST CLAIMANT
DANIEL MWAURA 2ND CLAIMANT
MERCY NYAMBURA 3RD CLAIMANT
NANCY NYAWIRA WANG’OMBE 4TH CLAIMANT
DAVID KIHARA WANJOHI 5TH CLAIMANT
LUCY NYAMBURA MWANGI 6TH CLAIMANT
ROSALINA NDUTA 7TH CLAIMANT
SOPHIE WENA EPHELY 8TH CLAIMANT
AMBROSE MALUNGU 9TH CLAIMANT
PENINAH MUTUA 10TH CLAIMANT
KEVIN YONGO 11TH CLAIMANT
ANTONY KAZUNGU KATANA 12TH CLAIMANT
ROSE KAMATHI 13TH CLAIMANT
FATUMA NYANJONG 14TH CLAIMANT
VIOLET NYANDO 15TH CLAIMANT
IRENE GICUKU MUGO 16TH CLAIMANT
DAMARIS CHEPKEMOI 17TH CLAIMANT
ANDREW KASERA 18TH CLAIMANT



WINFRED ITHEWA	19 TH CLAIMANT
ISAAC SAITOTI KAARE	20 TH CLAIMANT
MONICAH RAPANDO	21 ST CLAIMANT
PAUL MASINI OKOTH	22 ND CLAIMANT
STEPHEN MZEE TUMBO	23 RD CLAIMANT
DENNIS MUTHII	24 TH CLAIMANT
EDDY NYANDWA	25 TH CLAIMANT
LUCY RUGURU	26 TH CLAIMANT
ALICE NJERI	27 TH CLAIMANT
MERCY GATONYE	28 TH CLAIMANT
PHILLIP KIPKOECH	29 TH CLAIMANT
DANIEL MORONGE	30 TH CLAIMANT
FAITH INNOCENT	31 ST CLAIMANT
GEORGE NYAMU	32 ND CLAIMANT
EMILY BOEN TOKOM	33 RD CLAIMANT
JANESTELLA OTUYA OKUMU	34 TH CLAIMANT
DORCAS MUSENGYA KIOKO	35 TH CLAIMANT
JOSEPH MLAMA OMAYA	36 TH CLAIMANT
DAPHINE MUCHAI	37 TH CLAIMANT
KELVIN KAHUGA MWANGI	38 TH CLAIMANT
MAUREEN ELEGWA	39 TH CLAIMANT
PETER GICHUNGE RINTAGU	40 TH CLAIMANT
RODA MBANDI KILONZI	41 ST CLAIMANT
JANET ANYANGO OMOLLO	42 ND CLAIMANT
MOSES KINUTHIA KARIUKI	43 RD CLAIMANT
PETER MWANGI GITIKA	44 TH CLAIMANT
MARY WANJIKU KARIGU	45 TH CLAIMANT
BERNARD MULANDI	46 TH CLAIMANT

AND

KENYA NATIONAL FARMERS FEDERATION [SUED THROUGH ITS
CHAIRMAN, NDUATI KARIUKI, SECRETARY PROFESSOR KABURU
M'RIBIRU AND ITS TREASURER GRACE NGAMBI] RESPONDENT

AND



KENFAP SERVICES LIMITED INTERESTED PARTY
KILIMO TALII MERU SOUTH LIMITED INTERESTED PARTY

JUDGMENT

1. The 46 Claimants filed their Statement of Claim, on 7th December 2018.
2. They donated authority to prosecute the Claim, to Charles Mbuthia [1st Claimant], Mercy Nyambura [3rd Claimant] and David Kihara Wanjohi [5th Claimant].
3. They have identified the issues in dispute to be: -
 - a. Unpaid salary arrears.
 - b. Unpaid terminal dues to some of the Claimants, after constructive dismissal.
 - c. Unpaid terminal dues after unfair termination to other Claimants.
4. They describe the Respondent as an umbrella organization of all farmers in Kenya.
5. The Interested Parties are described as special purpose vehicles for the Respondent, holding the Respondent's investment capital.
6. The Respondent was founded in 1946, and has changed its name and business structures over time. It incorporated the 1st Interested Party in the year 2005. The 1st Interested Party is intended to generate revenue for the Respondent. The Respondent transferred its assets to the 1st Interested Party, including LR. Dagoretti/Thogoto/ 573, where Kilimo Grand Resort Hotel, stands.
7. The 2nd Interested Party was incorporated by the Respondent around the same time in 2005. It is a subsidiary of the 1st Interested Party. Its purpose is to run Community-based Agro-Tourism Program in Meru County. The Respondent similarly transferred some of its assets to the 2nd Interested Party, including LR. Mwimbi/Murugi/ 3030.
8. At all material times, the Claimants were employed by the Respondent in various positions, including: commodity organizations' and back stoppers; resource mobilization coordinators; regional coordinators; personal assistants; accountant; managers; drivers; voice artists and media presenters; camera operators; and editors.
9. They aver that between October 2015 and September 2018 [36] months, the Respondent failed to pay their monthly salaries. They were enrolled to N.S.S.F, but the Respondent did not remit their contributions. In light of non-payment of salaries for 36 months, the Claimants considered the Respondent to have terminated their contracts constructively, unfairly and unlawfully.
10. They are seeking salary arrears for 36 months; 12 months' salary for unfair and unlawful termination; and service pay at the rate of 15 days' salary for each complete year of service.
11. The salary arrears are computed at a total of Kshs. 70,361,215; compensation equivalent of 12 months' salary computed at Kshs. 36,837,420; and service pay at Kshs. 13,807,654.
12. The total amount claimed, as shown at page 4 of the Claimants' closing submissions, is Kshs. 134,683,007.
13. They pray for costs and interest.



14. They pray that they are allowed to execute decree against the Interested Parties.
15. The Respondent filed a Statement of Response, on 17th December 2019. It denies that the Claimants' contracts were terminated unfairly and unlawfully. No one was constructively dismissed.
16. None of the Claimants had a valid contract with the Respondent, during the period in question. The Respondent had fixed-term contracts with the Claimants, which expired in the year 2015. None was renewed.
17. Other Claimants voluntarily resigned. Their letters of resignation are exhibited.
18. The documents relating to the Interested Parties' properties exhibited by the Claimants were illegally obtained. The Claimants were facilitated by the 4th Claimant Nancy Wang'ombe to obtain the documents illegally from the land registry, where she worked before her contract expired.
19. Most of the Claimants listed as Parties, are not actual Parties, and are not aware of the proceedings before the Court. Their names have been used by a few unscrupulous former Employees of the Respondent, for ulterior motives. Some of the signatures on the authority to act, are made by the same person.
20. Some of the Claimants were employed on specific projects, based on their expertise, and were fully compensated under the respective projects. Others like George Nyamu and Bernard Mulandi were employed by another Organization, against whom they filed separate court proceedings, in Cause Number 372 of 2017.
21. The Respondent states that it has been experiencing financial difficulties over the past 5 years, but honoured all its contractual obligations to its Employees.
22. The Claimants cannot found a cause of action on contracts that expired. The Claim is unfounded. The Respondent urges the Court to dismiss the Claim with costs.
23. The 1st Claimant gave evidence for the Claimants, on 15th February 2023, closing the Claimants' case. The Respondent's CEO Daniel Mwenda, gave evidence 29th November 2023, closing the hearing. The Claim was last mentioned on 1st March 2024, when the Parties confirmed filing and exchange of their closing submissions.
24. Mbuthia adopted the contents of the Statement of Claim, his witness statement, and documents filed by the Claimants [1-51], in his evidence-in-chief.
25. He told the Court that he has full authority of his colleagues to give evidence on their behalf. The Claimants could not continue working, when the Respondent failed to pay their salaries. They had no transport to work. They were frustrated. It is not true that their contracts expired. There were circulars issued by the Respondent to the Claimants, redeploying some of them, while others remained at their respective stations.
26. The Employees were recalled on 1st July 2016, but were not paid their salaries. The 4th Claimant resigned in 2018. Her letter was received and stamped by the Respondent in 2018. The 5th Claimant applied for annual leave on 19th April 2016. Leave was granted. The Claimants were in active employment.
27. Mbuthia explained that the Interested Parties were created by the Respondent as special purpose vehicles. At page 165 of the Claimants' documents is a sale agreement showing a transaction entered into by the 1st Interested Party for the Respondent. The Interested Parties were created as sustainability vehicles.



28. Cross-examined, Mbutia told the Court that some of the signatures on the authority filed in Court, did not belong to the named persons. He initialized their names. They gave their authority to him on the phone, and he wrote their initials against their names. Mbutia was aware that it was the position of the Respondent, that some of the persons named as Claimants, were not aware about the proceedings.
29. He told the Court that some of the Claimants had been influenced by the Respondent, to disown the Claim.
30. He executed contracts periodically, each year. After 2015, he did not execute any contract. He worked beyond December 2015. He was redeployed in January 2016. The redeployment circular issued in 2015, before his contract lapsed. The redeployment letter referred to rationalization proposal, and that continuing Employees needed to reapply for their jobs. The Claimant applied but did not have his job application in Court. He resigned in 2018. Resignation letter did not mention salary arrears.
31. Circular No. 12 referred to a clearance process. It states that all the contracts, would lapse in December 2015, and interested Employees could apply for renewal. There was no application for renewal made by any of the Claimants. There is nothing exhibited by the Claimants, to show that they were actively working, after December 2015.
32. Mbutia was able to survive for 36 months without a salary because he had savings. He did not have a contract of employment with the Interested Parties.
33. Redirected, he told the Court that he initialized for some Claimants, because they could not travel to Nairobi. Some of the Claimants were coerced to withdraw the Claim by the Respondent. It was the practice of the Respondent to issue short time contracts over a long period of service. The Claimants considered themselves to be regular Employees of the Respondent.
34. The CEO Mwenda, relied on his witness statement, dated 13th December 2019. He denied on cross-examination, that his evidence was hearsay, having joined the Respondent in 2017. He was familiar with the personnel records.
35. It is true that some of the Claimants worked in excess of 10 years. The Respondent did not dispute the dates of commencement, given in their contracts. Those who applied for renewal would continue to work beyond the year 2015.
36. Redirected, the CEO told the Court that redeployment depended on renewal of contract. The Claimants did not apply, and there was no renewal, beyond December 2015.
37. The issues are whether the Claim is properly before the Court; whether if in the affirmative, the Claimants' contracts were terminated fairly and lawfully; and whether they are entitled to the prayers sought.

The Court Finds:-

38. Authority to prosecute the Claim: The Claimants filed undated copies of authority to act.
39. The authority states that "owing to our large numbers, we hereby instruct the following persons to swear affidavits, sign statements, testify in Court and undertake all the necessary actions, on our behalf, to facilitate resolution of the employment dispute between us and the Employer:
 1. Charles Mbutia Kamagu.
 2. Mercy Nyambura Mburu.
 3. David Wanjohi Kihara. "



40. The authority incorporates retainer agreement between the Claimants and the Law Firm of Ataka, Kimani & Okoth Advocates. The Advocates are instructed to pursue the Claim, and the Claimants undertake to pay the Advocates 15% of the total dues claimed.
41. The Court does not think that authority to act, should incorporate retainer agreements between the instructing Claimants and their Advocates. A letter of authority is a specific statutory document, required to be filed under Rule 9 of the Employment and Labour Relations Court [Procedure] Rules, 2016. The Rule does not allow the inclusion of retainer agreements. It has nothing to do with instructions fees between an Advocate and a Client. Merger of the retainer agreement with the authority filed by the Claimants, is irregular.
42. Rule 9 is titled ‘Suits by Several Persons.’ It is worded as follows: -
1. A suit may be instituted by one party on behalf of other parties, with a similar cause of action.
 2. Where a suit is instituted by one person, that person shall in addition to the statement of claim, file a letter of authority signed by all other parties
Provided that in appropriate circumstances, the Court may dispense with this requirement.
 3. A statement of claim shall be accompanied by a schedule of the names of the other claimants in the suit, their address, description and the details of wages due or the particulars of any other breaches and reliefs sought by each claimant.
43. Charles Mbuthia, the 1st Claimant herein, told the Court that Claimants listed as number 7 to 22 on the first letter of authority, did not sign the authority.
44. Mbuthia signed his own initials against their names, CMK.
45. This was repeated in the second letter of authority, from number 2 to 6 on the list. Instead of the persons signing to indicate their authorisation of Mbuthia to act on their behalf, Mbuthia himself initialized CMK.
46. Rule 9[2] this Court’s Procedure Rules, is specific that a letter of authority, shall be signed by all other persons on whose behalf the Claim is brought.
47. The letter of authority grants the appointed Claimant authority to take action on behalf of the others. Authority is manifested by the signatures of the other Claimants, on whose behalf the action is brought, on the letter of authority. Without signature, there is no evidence of authority to act, and the action taken by the Claimant purporting to have authority, is void.
48. Mbuthia appears to have been quite cavalier in explaining to the Court, the appending of his initials GMK, against the names of no less than 20 of the persons named as Claimants in this Claim.
49. He agreed that his initials did not constitute signatures of any Claimant. He made the initials with the consent of his colleagues. He talked to them on phone. They could not sign because they were not able to travel to Nairobi.
50. In his closing submissions, the 1st Claimant repeats the assertion that he signed his initials GMK, on behalf of other Claimants, because they could not travel to Nairobi. He submits puzzlingly, that the Respondent and the Interested Parties ought to have filed affidavits, showing that the other Claimants, did not authorize the 1st Claimant. The 1st Claimant presented the Claim, and it was his responsibility to establish on whose authority, he did so.



51. He conceded that some of the Claimants, may have disowned the Claim, attributing their changing position to coercion by the Respondent. He told the Court on redirection that some of the Claimants were called to Nairobi by the Respondent, and coerced into signing affidavits withdrawing the Claim.
52. The Court does not think that any Claimant was coerced by the Respondent to disown the Claim; such Claimants had not given authority to the 1st Claimant to act for them from the inception, and were well-advised to disown the Claim.
53. There was no justification for the 1st Claimant to grant himself authority to act, in the name of other persons, who were not even aware that proceedings had been initiated in Court. Presentation of a Claim where a huge amount of money is sought, without clear authority of the persons on whose behalf the Claim is alleged to be presented, is the worst form of abuse of the process of the Court.
54. The authority to act can also be faulted on other counts highlighted by the Respondent in its closing submissions. Details of the Claimants on whose behalf the Claim is presented, were not disclosed in full. It was not explained why the Claimants, who could not travel to Nairobi for whatever reason, could not sign the authority from their location, and courier the signed copy to Mbuthia.
55. The Court agrees with the submission of the Respondent that its Rule 9[2] is equivalent of Order 1 Rule 12 of the Civil Procedure Rules, and endorse the decisions cited by the Respondent in *Ndung'u Mugoya & 473 Others v. Stephen Wang'ombe & 9 Others* [2005] e-KLR and *Nakuru H.C.C.C No. 152 of 2003, John Kariuki & 347 Others v. John Mungai Njoroge & 8 Others*.
56. The holding in these decisions, was that authority must be signed by the donor and must be filed in Court, where the Claim is presented. The mischief sought to be addressed by the rule is to prevent innocent persons from being bound by decisions of the Court, without knowledge of proceedings initiated before the Court. A party cannot be called upon to meet obligations, or enjoy the benefits of a litigation, he is not privy to. Authority guards against fictitious claims.
57. The Claim was brought in violation of Rule 9[2] of the E&LRC [Procedure] Rules, 2016, and is not sustainable.
58. Remedies: In light of the conclusion made above, it is not useful to look into the substantive issues concerning the Claimants' contracts; whether they were unfairly and unlawfully terminated; and whether the Respondent owes them a total amount of Kshs. 134,683,007.
59. The last issue is about the costs. There is no doubt in the mind of the Court that the Respondent and the Interested Parties, merit an order for payment of costs.
60. Should costs be paid by all the Claimants, a sizeable number of whom did not authorize the 1st Claimant to present the Claim? Should a Claimant with no knowledge of the Claim, be confronted with a Bill of Costs?
61. In E&LRC Cause No. E497 of 2020, *Charles Kimani Waweru & 226 Others v. The Kenya Kazi Services Limited*, the Court found that the Claim had been presented by one of the Claimants, Charles Kimani Waweru, on the strength of a disputed authority to act. It was found that inclusion of some Claimants to the dispute was illegal, their authority having not been obtained or ascertainable. The Court ordered the lead Claimant, who filed and prosecuted the Claim without clear authority, to meet the costs of the Claim.
62. The 1st Claimant herein, swore the verifying affidavit, filed witness statement and gave evidence alone. Although 2 other Claimants, Mercy Nyambura Mburu and David Wanjohi Kihara were named alongside the 1st Claimant, as the persons authorized to act, they are not shown to have done



anything in the proceedings, in exercise of the disputed authority to act. The 1st Claimant assumed full responsibility in filing and prosecution of the Claim, and shall therefore, pay costs to the Respondent and the Interested Parties.

IT IS ORDERED: -

- a. The Claim is declined.
- b. Costs to the Respondent and the Interested Parties, to be paid by the 1st Claimant, Charles Mbutia.

DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY AT NAIROBI, UNDER PRACTICE DIRECTION 6[2] OF THE ELECTRONIC CASE MANAGEMENT PRACTICE DIRECTIONS, 2020, THIS 14TH DAY OF JUNE 2024.

JAMES RIKA

JUDGE

