



**Kenya Union of Commercial Food and Allied Workers v Dadu Hardware Limited;
Rabiud Services Kenya Limited (Applicant) (Employment and Labour Relations
Cause E006 of 2023) [2024] KEELRC 2597 (KLR) (24 October 2024) (Ruling)**

Neutral citation: [2024] KEELRC 2597 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT ELDORET
EMPLOYMENT AND LABOUR RELATIONS CAUSE E006 OF 2023
MA ONYANGO, J
OCTOBER 24, 2024**

BETWEEN

**KENYA UNION OF COMMERCIAL FOOD AND ALLIED
WORKERS CLAIMANT**

AND

DADU HARDWARE LIMITED RESPONDENT

AND

RABIUD SERVICES KENYA LIMITED APPLICANT

RULING

1. The application before me for determination is dated 18th March 2024 and seeks an order that the Applicant be granted leave to be enjoined in this cause, tender evidence and participate in the proceedings herein.
2. The application is made on the basis that the Applicant has a legal stake and interest in this matter thus it is necessary for it to be enjoined. The Applicant states sufficient cause exists to warrant granting the orders sought.
3. The application is supported by the affidavit of one Abiud Wanyonyi Barasa, the applicant’s director. He states that this court delivered a ruling on 24th November 2023 in which it directed as follows:
 - a. The Respondent be and is hereby restrained from forcing its employees into signing contracts of employment with an outsourcing firm known as Rabiud Services (Kenya) Limited or any other outsourced labour offering firm pending hearing and determination of the claim herein
 - b. The Respondent be and is hereby restrained from victimizing, intimidating, coercing, harassing, disciplining or terminating the services of the Claimant members whose names



appear on the check off forms on account of their union membership pending the hearing and determination of the main suit

- c. The Respondent is directed to immediately commence deduction and remittance of union dues to the Claimant's members whose names appear on the check off forms'
 - d. The Respondent's application dated 23rd March 2023 is hereby dismissed
 - e. Costs shall be in the cause.
4. The Applicant's Director states that vide the agency agreement between itself and the Respondent, they entered into an agreement for the Applicant to hire and recruit human resource to work for the Respondent at the Respondent's premises. That it was a term of that agency agreement that the Applicant is the direct supervisor of the recruited human resource. The Applicant avers that based on the above terms of the agency agreement, the orders of 24th November 2023 affects it.
 5. It is further averred that there is likelihood that future orders and outcome of this cause will directly affect the Applicant hereto thereby condemning the Applicant unheard and make the Applicant to suffer irreparable loss and damage.
 6. It is the Applicant's case that it is a necessary party to this cause and that the Rules of Natural justice, the right to a fair hearing under Article 50 of the Constitution demand that the it be heard before any adverse order is issued.
 7. Order 1 Rule 10 (2) of the Civil Procedure Rules provides that:-

“The court may at any stage of the proceedings, either upon or without the application of either party, and on such terms 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 that 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 effectually and completely to adjudicate upon and settle all questions involved in the suit, be added”.
 8. From the above provision, it is clear that the court can, upon satisfying itself that the person who is not a party to the suit but whose presence before the court may be necessary in order to enable or assist the court to effectually and completely determine all questions involved in a dispute, add such person as a party.
 9. The Applicant has exhibited to its supporting affidavit, an agency agreement dated 7th August 2019 between the Respondent herein and itself. From a perusal of that agency agreement, I note that the Respondent engaged the Applicant for purposes of sourcing, recruiting, staffing and supplying casual employees only. Paragraph 2 of the Agency Agreement reads:

That the agency shall supply staff who shall be engaged as a Casual basis only.
 10. The prayers in the application dated 21st February, 2023 and the subsequent ruling delivered on 24th November, 2023 prevented the Respondent from compelling or forcing its existing employees to sign labour contracts with outsourcing companies. This would in effect mean terminating the contracts they were serving and converting their services to casual terms of employment. The court however did not prohibit the Respondent from engaging any Casual employees through an outsourcing company. The order related only to employees who were already in employment and not new employees to be recruited by the outsourcing company.



11. The members of the Claimant who are subject to the court order are in my understanding not casual employees.
12. I therefore find that the Applicant is not a necessary party in these proceedings as it is only engaged by the Respondent to supply casual employees for the Respondent while the employees who are subject to the Claim herein are not casual employees.
13. For these reasons I find no merit in the application and dismiss it with costs.

DATED, SIGNED AND DELIVERED VIRTUALLY ON THIS 24TH DAY OF OCTOBER, 2024

MAUREEN ONYANGO

JUDGE

