



**Ahmed v Malik (Sued as Chairman of Sir Ali Muslim Club) & 3 others  
(Cause E063 of 2022) [2023] KEELRC 679 (KLR) (16 March 2023) (Ruling)**

Neutral citation: [2023] KEELRC 679 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E063 OF 2022  
L NDOLO, J  
MARCH 16, 2023**

**BETWEEN**

**REHMAN ALI AHMED ..... CLAIMANT**

**AND**

**SAHER MALIK (SUED AS CHAIRMAN OF SIR ALI MUSLIM CLUB) ..... 1<sup>ST</sup> RESPONDENT**

**NAUSHAD HAKADA (SUED AS TREASURER OF SIR ALI MUSLIM CLUB) ..... 2<sup>ND</sup> RESPONDENT**

**AYUB KHAN (SUED AS SECRETARY OF SIR ALI MUSLIM CLUB) ..... 3<sup>RD</sup> RESPONDENT**

**SIR ALI MUSLIM CLUB ..... 4<sup>TH</sup> RESPONDENT**

**RULING**

1. By a Statement of Claim dated 3<sup>rd</sup> February 2022, the Claimant sued the Respondents for constructive termination of employment.
2. In response to the Claimant's claim, the Respondents filed a Statement of Defence and Counterclaim as amended on 5<sup>th</sup> October 2022, to which the Claimant responded on 19<sup>th</sup> October 2022.
3. Thereafter, the Claimant filed a Notice of Preliminary Objection dated 24<sup>th</sup> October 2022, challenging the Respondent's Counterclaim on the following grounds:
  - a. The Counterclaim dated 6<sup>th</sup> October 2022 is defective and an affront to Rule 9(3) of the Employment and Labour Relations Court (Procedure) Rules, 2016;
  - b. The said Counterclaim is bad in law, misconceived and fatally defective, incompetent and unsustainable;



- c. The verifying affidavit dated 6<sup>th</sup> October 2022 contravenes Order 19 Rule 3(1) of the Civil Procedure Rules, 2010 and Rule 4(2) of the Employment and Labour Relations Court (Procedure) Rules, 2016;
  - d. Both Order 19 Rule 3(1) of the Civil Procedure Rules, 2010 and Rule 4(2) of the Employment and Labour Relations Court (Procedure) Rules, 2016 are couched in mandatory terms and must be complied with;
  - e. The lack of consent of the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents is fatal.
4. The Objection was urged by way of written submissions.
  5. The Claimant relies on Rules 4(2) and 9(3) of the Employment and Labour Relations Court (Procedure) Rules, 2016 as well as Order 19 Rule 3(1) of the Civil Procedure Rules, 2010. These provisions provide for the form and content of verifying affidavits.
  6. The substance of the Claimant's objection is that because there was no consent from the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents, then the Counterclaim is incurably defective and ought to be struck out.
  7. I do not agree. From the pleadings, it is evident that the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents were sued by the Claimant in their capacity as officers of the 4<sup>th</sup> Respondent. That being the case, their Statement of Defence and Counterclaim ought to be seen in this light. In my view therefore, it is sufficient for the verifying affidavit to be sworn by the 1<sup>st</sup> Respondent on his own behalf and on behalf of the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents.
  8. At any rate, even if the Court were to find that the consent of the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents were necessary, that would not be a valid ground for striking out the Counterclaim.
  9. In their submissions, the Respondents relied on the persuasive decision in *Eye Company (K) Limited v Erastus Rotich t/a Vision Express* [2021] eKLR where Ngetich J stated the following:
 

“...it was sufficient for the authorised person to depone that he or she was duly authorized, but in the event of a complaint that such person was unauthorized, it was up to the disputing party to demonstrate with evidence that the deponent did not have the requisite authority.”
  10. As it stands, the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents are joint parties in these proceedings and I find nothing to suggest that the 1<sup>st</sup> Respondent lacked the necessary capacity to depone a verifying affidavit on behalf of all the Respondents.
  11. Flowing from the foregoing, I find and hold that the Claimant's Preliminary Objection is not well taken and proceed to overrule it with costs in the cause.
  12. Orders accordingly.

**DELIVERED VIRTUALLY AT NAIROBI THIS 16<sup>TH</sup> DAY OF MARCH 2023**

**LINNET NDOLO**

**JUDGE**

Appearance:

Miss Athman h/b for Mr. Khan for the Claimant

Miss Ochieng h/b Mr. Mungu for the Respondents

