



Mutugi v Career Readiness Initiative Ltd (Employment and Labour Relations Cause 646 of 2019) [2023] KEELRC 877 (KLR) (6 April 2023) (Ruling)

Neutral citation: [2023] KEELRC 877 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS CAUSE 646 OF 2019**

AN MWAURE, J

APRIL 6, 2023

BETWEEN

PAULINE WANGUI MUTUGI CLAIMANT

AND

CAREER READINESS INITIATIVE LTD RESPONDENT

RULING

1. This ruling relates to the Notice of Motion application filed by the defendant/applicant under Section 1A, 1B, and 3A of the [Civil Procedure Act](#), Order 11 Rule 3, Order 51 Rule 1 of the [Civil Procedure Rules, 2010](#), and all the other enabling provisions of the law.
2. The application seeks the following;
 - a. This matter be consolidated and /or be heard together with ELRC 525 of 2021; Prisca Jepng'etich versus Generation Career Readiness Social Initiatives Limited
 - b. Consequent to issuance of prayer (a) hereinabove, ELRC E 646 of 2019 Pauline Mutugi versus Generation Career Readiness Social Initiative Limited be designated as the lead file
 - c. Such further and other reliefs as this honourable court may deem just and expedient to grant.
 - d. Costs of this application be provided for.
3. The application is based on grounds that the claimants in both cases were employees of the Respondent. Prisca Jepng'etich was sewing machine instructor and Pauline Mutugi was a programme regional lead and both claimants were jointly accused of engaging in fraudulent activities and abusing their positions by directing and facilitating employees under them to pay money to them to appreciate the SMO leadership.



4. In the replying affidavit the claimant/respondent says in opposition to the application that the claimant in ELRC 525 of 2021 started working with the Respondent in 2019 while the claimant in this case started working with them way back in 2017.
5. That the claimant in ELRC 525 of 2021 was a machine instructor while she was a programme regional lead and thus they had different job groups, the claimants in both cases earned different salaries, the prayers sought in both the claims are different and the anticipated awards are likely to be different as well. The claimants according to the Respondent/claimant were also dismissed for different reasons.
6. The suits are based on different reasons and filed at different times. The anticipated reliefs and attendant costs will be different from that of the other claimant. The advocates representing the parties are substantially different and it may cause a conflict in the diaries in respect to fixing of convenient hearing dates hence delay the expeditious hearing of the matters as both counsels have to synchronise their diaries conveniently at all material times.
7. They state that accordingly the suits the Respondent is seeking to consolidate do not share anything in common other than the claimants being its former employees and thus are not fit for consolidation.
8. The Respondent/applicant cited the case of *Law Society of Kenya versus the Centre for Human Rights and Democracy* Petition No 14 of 2013 that the essence of consolidation of suits is to facilitate the efficient and expeditious disposal of disputes and to provide a framework for fair and impartial dispensation of justice to parties.
9. The Respondent also relied on the case of *Transcend Media Group versus Standard Group Ltd* 2021 e KLR that the principles to be considered when determining whether matters ought to be consolidated are;
 - i. The suits should have common question of law and facts
 - ii. The reliefs sought in both cases in respect of or arise from the same transactions or series of transactions.
 - iii. Whether a party will be disadvantaged or prejudiced or whether consolidation will confer undue advantage on the other party
10. The Respondent/Applicant submits that both suits arise from the same questions of law and facts and even the reliefs being claimed by both parties are of a similar nature and arise from same questions of law and facts and even the reliefs being claimed by both parties are of similar nature and arise from same transactions.
11. The claimant in ELRCC E 646 of 2019 Pauline Mutugi versus Generation Career Readiness Social Initiative Limited was working as a Programme Regional Lead employed by the applicant. On the other hand, the claimant in ELRC 525 of 2021; Prisca Jepng'etich versus Generation Career Readiness Social Initiative Limited was a sewing machine instructor also employed by the applicant. It is notable that Pauline Mutugi was Manager and Prisca was a machine operator and yet the allegations that led to their termination arose from same allegations.
12. The claimant further argues that both suits recommended for consolidation have not been progressed to the hearing stage and as such consolidation will not occasion any of the plaintiff's any disadvantage. Both parties will still be heard and the consolidation of the two suits will not in anyway interfere with the parties right to fair hearing as envisaged under Article 50 of the *Constitution of Kenya*.
13. There was no other submissions in the file.



Determination

14. Rule 23 of the [Employment and Labour Relations Court \(Procedure Rules\), 2016](#) provides that the Court may consolidate suits if it appears that in any number of suits, some common question of fact and law arises or it is practical and appropriate to proceed with the issues raised in the suit simultaneously.
15. In [Korean United Church of Kenya & 3 Others vs Seng Ha Sang](#) (2014) eKLR the Court held that:

“consolidation of suits is done for purposes of achieving the overriding objective of the Civil Procedure Act, that is, for expeditious and proportionate disposal of civil disputes. The main purpose of consolidation of suits is to save costs, time and effort and to make the conduct of several actions more convenient by treating them as one action.”
16. In [Law Society of Kenya vs Center for Human Rights & Democracy & 12 Others](#) [2014] eKLR, the Supreme Court of Kenya held: -

“The essence of consolidation is to facilitate the efficient and expeditious disposal of disputes and to provide a framework for a fair and impartial dispensation of justice to the parties. Consolidation was never intended to confer any undue advantage upon the party that seeks it, nor was it intended to occasion any disadvantage towards the party who opposes it.”
17. In [Nyati Security Guards & Services Ltd vs Municipal Council of Mombasa](#) [2000] eKLR, the court held that:

“The situations in which consolidation can be ordered include where there are two or more suits for matters pending in the same court where: -

 - a. Some common questions of law or fact arises in both or all of them.
 - b. The rights or reliefs claimed in them are in respect of the same transactions;
 - c. For some other reasons, it is desirable to make an order for consolidating them.”
18. The court has looked at the termination letter dated the July 25, 2019 from the Respondent Company to the claimant in E 525 of 2021 relating to Priscah Jepngetch. The same issues arise from the same transaction of events given by the claimant in Cause No 646 of 2019 referring to Pauline Wangui and the key allegation from the employer being monies that were supposed to be raised for the Programme Manager to appreciate him. The witnesses are therefore likely to be the same. The issues of fact and law are broadly similar and different findings of fact and law from the court occasioned by the non-consolidation will not be in the interest of justice. This will also do away with any duplicity and facilitate the Court’s determination of the issues in dispute and definitely be a prudent way to use judicial time.
19. The court has not ignored the fact that the claimants raised the issues that would make it improper to consolidate the cases including the fact that the respective claimants were employed at different times and their jobs were different and they earned different salaries. The claimants have raised other differences but careful consideration the court is persuaded the similarities justify the consolidation of the suits differences notwithstanding. The provisions in section 23 of [Employment and Labour Relations Court](#) procedure rules are that the cases for consolidating should have common question of fact and law and secondly should be practical and appropriate to proceed with the issues raised in the suits simultaneously.



20. In the instant cases the court is convinced the similarities of facts are sufficient to justify the consolidation of cases ELRC 525 of 2023 Prisca Jepngetich Vs Generation Careers Readiness Social Initiative Limited with E646/2019 and case no E646 of 2019 Pauline Wangu Mutungi vs Career Readiness Social Initiative Ltd be the lead file.
21. The court will mention the case on 25/4/2023 to give further direction as pertains to the hearing of the main suit.

Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 6TH DAY OF APRIL, 2023.

ANNA NGIBUINI MWAURE

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 15th March 2020 and subsequent directions of 21st 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 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.

A signed copy will be availed to each party upon payment of Court fees.

ANNA NGIBUINI MWAURE

JUDGE

