



REPUBLIC OF KENYA



**Kimemia v Kidde – Fenwal INC & another (Cause 111 of 2018)  
[2023] KEELRC 3066 (KLR) (30 November 2023) (Ruling)**

Neutral citation: [2023] KEELRC 3066 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE 111 OF 2018  
J RIKA, J  
NOVEMBER 30, 2023**

**BETWEEN**

**DOMINIC MWANGI KIMEMIA ..... CLAIMANT**

**AND**

**KIDDE – FENWAL INC ..... 1<sup>ST</sup> RESPONDENT**

**UNITED TECHNOLOGIES CORPORATION CLIMATE CONTROL AND  
SECURITY ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. On 11<sup>th</sup> July 2023, the 2<sup>nd</sup> Respondent was struck out of the proceedings, on the ground that the other Parties could not agree if the 2<sup>nd</sup> Respondent was a corporate entity.
2. Although the record indicates that the Law Firm of Coulson Harney LLP, filed Memorandum of Appearance dated 21<sup>st</sup> February 2018 for both Respondents, Mr Deya from the said Law Firm, indicated on 11<sup>th</sup> July 2023, that his Law Firm was only representing the 1<sup>st</sup> Respondent.
3. The Claimant gave evidence and closed his case on 11<sup>th</sup> July 2023. The 1<sup>st</sup> Respondent's witness was said to reside in a different time-zone, and was scheduled to be heard on 16<sup>th</sup> November 2023 at 4.00 p.m. Kenyan time.
4. The Claimant subsequently filed an Application dated 31<sup>st</sup> July 2023, asking for reinstatement of the 2<sup>nd</sup> Respondent to the proceedings, and grant of leave to amend the name of the 2<sup>nd</sup> Respondent, to read United Technologies Limited.
5. The Application is founded on the Affidavit of the Claimant's Advocate, Muita Zachariah Kiplangat sworn on 31<sup>st</sup> July 2023.



6. Mr. Kiplangat explains that the Law Firm of Coulson Harney LLP, is on record for both Respondents. It has been acting for both. It was only on 11<sup>th</sup> July 2023, that the Advocates for the Respondents denied having instructions from the 2<sup>nd</sup> Respondent. The Claimant's contract of employment was executed between him, and an entity called United Technologies Corporation. This entity is the parent company to the 1<sup>st</sup> Respondent. The Statement of Response on record is filed by both Respondents, represented by the Law Firm of Coulson Harney LLP. Striking out of the 2<sup>nd</sup> Respondent, was as a result of misrepresentations made to the Court by the Respondents' Advocates.
7. Senior Human Resource Manager, Alan Nasuti, swore an Affidavit in reply, on 22<sup>nd</sup> September 2023. It is denied that the 2<sup>nd</sup> Respondent was struck out after the Respondents misrepresented the status of the 2<sup>nd</sup> Respondent to the Court. The Claimant was employed by the 1<sup>st</sup> Respondent as a Sales Manager. The 1<sup>st</sup> Respondent is an independent company. Previously, the 1<sup>st</sup> Respondent was a subsidiary of United Technologies Corporation in the "Climate Controls & Security" division. There was no entity known as "United Technologies Climate Control & Security." The 1<sup>st</sup> Respondent challenged joinder of the 2<sup>nd</sup> Respondent on this ground. The Court acted properly in striking out the party described as "United Technologies Climate Control & Security" from the proceedings. There is no merit to the Claimant's Application.

**The Court Finds: -**

8. The Memorandum of Appearance dated 21<sup>st</sup> February 2018, was filed by the Law Firm Coulson Harney LLP, representing the 2 Respondents.
9. The 2<sup>nd</sup> Respondent is named as "United Technologies Corporation [UTC] Climate Control & Security," in the Statement of Claim, as well as in the Memorandum of Appearance and the Statement of Response.
10. Based on the explanation given by Alan Nasuti in the Replying Affidavit, the 2<sup>nd</sup> Respondent's name is "United Technologies Corporation." Climate Controls & Security has been clarified to be a division within the Corporation.
11. It is confirmed that the Law Firm of Coulson Harney LLP appears for both Respondents. It has been confirmed that the 2<sup>nd</sup> Respondent is a corporate entity, the only mistake made by the Claimant, being in the inclusion of the division in which the 2<sup>nd</sup> Respondent operates, in the 2<sup>nd</sup> Respondent's name. The 1<sup>st</sup> Respondent states it is an independent entity which employed the Claimant. It however acknowledges that it was a subsidiary of United Technologies Corporation. The Claimant wishes to pursue remedy against both the subsidiary and the parent company, and for purposes of determining who was his Employer, under Section 2 of the Employment Act, the parent company is a necessary party.
12. The Application filed by the Claimant dated 31<sup>st</sup> July 2023 is well-founded in fact and law. The orders discharging the 2<sup>nd</sup> Respondent from the proceedings cannot be sustained. The 2<sup>nd</sup> Respondent is a necessary Party to the Claim.
13. There is no reason why amendment of the Statement of Claim, should not be granted.

**It Is Ordered: -**

- a. The 2<sup>nd</sup> Respondent is reinstated to the Claim, as a Co-Respondent.
- b. The 2<sup>nd</sup> Respondent's name is amended to read "United Technologies Corporation."
- c. Costs in the cause.



d. Hearing date for the Respondents' case to be allocated at the Registry.

**DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY AT NAIROBI,  
UNDER PRACTICE DIRECTION 6[2] OF THE ELECTRONIC CASE MANAGEMENT  
PRACTICE DIRECTIONS, 2020, THIS 30<sup>TH</sup> DAY OF NOVEMBER 2023.**

**JAMES RIKA**

**JUDGE**

