



**Bakery Confectionery Food Manufacturing & Allied Workers Union (K)  
v Sunveat Foods Limited; Temo Trading Services (Interested Party) (Cause  
375 of 2019) [2023] KEELRC 3250 (KLR) (7 December 2023) (Ruling)**

Neutral citation: [2023] KEELRC 3250 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE 375 OF 2019  
L NDOLO, J  
DECEMBER 7, 2023**

**BETWEEN**

**BAKERY CONFECTIONERY FOOD MANUFACTURING & ALLIED  
WORKERS UNION (K) ..... CLAIMANT**

**AND**

**SUNVEAT FOODS LIMITED ..... RESPONDENT**

**AND**

**TEMO TRADING SERVICES ..... INTERESTED PARTY**

**RULING**

1. By its Notice of Motion dated 12<sup>th</sup> October 2023, the Claimant seeks the following orders:
  - a. That Temo Trading Services be enjoined as an interested Party and/or Co-Respondent in this suit;
  - b. That the Claimant be allowed to amend its Statement of Claim to include Temo Trading Services as an interested Party or Co-Respondent in these proceedings;
  - c. That the cost of the application abides by the main cause.
2. The application is supported by an affidavit sworn by the Claimant’s General Secretary, Danchael Mwangure and is premised on the following grounds:
  - a. The Claimant lodged a suit against the Respondent seeking an order to compel the Respondent to remit trade union dues as well as an order compelling the Respondent to execute a Recognition Agreement;



- b. The Respondent thereafter filed a Statement of Defence dated 28<sup>th</sup> July 2020, by which it indicates that some of the employees recruited by the Claimant are outsourced by Temo Trading Services;
  - c. The said Temo Trading Services is adversely mentioned in the Claimant's amended Statement of Claim as having been contracted to outsource labour in respect of some of the Claimant's members after the said employees had been recruited by the Claimant;
  - d. Though in the Statement of Defence filed in court the Respondent contends that some employees are outsourced, no employment records have been attached to support that contention and as such it would be necessary for the said entity to be joined either as an Interested Party or as a Co-Respondent in these proceedings;
  - e. The Claimant contends that it would be impossible to initiate discovery and seek production of employment records in respect of the employees who are said to have been outsourced by Temo Trading Services without the said entity being admitted as a party in these proceedings;
  - f. The Claimant further contends that the mere fact that an employee is outsourced does not deprive them of their rights envisaged in the Constitution, including the right to join and participate in the activities of a trade union as prescribed under the provisions of Article 41(2) (c) of the Constitution;
  - g. The joinder of Temo Trading Services as a party in these proceedings will allow the Court to wholly appreciate the facts and the dispute before it and effectively and efficiently adjudicate on all the issues;
  - h. The joinder of the said entity will not occasion any prejudice to the Respondent as it is the Respondent that has introduced the said party, hence making it a necessary party in the proceedings to allow the Court to efficiently and effectively determine the issues before it as raised by the Respondent in its Statement of Defence;
  - i. The Intended Interested Party has an identifiable stake in these proceedings in as much as the welfare of the employees recruited by the Claimant is concerned;
  - j. It would be appropriate and in the interest of justice that all matters touching on and concerning the subject matter of the case in hand be determined finally and completely to avoid litigating over the same matters again;
  - k. No prejudice will be suffered by the Intended Interested Party should the Court allow the application for joinder.
3. The Intended Interested Party opposes the application by a replying affidavit sworn by Ezekiel Adagi, on 14<sup>th</sup> November 2023.
  4. Adagi who describes himself as the proprietor of Temo Trading Services, depones that he executed a Labour Outsourcing Agreement with the Respondent, dated 28<sup>th</sup> May 2013. He adds that he duly delivered by providing the Respondent with outsourced labour services as per the terms of the Agreement.
  5. Adagi further depones that he and the Respondent signed a Variation Agreement on 1<sup>st</sup> February 2017, varying clauses 1 and 2 of the Labour Outsourcing Agreement dated 28<sup>th</sup> May 2013. He states that the variation touched on his obligations as an Outsourcing Agent and the Respondent as the Client.



6. According to Adagi, the Respondent terminated the Labour Outsourcing Agreement without notice, thus removing Temo Trading Services from its obligations. He states that the termination took effect in the year 2022 and since then, the Intended Interested Party had not outsourced any labour services to the Respondent.
7. Adagi concludes that Temo Trading Services does not have any employees outsourced to the Respondent and is thus of no help to the Claimant's claim against the Respondent.
8. Order 1 Rule 15(1) of the Civil Procedure Rules which provides as follows:
  - (1) Where a defendant claims as against any other person not already a party to the suit (hereinafter called the third party)—
    - (a) that he is entitled to contribution or indemnity; or
    - (b) that he is entitled to any relief or remedy relating to or connected with the original subject-matter of the suit and substantially the same as some relief or remedy claimed by the plaintiff; or
    - (c) that any question or issue relating to or connected with the said subject-matter is substantially the same question or issue arising between the plaintiff and the defendant and should properly be determined not only as between the plaintiff and the defendant but as between the plaintiff and defendant and the third party or between any or either of them, he shall apply to the Court within fourteen days after the close of pleadings for leave of the Court to issue a notice (hereinafter called a third party notice) to that effect, and such leave shall be applied for by summons in chambers ex parte supported by affidavit.
9. In the present case, the Claimant who is the applicant for joinder of the Intended Interested Party points to an averment in the Respondent's Statement of Defence as amended on 2<sup>nd</sup> December 2020, that some of the employees recruited by the Claimant had been outsourced from the Intended Interested Party.
10. As held in *Interactive Advertising Limited & Another v Equity Bank Limited & 2 others* [2016] eKLR joinder of a third party will apply where the subject between the third party and the respondent aligns with the original cause of action.
11. In opposing the application, the Intended Interested Party states that there is no subsisting contract between itself and the Respondent since the Outsourcing Agreement has been terminated.
12. However, as held by the Court of Appeal in its decision in *Gachago v. Attorney General* [1981] KLR 232 third party proceedings are not dependent on the existence of a contract binding on the Intended Third Party.
13. Determination of the issues in dispute in this case will be informed by the number of employees recruited by the Claimant. The question as to whether some of the employees working for the Respondent were outsourced from the Intended Interested Party is therefore central to the determination of the dispute.



14. Being the custodian of the records of the outsourced employees, the Intended Interested Party is a necessary party in these proceedings. I therefore issue an order for joinder of the Intended Interested Party in these proceedings.
15. The Claimant is at liberty to amend its claim as appropriate within the next twenty-one (21) days upon which both the Respondent and Third Party will have 21 days to respond.
16. The costs of the application will be in the cause.
17. Orders accordingly.

**DELIVERED VIRTUALLY AT NAIROBI THIS 7TH DAY OF DECEMBER 2023**

**LINNET NDOLO**

**JUDGE**

**Appearance**

**Mr. Amalemba for the Claimant**

**Mr. Okeche for the Respondent**

**Mr. Ondego for the Intended Third Party**

