



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI**  
**CAUSE NO. 1322 OF 2016**

*(Before Hon. Justice Dr. Jacob Gakeri)*

**JOHN KIOKO MUKOSI..... 1<sup>ST</sup> CLAIMANT**  
**JOSEPH LUSAKA..... 2<sup>ND</sup> CLAIMANT**  
**JANE WANGARI..... 3<sup>RD</sup> CLAIMANT**  
**GEOFFREY SAFARI..... 4<sup>TH</sup> CLAIMANT**

**VERSUS**

**PRIMI PIATTI AND**

**ALEXANORE CHOCOLATIERS LIMITED..... RESPONDENT**

**RULING**

1. On 13<sup>th</sup> August 2021, the agreed hearing date, hearing was adjourned owing to technical challenges relating to internet connectivity. During the mention on 13<sup>th</sup> August 2021, Mr Kandere for Claimant confirmed that he was ready to proceed with one witness.
2. Mr. Mungai for the Respondent indicated that he was also ready to proceed and requested Counsel for the Claimant to confirm the number of witnesses. He stated that his instructions were that the four (4) Claimants had to prove their individual cases.
3. Mr. Kandere indicated that he had only one witness on account of the three (3) others having executed and filed written authority dated 1<sup>st</sup> July 2016 authorising Mr. John Kioko Mukosi to plead, act and appear on their behalf in any manner whatsoever in the proceedings including swearing of affidavits in future. The letter of authority was filed on 5<sup>th</sup> July 2016. Counsel contended that the objection by Counsel for the Respondent should have been raised earlier on during the pre-trial directions. Counsel for the Respondent told the Court that he challenged the legality of the purported authority letter that he had information that it was a forgery. He asserted that each Claimant should prove its case individually. Hearing was scheduled for 4<sup>th</sup> October 2021.
4. After Counsel for the Claimants had confirmed that he was ready to proceed with one witness, Counsel for the Respondent objected to one witness CW1 (1<sup>st</sup> Claimant) MR. JOHN KIOKO MUKOSi testifying for the other three (3) Claimants. He stated that the letter of authority being relied upon by the witness had no standing in law and insisted that each Claimant testifies.
5. Mr Kandere objected to the statement that the letter of authority on record had no standing in law and recalled that the Respondent's Counsel had made a similar comment on 13<sup>th</sup> August 2021 during the mention. He contended that the three Claimants had confirmed that they gave authority to the 1<sup>st</sup> Claimant. He further stated that Counsel for the Respondent had cited no authority in support of his statements. Counsel argued that the letter of authority is provided for by the Civil Procedure Rules 2010 and it *inter alia* saves judicial time. In addition each Claimant in this case had a witness statement on record and Counsel had the opportunity to cross examine the witness on the statements. Counsel for the Respondent argued that the Claimants did not have a common thread in their claims.
6. Fortunately, two of the three witnesses were present and Counsel for the Claimant's agreed that they testify to indulge the Respondent's Counsel. After the last of the two witnesses had testified, cross examined and re-examined, the Claimant's Counsel intimated that, that was the end of the Claimant's case.
7. Mr. Mungai for the Respondent protested that Counsel could not close the Claimant's case before confirming the status of the 3<sup>rd</sup> Claimant. He stated that he had information that the 3<sup>rd</sup> Claimant had withdrawn the claim and should therefore testify since it was her claim.

8. Mr. Kandere for the Claimants insisted on reliance on the written authority on record. Since the 3<sup>rd</sup> Claimant had signed it and any rate was outside the Court's jurisdiction, he sought guidance of the Court. Mr. Mungai stated that since the 3<sup>rd</sup> Claimant was in the United States of America, she could testify virtually during the next hearing as it is technologically possible. He repeated the statement that he had reliable information that the 3<sup>rd</sup> Claimant had withdrawn its claim.

9. Both Counsels stuck to their positions precipitating this ruling as follows –

10. I have carefully considered the respective submissions of Counsel on the letter of authority executed by the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Claimants on 1<sup>st</sup> July 2016 and filed on 5<sup>th</sup> July 2016 as well as the possibility of the 3<sup>rd</sup> Claimant testifying virtually from the United States during the next hearing. Counsel for the Respondent was categorical that the 3<sup>rd</sup> Claimant should testify in person since it was her claim. He alleges that he has reliable information that the 3<sup>rd</sup> Claimant had withdrawn the claim. Counsel provided no material in support of this allegation. Relatedly, Counsel discounted the letter of authority signed by the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Claimants authorising the 1<sup>st</sup> Claimant (CW1) to act on their behalf.

Counsel led no evidence to assail the letter of authority.

11. The Claimant's Counsel on the other hand insisted that the letter of authority on record suffices for the 3<sup>rd</sup> Claimant since the 2<sup>nd</sup> and 4<sup>th</sup> Claimants had testified in person. He argued that since the 3<sup>rd</sup> Claimant was outside the Country and owing to time differences, the letter of authority was sufficient. He reminded Counsel for the Respondent that he had already accommodated him by preparing and having the 2<sup>nd</sup> and 4<sup>th</sup> Claimants testify in person, the letter of authority notwithstanding.

12. In light of the foregoing, since Counsel for the Respondent has not provided any material before the Court to demonstrate that the 3<sup>rd</sup> Claimant had in fact withdrawn her claim and the letter of authority signed by the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Claimants was made in compliance with Order 1 Rule 13 of the Civil Procedure Rules 2010 (Amended 2020), Rule 9 of the Employment and Labour Relations Court (Procedure) Rules 2016 and remains on record, the Court will in the circumstances proceed on the basis of the evidence on record in consonance with Rule 21 of the Employment and Labour Relations Court (Procedure) Rules, 2016.

13. See **Ndung'u Mugoya and 473 others v Stephen Wangombe & 9 others [2005] eKLR** and **John Kariuki & 347 others v John Mungai Njoroge & 8 others, Nakuru HCCC No. 152 of 2003** (unreported) on the importance of a signed letter of authority in proceedings.

**DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 4<sup>TH</sup> DAY OF OCTOBER 2021**

**DR. JACOB GAKERI**

**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 15<sup>th</sup> March 2020 and subsequent directions of 21<sup>st</sup> 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 Civil 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.

**DR. JACOB GAKERI**

**JUDGE**