

KENYA / JUDGMENT

Universal Traders Sacco Ltd v Kaunga [2025] KECOPT 550 (KLR)

[2025] KECOPT 550 (KLR)

COURT

Cooperative Tribunal

BEFORE

J Mwatsama, B Sawe, F Lotuiya, P. Gichuki, M
Chesikaw, PO Aol

CASE / FILE NUMBER

Tribunal Case 630 of 2019

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Universal Traders Sacco Ltd v Kaunga (Tribunal Case 630 of 2019) [2025] KECOPT 550 (KLR) (13
November 2025) (Ruling)

Neutral citation:

[2025] KECOPT 550 (KLR)

Republic of Kenya

In the Cooperative Tribunal

Tribunal Case 630 of 2019

Janet Mwatsama, Vice Chair, B Sawe, F Lotuiya, P. Gichuki, M Chesikaw & PO Aol, Members

November 13, 2025

Between

Universal Traders Sacco Ltd

Claimant

and

Jane Njue Kaunga

Respondent

Ruling

Introduction and background

1. Vide a Notice of Motion Application dated 3rd of October 2024 the Respondent/Applicant herein has approached the tribunal seeking for the following reliefs: -a. That Leave be granted to the applicant to amend the statement of Claim dated 4th September 2019 specially by Replacing the name Jane Njue Kaunga with the name Jane Njuhi Kaunga as the name 'Jane Njuhi Kaunga' belongs to the person well referred under the Statements of Accounts as attached to the pleadings of 4th September 2019. b. That the Amended Statement of Claim herein be deemed as duly filed and served upon payment of requisite fees. c. That the cost of this application be provided for.

2. The subject Application is premised and/or anchored on the various Grounds which are enumerated at the foot thereof and same is further supported by the Affidavit of one Dominic Mutunga, sworn on 3rd October 2024.

3. Upon being served with the present Application, the /Respondent herein responded by filing a Replying Affidavit; for clarity, the Claimant filed his Replying Affidavit dated 05/05/2025.

4. The Applicant submitted that the name Jane Njuhi Kaunga is well captured under the Claimant's pleadings more so the Statement of Accounts as attached to the List of Documents dated 4th September 2019.

5. The Applicant also submitted that Jane Njuhi Kaunga is a member of the Claimant/Applicant being member number No. 0xxxxxxxxx5 and Running account number Axxxxxxxx5.

6. It's also the Claimant/Applicant submission that on or about 31-10-2017 Jane Njuhi Kaunga was advanced a loan in tune of Kshs. 129,000,000/= notably she failed to service the same and her balance stood at Kshs. 117,629.26/= as May 2019.

7. It is also the Claimant evidence that at all times material to this suit the respondent was referred to as Jane Njuhi Kaunga while Many of the personnel within the claimant's offices would call her Jane Njue Kaunga owing to the fact that most use the 'kamba dialect replaying the sound "hi" with "e" from time to time.

8. The Claimant also submits that during drafting of the claim the name Jane Njue Kaunga was captured instead of Jane Njuhi Kaunga.

9. The claimant further stated that it was not the claimant's mistake but inadvertence on the part of its advocate on record which should not be visited on the claimant.

10. That no prejudice will be occasioned to the Respondent if the amendments sought are granted.

11.The Applicant/Claimant also submits that further the replying affidavit statement of 15th November 2019 by Jane Njuhi Kaunga confirms that indeed she holds the ID No. 1xxxxx2 as well reflect under their statement of accounts duly attached to their list of documents of 4th September 2019.

12.The Claimant/Applicant submits that it is in the interest of justice that the error be corrected and the statement be amended by deleting/removing the name Jane Njue Kaunga and adding/ highlighting the name Jane Njuhi Kaunga which refers to the worthy Respondent under the Claimant's claim supporting documents.

13.On the part of the Respondent, through the Replying Affidavit dated 5th May 2025, the respondent herein opposed the application and stated that the said application on amendment of the name remains materially incorrect.

14.That it will be prejudicial and also false, misleading and wholly unacceptable.

15.That the Respondent also stated that the term "alias jane 'Njue' Kaunga" on both the service address in the notice of motion, and the proposed amended statement of claim is deliberate. It is a strategic attempt to cure defects and thus justify a demand letter and other documents wrongly addressed and purported to have been served to her.

16.The Respondent also submits that the Claimant/Applicant first alleges the misnaming arose out of negligence on the part of its advocate and then shift the blame to the ignorance of the seven Kamba vowel pronunciations, which assertions the respondent rejects as plausible and professionally careless.

17.The Respondent also object to any amendment that continues to mischaracterize or misidentify her, and she respectfully urge is tribunal to reject the application in its current form unless and until the Claimant accurately sets out her proper name and address or the tribunal do hereby order to strike out paragraph 2 of the amended statement of claim, and the use of the name "alias Jane Njue Kaunga" for service, as a representation of her name.

18.The Respondent finally submitted that this Application should be disallowed and she reserve the right to respond to the substance of the claim in due course upon proper identification and service.

Analysis and Determination

19.Having reviewed the Application dated 3/10/2024, the Affidavit in support thereto, Replying Affidavit and all the pleadings on record.

20.The issue that is pertinent and germane for determination is whether the application has merit and Who bears cost of the said Application.

21.One of the issues of the Preliminary consideration before the commencement of an action, is the issue of who should be made parties to the action. In resolving this issue there is room for two possible errors. The 1st failure as to join as a party to the Action, a person who ought to have

been so joined either as a claimant or the defendant. This leads us to the mistake of non-joinders of parties. The 2nd is the wrongful joinder of a person to the action who ought not to have been joined. Here the error is that of misjoinder of party. The affected person might have been erroneously joined either as a claimant or defendant.

22.The mistake of non-joinder foresees a situation where a matter should be duly constituted by two or more claimant or defendant as the case maybe. Failure to join a party or erroneously joining a party is not fatal to a suit, the error in each being remediable in the manner provided for in the rules.

23.Under order 1 Rule 9 of the Civil Procedure Rules, 2010, a suit shall not be defeated by reason of misjoinder or non-joinder of parties. This means that an error in naming a party does not necessary render the entire suit defective, provided that the mistakes can be corrected without causing injustice to the other party.

24.Under order 1 rule 10 (2) and (4) allows the court to order substitution or correction of the Respondent's name if it is in the interest of justice.

25.Furthermore, the procedure on amendment of pleadings is regulated under order 8(1) , (2), (3), and (4) and also under order 51 of the civil procedure Rules 2010.

26.Been guided by constitution of Kenya 2010, under article 159(2d) which saysin exercising judicial authority, the courts and tribunals shall be guided by the principle: justice shall be administered without undue regard to procedural technicalities.

27.A party does not become a party until there is an order of joinder whether on application or Suo moto by the court. Therefore, in ordinary circumstances, admission to a judicial proceeding especially where you are not the primary party is an important aspect in adjudication of cases which follows after the principle that "presence of proper parties before the court is sine qua non exercise of jurisdiction by the court", and that principle will be defeated if parties were to enter existing proceeding without permission of the court or anyhow. Just to emphasize how important the leave of the court in joinder of parties is, as it is at that stage where the proper parties are discerned, see Apex International Limited & Anglo-Leasing and Finance International Limited v Kenya Anti-Corruption Commission [2012] eKLR which quoted the decision of the Supreme Court of Nigeria in the case of Goodwill and Trust Investment Ltd And Another v Will And Bush Ltd that:It is trite law that to be competent and have jurisdiction over a matter, proper parties must be identified before the action can succeed, the parties to it must be shown to be proper parties whom rights and obligations arising from the cause of action attach. The question of proper parties is a very important issue which would affect the jurisdiction of the suit in limine. When proper parties are not before the court the court lacks jurisdiction to hear the suit, and, "where the court purports to exercise jurisdiction which it does not have, the proceedings before it, and its judgment will amount to a nullity no matter how well reasoned."

28. Upon a thorough perusal of the Tribunal record, it is apparent that the list Documents and the statement of accounts Filed by the claimant shows the Name Jane Njuhi Kaunga and her National identity card number.

29. It is also clear that the error was made by the counsel of the claimant when initially drafting the pleadings. The amendment being done was just seeking leave to have the proper name of the Respondent. This tribunal have noted the same mistake on the name “Njue” instead of “Njuhi” and is of the opinion that there is no prejudice if the same is allowed.

30. This tribunal also notes that while the tribunal have the discretion to allow corrections of party names, this should be done where the identity of the party remains clear and no prejudice is caused to the other party.

31. The Tribunal also perused the List of Documents and the Statement of Accounts filed by claimant which clearly shows the name “Jane Njuhi Kaunga” and hence the respondent herein correct name.

32. Under Order 1 Rule 9 Civil Procedure Rule no dismissal for misjoinder or non-joinder, a lawsuit cannot be thrown out (defeated) simply because one or more people were incorrectly included or left out as parties.

Final Orders

33. i. That Leave be granted to the Applicant to amend the Statement of Claim dated 4th September 2019 specially by Replacing the name Jane Njue Kaunga with the name Jane Njuhi Kaunga as the name ‘Jane Njuhi Kaunga’ belongs to the person well referred under the statements of accounts as attached to the pleadings of 4th September 2019. ii. That the Amended Statement of Claim be deemed as duly filed and served subject to Payment of requisite fees 30 days from today. iii. That cost of this application be in cause. iv. Mention for Pre-trial directions on 4.3.2025

34. The upshot, the notice of motion dated 3rd October 2024 be and is hereby allowed with cost to the applicant.

RULING DATED AND DELIVERED VIRTUALLY AT NAIROBI THIS 13TH DAY OF NOVEMBER, 2025. HON. J. MWATSAMA - DEPUTY CHAIRPERSON - SIGNED - 13.11.2025 HON. BEATRICE SAWE - MEMBER - SIGNED - 13.11.2025 HON. FRIDAH LOTUIYA - MEMBER - SIGNED - 13.11.2025 HON. PHILIP GICHUKI - MEMBER - SIGNED - 13.11.2025 HON. MICHAEL CHESIKAW - MEMBER - SIGNED - 13.11.2025 HON. P. AOL - MEMBER - SIGNED - 13.11.2025 Tribunal Clerk - Mutai No appearance by parties. Ruling delivered in absence of parties. HON. J. MWATSAMA - DEPUTY CHAIRPERSON - SIGNED - 13.11.2025

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