



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**MISC. CIVIL APPLICATION NO. 85OF 2003**

**LYDIA NJERI KARANJA .....PLAINTIFF**

**V E R S U S**

**JANET NYOKABI NDUNGU .....DEFENDANT**

**R U L I N G**

When the application for leave to add two more names came for hearing, Mr. Ngaruiya for Respondent raised a preliminary point saying the persons named in the application are not the appellants and that there should be a miscellaneous application filed by the Applicant. Mr. Mwangi for the Applicant stated that the description in the affidavit is clear and if anything amendment can cure the same.

The rule as to raising of preliminary points of law is now trite following the decision of Sir Charles Newbold and Law J.A. in the case of MUKISA BISCUIT MANUFACTURING COMPANY LIMITED vs. **WESTEND DISTRIBUTORS COMPANY LIMITED 1969 EA 696** when he said that such points ought to be raised only on agreed facts or on facts not in dispute and or on a clear point of law. Such objection should raise points of substance and not just some objection on technicality or mere default of form, but where it is made the objection must be clear and state what point of law is to be decided.

In this objection, I have not seen the point raised or the law in it. A point of law must be based on some law, either because it has been established judicially or it is a statutory provision or a rule of law. No law is stated here to me and I cannot therefore say if any law has at all been transgressed.  
Application dismissed with costs.

**DATED at Nairobi this 23rd day of May 2003.**

**A. I. HAYANGA**

**JUDGE**

**Read to -**

**Mr. Mwangi for Applicant**

**Mr. Mundia for Respondent**

**A.I. HAYANGA**

**JUDGE**

