



Oniang'o & another v Call Centre International [Kenya] Limited (Civil Appeal E178 of 2025) [2025] KEHC 12863 (KLR) (Civ) (18 September 2025) (Judgment)

Neutral citation: [2025] KEHC 12863 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL

CIVIL APPEAL E178 OF 2025

AC MRIMA, J

SEPTEMBER 18, 2025

BETWEEN

MAURICE ONIANG'O 1ST APPELLANT

REST OF WORLD 2ND APPELLANT

AND

CALL CENTRE INTERNATIONAL [KENYA] LIMITED RESPONDENT

(Being an appeal from the Ruling and Order of Hon. Ruguru, N. (Senior Principal Magistrate) dated 24th January 2025 in Nairobi [Milimani] Chief Magistrates Commercial Court Civil Case No. E3438 of 2023)

JUDGMENT

1. The appeal subject of this judgment emanates from the ruling delivered on 24th January 2025 in Nairobi [Milimani] Chief Magistrates Commercial Court Civil Case No. E3438 of 2023 [hereinafter referred to as 'the suit'] where the Court dismissed the Appellants [then Defendants] Notice of Preliminary Objection dated 22nd November 2023 which challenged the jurisdiction of the Court on account of non-issuance of Summons to Enter Appearance and service thereof outside the country.
2. In a raft of 12 somehow repetitive grounds of appeal, the Appellants challenged the impugned ruling on the following three main grounds namely: -
 - (i) That despite directing that the Notice of Preliminary Objection will be heard together with the Appellants' application by way of a Notice of Motion dated 22nd November 2023 which had been filed alongside the objection, the trial Court only rendered itself on the objection.



- (ii) The effect of non-issuance of Summons to Enter Appearance, the service thereof outside Kenya and the entry of a conditional appearance by the Appellants.
 - (iii) The legal effect of not serving interim orders for 2 years.
3. The Appellants then prayed that the appeal be allowed, the impugned ruling be set-aside and in its place the Notice of Preliminary Objection and the Notice of Motion both dated 22nd November 2023 be allowed as prayed.
 4. By the directions of this Court, parties filed their respective written submissions, hence, this judgment.
 5. This Court has carefully considered the record, the submissions, the decisions thereto and the trial Court's record. As a starting point, this Court will deal with the manner in which the trial Court handled the application and the objection. For ease of this discussion, suffice to point out that the application sought nine prayers on the basis that the Court lacked jurisdiction over the suit. Unlike in the objection, the 1st Appellant herein, Maurice Oniang'o, and one Frances E. Babb, the 2nd Appellant's Secretary, swore affidavits supporting the application wherein they deposed to several factual issues and tendered documentary evidence.
 6. From the record, the trial Court then issued directions on the hearing of both the application and the objection. Upon compliance, the trial Court set the matter for a ruling thereby rendering the impugned ruling which only centred on the objection. In the ruling dismissing the objection, the Court addressed two issues. The first one was on the territorial jurisdiction of the Court. On that issue the Court found that the issue was not a pure point of law, but a factual one, thereby not attaining the threshold set in *Mukhisa Biscuits Manufacturing Co. Ltd vs. West End Distributors* [1969] EA 696. The other issue was the purpose of the Summons to enter appearance which the Court found was to notify the Appellants of the suit and since the Appellants had entered appearance, then nothing turned on it.
 7. It is true the issue as to whether the Appellants were outside the country was a factual one and could not be covered in the objection. However, the aspect was dealt with in the application and, allegedly, evidence had been tendered thereto. Indeed, the issue was hotly disputed by the parties. Therefore, having directed that the objection and the application be heard together, the parties having duly complied including filing their respective affidavits and written submissions and given the overlap of the issues in the application and objection on both issues of fact and law, it was incumbent upon the Court not to depart from its direction on the hearing of both the application and the objection together. Had the Court done so then it would have resolved the issue of territorial jurisdiction on the basis of the evidence in the affidavits instead of abstaining for lack of such evidence. The upshot is that the issue is still pending.
 8. This Court would have rendered itself on the issue on territorial jurisdiction, service and its legal effect in this judgment, but for one reason. The reason is that the issue calls for evidence to be interrogated and once this Court so does, there can be no appeal on any factual issue decided by this Court to the Court of Appeal. Therefore, any party aggrieved by the decision of this Court on that issue would not have any further avenue to challenge it. This Court would, therefore, have effectively denied the party its right of appeal which act goes against the grain of Article 50 of the *Constitution*. It is on that score that this Court declines the invitation by the Appellants to determine the application at this point in time. The application will have to be first heard and determined by the trial Court and may only be dealt with by this Court on appeal.
 9. Having said so, there is no need of dealing with the rest of the issues raised on this appeal since that will only be academic.



10. In the end, this Court hereby makes the following final orders: -

- (a) The appeal succeeds and the ruling dated 24th January 2025 is hereby set aside in its entirety.
- (b) The Notice of Preliminary Objection and the Notice of Motion both dated 22nd November 2023 shall be heard together by any other competent Magistrate other than Hon. Ruguru, N.
- (c) The original file in Nairobi [Milimani] Chief Magistrates Commercial Court Civil Case No. E3438 of 2023 shall be remitted back and placed before the Head of Station, Milimani Chief Magistrates Court for further directions.
- (d) The Respondent shall bear the costs of the appeal.
- (e) This matter is hereby marked as CLOSED.

It is so ordered.

DELIVERED, DATED AND SIGNED AT NAIROBI THIS 18TH DAY OF SEPTEMBER, 2025.

A. C. MRIMA

JUDGE

Judgment virtually delivered in the presence of:

Miss. Mercy Mutemi, Learned Counsel for the Appellants.

Miss Obuya, Learned Counsel for the Respondent.

Michael/Amina – Court Assistants.

