



**County Government of Nyeri v Occidental Insurance Company Limited
(Civil Case 1 of 2023) [2024] KEHC 5424 (KLR) (6 May 2024) (Ruling)**

Neutral citation: [2024] KEHC 5424 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYERI
CIVIL CASE 1 OF 2023**

MA ODERO, J

MAY 6, 2024

BETWEEN

THE COUNTY GOVERNMENT OF NYERI PLAINTIFF

AND

OCCIDENTAL INSURANCE COMPANY LIMITED DEFENDANT

RULING

1. Before this court for determination is the Notice of Preliminary Objection dated 14th April, 2023 filed by the Respondent Occidental Insurance Company Limited.
2. The plaintiff County Government Of Nyeri opposed the Preliminary Objection. The matter was canvassed by way of written submissions. The Respondent files the written submissions dated 1st November, 2023 whilst the plaintiff relied upon their written submissions dated 30th August, 2023.

Background

3. This matter revolves around a suit filed by the plaintiff against the Defendant initiated by way of a plaint dated 30th January, 2023. In that plaint the plaintiff sought for judgment against the Defendant for
 - “(a) The insured sum of Kshs. 52,000,000 (Kenya shillings fifty two million).
 - (b) Punitive costs and incidentals to this suit.
 - (c) Interest on (a) and (b) above at court rates.
 - (d) Any other relief this Honourable court deems fit to grant.”
4. The Defendants filed a statement of Defence dated 18th May, 2023 and also filed this Notice of Preliminary Objection seeking to have the suit struck out.



5. The basis of the disagreement between the parties is the Motor Vehicle Insurance Policy Document / contract dated 29th July, 2020 entered into between the parties.
6. The Defendant contends that this court does not have original jurisdiction to determine the dispute in view of the provisions of Clause 9 of the said Policy Document. Hence this Preliminary Objection which is premised upon the following grounds:

“That:

- a. The Honourable Court is not clothed with the requisite original jurisdiction to hear and determine the plaintiff’s claim in light with clause 9 of the Motor vehicle Insurance Policy Document/contract which provides for mediation and/or arbitration as the preferred mode of dispute resolution.
 - b. That the suit is therefore in contravention of the arbitration and/or mediation clause.”
7. As stated earlier the Preliminary Objection was opposed.

Analysis and Determination

8. I have carefully considered the Preliminary Objection filed by the Objectors as well as the written submissions filed by both parties.
9. The definition of what constitutes a Preliminary Objection was given in the case of *Mukisa Biscuit Manufacturing Company Ltd v West End Distributors Ltd* [1969] EA in which the court stated as follows.

“A Preliminary Objection consists of a point of law which has been pleaded or which arises by clear implication out of pleadings and which if argued as a Preliminary point may dispose the suit. Examples are an objection to the jurisdiction of the court, or a place of limitation or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration ... A Preliminary Objection is in the nature of what is used to be a demurrer. It raises a pure point of law, which is argued on the assumption that all facts pleaded by the opposite side are correct. It cannot be raised if any fact is to be ascertained or if what is sought is the exercise of judicial discretion.”

10. In *Aviation & Allied Workers Union Kenya v Kenya Airways Limited & 3 Others* [2015] eKLR, the Supreme Court of Kenya stated that

“a Preliminary Objection may only be raised on a “pure question of law”

11. To discern such a point of law, the court has to be satisfied that there is no proper contest as to the facts. The facts are deemed agreed as they are prima facie presented in the pleadings on record”
12. Therefore in order for a Preliminary Objection to succeed, the following tests must be satisfied;-
 - (i) The Preliminary Objection should raise a pure point of law.
 - (ii) The Preliminary Objection must be argued on the assumption that all the facts pleaded are correct.



- (iii) The Preliminary Objection cannot be raised if any fact is to be ascertained or if what is being sought is the exercise of judicial discretion.
- (iv) A valid Preliminary Objection ought if successful dispose of the entire suit.
13. Therefore a genuine and proper Preliminary Objection can only raise pure points of law and must not itself derive its foundation on facts or information which stands to be tested by normal rules of evidence.
14. The issue raised in the Preliminary Objection is the question of whether this court has jurisdiction to entertain the plaintiff's claim.
15. Jurisdiction is an issue which goes to the root of any suit. It is a pure point of law. It is trite that without requisite jurisdiction a court must immediately down its tools.
16. In *Owners Of The Motor Vessel "Lillian S" v Caltek Oil (Kenya) Ltd* [1989] eKLR the court famously stated that
- “Jurisdiction is everything Without it, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law downs tools in respect of the matter the moment it holds the opinion that it is without jurisdiction. [Own emphasis]
17. I am satisfied that the question of jurisdiction constitutes a pure point of law thus this is a valid Preliminary Objection.
18. The Defendants have cited clause 9 of the Insurance Policy Document/Contract in support of their contention that this court lacks original jurisdiction over this matter.
19. The Policy document is a contract which was voluntarily entered into by the parties and binds both of them. Indeed neither party has repudiated the contract.
20. Clause 9 of the contract provides for resolution of disputes as follows:-
- “Disputes between you and us”
- If any dispute arises between you and us on any matter relating to this policy, such dispute will be referred to
- (a) A single mediator to be agreed between you and us within thirty (30) days of the dispute arising and the mediation process to be finalized not later than thirty (30) days thereafter or
- (b) A single arbitrator agreed between us, to be appointed within thirty (30) days of the dispute arising. If we cannot agree, either party will refer the dispute to the chairman of the Chartered Institute of Arbitrators (Kenya) Branch whose decision will be binding on you and us. The arbitral award will be final. If the dispute is not referred to the arbitration process within twelve (12) months we will assume you have abandoned the claim”
21. It is trite that a contract voluntarily entered into between parties binds the parties in all aspects. This contract provided that any dispute between the parties was to be referred to mediation or Arbitration.



22. This clause binds the parties. Therefore the plaintiffs ought not have filed a suit in court Rather they ought to have first referred the dispute to mediation or Arbitration as provided for in the contract.
23. In the case of *Geoffrey Muthinja & Another v Samuel Mucuna Henry and 1756 Others* [2015] eKLR the court of Appeal observed as follows:-

“It is imperative that where a dispute resolution mechanism exists outside the courts, the same be exhausted before the jurisdiction of the courts is involved. Courts ought to be the fora of last resort and not the just port of call the moment a storm brews within churches [or parties] as is bound to happen. The exhaustion doctrine is a sound one and serves the purpose of ensuring that there is a postponement of judicial consideration of matters to ensure that a party is first of all diligent in the protection of his own interest within the mechanisms in place for resolution outside the courts. The accords with Article 159 of the *Constitution* which commands courts to encourage alternative means of dispute resolution.” [Own emphasis]

24. The plaintiff has not exhausted the dispute resolution mechanisms provided for in the contract which they themselves signed. The terms of clause 9 are clear and unambiguous. The plaintiff cannot ignore the provisions of clause 9 and rush to file a suit in court. This would offend the Doctrine of Exhaustion.
25. I am persuaded that the contract entered into by the parties themselves ousts the original jurisdiction to hear this dispute. It is only once clause 9 has been complied with that the matter may be referred to court.
26. Finally I find merit in this Notice of Preliminary Objection. The suit filed by the plaintiffs on 30th January, 2023 is hereby struck out.

Costs will be met by the plaintiffs.

DATED IN NYERI THIS 6TH DAY OF MAY, 2024.

MAUREEN A. ODERO

JUDGE

