



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
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**Jerop & 7 others v Kenya Railways Corporation (Cause E189 of 2024)
[2025] KEELRC 2597 (KLR) (26 September 2025) (Ruling)**

Neutral citation: [2025] KEELRC 2597 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E189 OF 2024
AK NZEI, J
SEPTEMBER 26, 2025**

BETWEEN

**MAUREEN JEROP 1ST CLAIMANT
EVANCE OKECHA 2ND CLAIMANT
HELLEN ACHIENG 3RD CLAIMANT
MIKE ORWA 4TH CLAIMANT
NICHOLAS CHEPKWONY 5TH CLAIMANT
MATHEW MAIYO 6TH CLAIMANT
PETER KOSGEY 7TH CLAIMANT
FESTUS KAMANJA 8TH CLAIMANT**

AND

KENYA RAILWAYS CORPORATION RESPONDENT

RULING

1. The eight Claimants herein sued the Respondent vide a Memorandum of Claim dated 28th February, 2024 and sought the following reliefs:-
 - a. A declaration that the Claimants suffered unfair and wrongful termination.
 - b. Two months payment in lieu of notice.
 - c. Compensation for wrongful and unfair termination of employment, calculated at 12 months' salary.
 - d. Severance pay for the 6 years worked by the Claimants.



- e. An order that the Respondent issues the Claimants with certificates of service.
 - f. Costs of the claim and interest.
2. The Claimants pleaded, inter-alia:-
- a. that they were employed by the Respondent on 23rd February, 2021 vide contracts of employment dated 25th February, 2021; and that they were employed as Passenger Assistants, Station Masters and Assistant Stations Masters.
 - b. that the Respondent's management has undergone transitions. That the Claimants' initial contracts were issued by China Road Bridge Corporation (CRBK), which transitioned the Claimants to Afri Star, before finally being transitioned to the Respondent herein.
 - c. that following allegations by the Respondent of some missing money (Kshs.220,170/=) at the Respondent's Nairobi terminus where the Claimants were stationed, and after the Claimants had demonstrated that the said alleged missing amount was as a result of invalid ticket sales, the Claimants were issued with interdiction letters on 28th October, 2022 to pave way for alleged investigations.
 - d. that on 22nd February, 2023, the Claimants received letters lifting their interdiction and terminating their employment.
 - e. that termination of the Claimants' employment was procedurally and substantively unfair.
3. The Respondent entered appearance vide a Memorandum of appearance dated 16th December, 2024. There is on record a Memorandum of Response shown to be dated 1st April, 2025. The date of the filing of the said pleading is, however, not verifiable from the Court's record as the date of filing of a Court document is reckoned based on the date of payment of the applicable court filing fees. Suffice to say that the Respondent admits having employed the Claimants as pleaded by them, and having interdicted and eventually terminated them. The Respondent, however pleads that termination of the Claimants' employment was procedural and was based on valid reasons.
4. The Respondent further pleads as follows at paragraph 28 of its Memorandum of Response:-
- “28. The Jurisdiction of this Honourable Court is denied on the basis that this Honourable Court lacks pecuniary Jurisdiction over the 1st, 2nd, 4th, 5th, 6th and 7th Claimants.”
5. On 2nd April, 2025, the Respondent filed a Notice of Preliminary Objection dated 1st April, 2025 calling for the Claimants' claim to be struck off on ground:-
- a. That this Honourable Court does not have pecuniary Jurisdiction to hear and [to] determine the claim by the 1st, 2nd, 4th, 5th, 6th and the 7th Claimants.
6. Both parties have filed written submissions on the said Preliminary Objection pursuant to the Court's directions in that regard.
7. In support of its said Preliminary Objection, the Respondent has submitted that the 1st, 2nd, 4th, 5th, 6th and 7th Claimants earned a gross monthly salary that was below Kshs.80,000/= as at the time of termination of their employment as follows:-
- a. 1st Claimant (Maureen Jerop) Kshs.47,820/=



- b. 2nd Claimant (Evince Okacha) Kshs.47,820/=
 - c. 4th Claimant (Mike Orwa) Kshs.47,820/=
 - d. 5th Claimant (Nicholas Chepkwony) Kshs.53,740/=
 - e. 6th Claimant (Mathew Maiyo) Kshs.49,045/=
 - f. 7th Claimant (Peter Kosgey) Kshs.53,740/=
8. It is the Respondent’s submission that although this Court has unlimited original and appellate jurisdiction in employment matters, Gazette Notice Number 6024 of 22nd June, 2018 sets the Jurisdiction of this Court to claims where an employee earns a gross monthly salary of Kshs.80,000/= and above at the time of termination. Based on the aforesaid Gazette Notice, the Respondent has called for the Claimants’ suit herein to be struck off. The Respondent has cited three persuasive peer decisions, being:-
- a. Ahenzo – vs – Cosmos Limited (Cause E339 of 2023) (2024) KEELRC 666 [KLR] (15th March, 2024) (Ruling) where the claim was struck out for want of Jurisdiction.
 - b. Bernard Odhiambo Oriawo – vs – KK Security Services Limited (Cause 624 of 2021) [2023] KEELRC 1322 [KLR] (18 May, 2023) (Ruling) where the Court found that filing of the suit in this Court was not fatal. That the Gazette Notice in issue did not strip this Court of Jurisdiction, but rather, donated the power this Court has to Magistrates of the rank of Senior Resident Magistrate and above to hear disputes where the monthly salary of an employee is less than Kshs.80,000/=. The Court transferred the suit to the Chief Magistrate’s Court for hearing and disposal.
 - c. Ondogo & 55 Others – vs – Weihai International Economic Technical Cooperative Company Limited (ELRC Appeal No. 004 of 2023) [2024] KEELRC 1040 [KLR] (19 April 2024) (Judgment) where the Court dismissed a Preliminary Objection, reinstated a dismissed suit and ordered that the same be transferred from Nyeri Chief Magistrates Court to Thika Chief Magistrate’s Court for hearing and determination.
9. On the other hand, it has been submitted on behalf of the Claimants that this Court has unlimited Jurisdiction to hear and to determine employment claims. The Claimants referred to the *Employment and Labour Relations Court Act*, and in particular Sections 2, 3 and 12 thereof. The Claimants also referred to Article 162(2)(a) of *the Constitution* of Kenya and Rules 2 and 23 of the Employment and Labour Relations Court (Procedure) Rules and submitted that “Pecuniary Jurisdiction” does not apply where a Court has inherent jurisdiction. That inherent Jurisdiction is a doctrine of the English Common law that a superior Court has the jurisdiction to hear any matter that comes before it, unless a statute or rule limits that authority or grants exclusive jurisdiction to some other court or tribunal; which is not the case in the instant suit.
10. The Claimants cited the case of Catherine Kawira – vs – Muriungi Kirigia [2016] eKLR where the Court stated as follows:-
- “5. I do not want to reinvent the wheel on the legal threshold for preliminary objections. It is now a well settled principle that a preliminary objection should be a point of law that is straight forward and not obscured in factual details for it to be proved. Again, it must be potent enough to decimate the entire suit or application. On this, I am content to cite the Case of Mukisa Biscuits



Manufacturing Company Limited – vs – West End Distributors Limited
[1969] EA where it was stated as follows:-

“So far as I am concerned, 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 of the suit. Examples are an objection to jurisdiction of the court, or a plea of limitation, or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration . . .”

11. Before delving into the issue of whether or not this Court is seized of jurisdiction to hear and to determine the suit herein, it is worthy noting that the issue raised in the Respondent’s Preliminary Objection is not pleaded and/or clearly pleaded by any of the parties in the pleadings filed herein. Indeed, the Claimants’ Memorandum of Claim does not contain any pleading and/or particulars of any of the Claimant’s wages earned at the time of termination of employment. The Respondent’s Memorandum of Response does not contain those particulars, either.
12. All that the Court has seen is a purported schedule of the Claimants’ wages contained in the Respondent’s written submissions filed herein in support of the Preliminary Objection. It is to be appreciated that submissions, written or oral, are not pleadings. The word “Pleading” is defined in the Black’s Law Dictionary (Tenth Edition) as:-

“A formal document in which a party to a legal proceeding (esp. a civil law suit) sets forth or responds to allegations, claims, denials, or defences. In federal civil procedure, the main pleadings are the plaintiff’s complaint and the defendant’s answer.”
13. Here at home (in Kenya), a “pleading” is defined in the Employment and Labour Relations Court (Procedure) Rules 2024 as:-

“The statement in writing of the claim or demand of an applicant, petition, Judicial review application, and the defence by the respondent thereto, the reply of an applicant thereto, the reply of an applicant to any defence or a counter-claim of a respondent.”
14. On the other hand, submissions, written or oral, are defined in The Black’s Law Dictionary (Tenth Edition) as an Advocate’s argument meant to persuade. In civil litigation realms, written submissions are written contentions for or on positions already taken by litigating parties.
15. Just like the pleadings from which it purports to arise, the Respondent’s “preliminary objection” dated 1st April, 2025 and replicated at paragraph 5 of this Ruling does not set out the basis of the objection. It simply states that this Court has no pecuniary jurisdiction to hear and to determine the claim by the 1st, 2nd, 4th, 5th, 6th and 7th Claimants. A party or parties who fail to present pleadings that articulate facts that they intend to ask the Court to determine cannot expect the Court to make a determination based on unpleaded facts. Parties are always bound by their pleadings. A preliminary objection must always be founded on pleadings as presented, and must be on a clear point of law. A preliminary objection on points of law can only be determined based on pleaded facts.
16. It was stated in the Mukisa Biscuits Case (Supra) as follows:-

“A preliminary objection is in the nature of what used to be called a demurrer. It raised a pure point of law, which was argued on assumption that all the other facts pleaded by the other



party were correct. It cannot be raised if any fact had to be ascertained or if what is sought is the exercise of judicial discretion . . .”

17. As already stated in this Ruling, matters stated in the preliminary objection and submitted on by the Respondent are not pleaded. The Preliminary Objection is without basis and must fail. It is hereby dismissed with costs.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 26TH DAY OF SEPTEMBER 2025

AGNES KITIKU NZEI

JUDGE

order

This Ruling has been delivered via Microsoft Teams Online Platform. A signed copy will be availed to each party upon payment of the applicable Court fees.

Appearance:

No appearance for the Claimants

Miss Gichohi for the Respondent

