



**Malumbe v Track and Trace Limited (Cause E333 of 2023)
[2024] KEELRC 2032 (KLR) (25 July 2024) (Ruling)**

Neutral citation: [2024] KEELRC 2032 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E333 OF 2023**

**L NDOLO, J
JULY 25, 2024**

BETWEEN

KLAUS DAVID MALUMBE CLAIMANT

AND

TRACK AND TRACE LIMITED RESPONDENT

RULING

1. The Claimant filed a Statement of Claim dated 24th April 2023, claiming that his employment had been unfairly terminated. The Respondent filed a Memorandum of Response dated 18th July 2023 and amended on 29th November 2023.
2. Alongside the amended Memorandum of Response, the Respondent filed a Notice of Preliminary of Objection, challenging the jurisdiction of this Court to entertain the claim on the grounds that:
 - a. The Court cannot assume jurisdiction over a matter that is outside its territorial jurisdiction;
 - b. The contract of employment between the parties is governed by the laws of the Republic of Uganda;
 - c. The contract was exclusively performed in the Republic of Uganda.
3. The law as to what constitutes a Preliminary Objection is well settled. In the celebrated decision in *Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd* (1969) EA, 696 it was held that:

“A Preliminary Objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion.”



4. The present Preliminary Objection is premised on the Respondent's assertion that the employment contract that is the subject of the dispute is governed by the law of the Republic of Uganda where the Claimant was deployed.
5. It would appear however that the issue of the applicable law is not a straight forward matter. First, the Claimant's letter of appointment dated 24th August 2021 is on the letterhead of an entity whose head office is in Nairobi, Kenya. Second, the Claimant's salary is expressed in Kenya Shillings. Third, in its Memorandum of Response dated 18th July 2023 and amended on 29th November 2023, the Respondent makes reference to its subsidiary in Uganda as the place where the Claimant was deployed.
6. From the foregoing, it is evident that the applicable law in this dispute is a contested matter that cannot be determined in limine; it is a matter that can only be determined upon taking evidence from the parties.
7. I therefore find and hold that the Respondent's Preliminary Objection is not well taken and proceed to overrule it with costs in the cause.
8. Orders accordingly.

DELIVERED VIRTUALLY AT NAIROBI THIS 25TH DAY JULY 2024

LINNET NDOLO

JUDGE

Appearance:

Mr. Odhiambo for the Claimant

Mr. Onyango for the Respondent

ELRC NAIROBI RULING CAUSE NO. E333 OF 2023 2

