

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**CIVIL APPEAL NO. E812 OF 2024**

**DAVID            ALVIN            AKELOLA.....**  
**....APPELLANT**

**VERSUS**

**Q-ZONE INTEGRATED**  
**PEST MANAGEMENT LIMITED.....RESPONDENT**

**(An appeal arising from the ruling and order of Hon. Gillian Simatwo,  
Resident Magistrate, RM, and Adjudicator, delivered on 5<sup>th</sup> July 2024,  
in Nairobi SCCC No. E855 of 2024)**

**JUDGMENT**

1. The suit, at the primary court, was initiated by the appellant, against the respondent, for compensation, arising from a termination of a contract. The appellant had allegedly been engaged as a consultant by the respondent, for a period of 6 months, which the respondent then terminated after only 1 month, without notice.
2. In response to the claim, the respondent raised a preliminary objection, on a point of law, founded on Article 162(2) of the Constitution and section 12 of the Employment and Labour Relations Court Act, Cap. 8E, Laws of Kenya, arguing that the matter turned on employment and labour relations, in respect of which the Small Claims Court did not have jurisdiction.
3. The preliminary objection was canvassed by way of written submissions. It was upheld, in a ruling that was delivered on 5<sup>th</sup> July 2024, on the basis that it offended the provisions of Article 162(2) of the Constitution, which reserves jurisdiction over employment and labour relations actions to the court envisioned in that Article. The claim before the trial court was struck out, on the basis that the trial court lacked jurisdiction to entertain it.

4. The appellant was aggrieved, hence the instant appeal. The grounds, in the memorandum of appeal, dated 15<sup>th</sup> July 2024, revolve around the trial court erring in failing to note that the claim fell under section 12(1)(a) of the Small Claims Court Act, Cap 10A, Laws of Kenya; the trial court erred in treating the appellant as an employee when in fact he was a consultant, entitled to be paid a fee for consultancy services rather than a salary; the trial court misconstrued the document on the engagement as constituting a contract of employment instead of a consultancy contract; and the trial court was biased.
5. Directions, on the disposal of the appeal, were given, on 11<sup>th</sup> March 2025, for canvassing by way of written submissions.
6. The appellant has submitted that the document upon which he was engaged contracted him for his services as a consultant and not as employee, hence it defines a consultant, and talks of consultancy statutory deductions, and after his engagement he was paid through a consultancy invoice. It is also submitted that the preliminary objection did not meet the threshold in *Mukisa Biscuits Manufacturing Company Ltd vs. West End Distributors* [1969] EA 696 (Sir Charles Newbold, P, Duffus VP & Law JA), as it was founded on the fact of the employment contract. It is also submitted, on the basis of section 12(1) of the Small Claims Court Act, that the contract was for supply of goods and services.
7. On its part, the respondent relies on the statement of claim, the contract of employment and the law. It submits that the pleadings, filed by the appellant, identified him as an employee of the respondent, engaged on the basis of an employment contract. It goes on to refer to the said employment contract, and submits that its content and context clearly pointed to an employer-employee relationship. It cites Article 162(2) of the Constitution, to submit that the realm of disputes in employment and labour relations has been reserved for the court contemplated or imagined in that provision. It is asserted that the Small Claims Court has no jurisdiction to entertain a claim between an employer and an employee. *Biosystems Consultants vs. Nyali Links Arcade* [2023] KEHC 21068 (Magare, J)

and *Mukisa vs. West Kenya Sugar Company Limited* [2024] 10542 (KLR) (Musyoka, J) are cited. It is submitted that section 13(5) of the Small Claims Court Act expressly excludes employment and labour disputes from the jurisdiction of the Small Claims Court.

8. I will start with section 13(5) of the Small Claims Court Act, which provides that a “*claim shall not be brought before the Court if the cause of action is founded upon ... employment and labour relations.*” That should be enough to establish that there is absolutely no jurisdiction, under the Small Claims Court Act itself, for the Small Claims Court to exercise jurisdiction over employment and labour relations matters.
9. Article 162(2) of the Constitution is the other provision. It reserves jurisdiction over disputes relating to employment and labour relations for the court contemplated in that Article, and, at Article 162(3), Parliament is directed to establish that court and define its jurisdiction. That was done, with the enactment of the Employment and Labour Relations Court Act. Of course, it is easier to understand Article 162(2) in the context of the High Court, for Article 165(5) of the Constitution declares that the High Court shall not exercise jurisdiction over the matters the subject of Article 162(2).
10. The jurisdiction, carved out for the Employment and Labour Relations Court by Article 162(2) of the Constitution, is exercised by the Employment and Labour Relations Court together with the Magistrate’s Court, by dint of section 29(3)(4) of the Employment and Labour Relations Court Act, which empowers the Chief Justice “*to appoint certain magistrates to preside over cases involving employment and labour relations in respect of any area of the country,*” and such magistrates “*have jurisdiction and powers to handle ... disputes relating to offences defined in any Act of Parliament dealing with employment and labour relations,*” and “*any other dispute as may be designated in a Gazette notice by the Chief Justice on the advice of the Principal Judge.*”

11. The provisions in section 29(3)(4) of the Employment and Labour Relations Court Act are supplemented by section 9(b) of the Magistrate's Court Act, Cap 10, Laws of Kenya, which provides that "*the magistrate's court,*" as appointed by the Chief Justice, under section 29(3) of the Employment and Labour Relations Court Act, "*shall, in the exercise of the jurisdiction conferred upon it under section 29 of the Employment and Labour Relations Court Act, and subject to the pecuniary limits under section 7(1), hear and determine claims relating to employment and labour relations.*"
  
12. The Magistrate's Court is a subordinate court, by dint of Article 169 of the Constitution, and so is the Small Claims Court. However, the Small Claims Court is not a magistrate's court. It is not a court within the magistracy. Whereas the Magistrate's Court is a subordinate court under Article 169(1)(a), the Small Claims Court is a subordinate court established under Article 169(1)(d) of the Constitution. The Small Claims Court is, therefore, a distinct subordinate court from the Magistrate's Court. The Employment and Labour Relations Court shares jurisdiction with the Magistrate's Court by virtue of section 29(3)(4) of the Employment and Labour Relations Court Act, as observed above. That sharing of jurisdiction does not involve the Small Claims Court; therefore, the Small Claims Court is excluded from that jurisdiction, by virtue of Article 162(2) of the Constitution and section 13(5) of the Small Claims Court Act.
  
13. The fact that the Small Claims Court is currently presided over by Adjudicators appointed by the Chief Justice, pursuant to section 6(2) of the Small Claims Court Act, from amongst the magistrates, who may also have been appointed by the Chief Justice, under section 29(3)(4) of the Employment and Labour Relations Court Act, for purposes of employment and labour relations cases, could cause some confusion, in the minds of some litigants, who may be tempted to believe that such magistrates, while sitting as adjudicators, have jurisdiction to dispose of such employment and labour relations cases, if filed under the Small Claims Court Act. I reiterate, that the Small Claims Court has no jurisdiction over employment and labour relations disputes.

14. The parties have engaged in a back and forth over the document that the appellant placed before the trial court, as the foundation for his case. That document, which both the parties herein signed on 2<sup>nd</sup> October 2023, is titled “contract of employment.” It describes the appellant as “the employee.” It defines the Employment Act, Cap 226, Laws of Kenya, as the law applicable, with respect to its terms and conditions. It defines a consultant as “the employee,” and stipulates that the terms “employee” and “consultant” are to be used interchangeably in the said document. It talks of Nairobi as the place of employment. It talks, at clause 5, of payment of a salary and allowances, not a service or consultancy fee. For all practical purposes, from the language of this document, the appellant was engaged by the respondent as an employee, and not as a consultant, for the contract defines consultant as employee.
15. I agree with the appellant, that, according to *Mukisa Biscuits Manufacturing Company Ltd vs. West End Distributors* [1969] EA 696 (Sir Charles Newbold, P, Duffus VP & Law JA), a preliminary objection on a point of law should turn on a pure point of law, which emerges from the pleadings, and it should not have to be verified from facts. In this case, the preliminary issue raised is founded on facts, the contract of employment document.
16. That should, however, not be fatal. It must be understood that *Mukisa Biscuits Manufacturing Company Ltd vs. West End Distributors* [1969] EA 696 (Sir Charles Newbold, P, Duffus VP & Law JA) was decided at an era when parties were not required to file evidence together with their pleading, when pre-trial disclosure of evidence had not been normalised. It is now a mandatory procedural requirement, at the filing of pleadings, and there would be nothing wrong with a party, pointing at a document, filed by the opposing side, to ground its preliminary objection on a point of law. In any event, the said document was not contested, for both sides acknowledged it, and the case by the appellant was built upon it. The respondent did not have to adduce evidence, to ascertain and

support his preliminary objection. That evidence was on record, filed by the appellant.

17. In view of the above, the dispute placed before the Small Claims Court was between an employer and an employee. The Small Claims Court would have no jurisdiction to preside over such a dispute, and the trial court properly upheld the objection raised by the respondent. The appeal herein has no merit. I hereby dismiss it. The respondent shall have the costs thereof. Orders accordingly.

**DELIVERED VIA EMAIL, DATED AND SIGNED IN CHAMBERS, AT BUSIA,  
THIS 3<sup>RD</sup> DAY OF OCTOBER 2025.**

**W MUSYOKA  
JUDGE**

**Mr. Arthur Etyang, Court Assistant, Busia.**

**Ms. Carolyn Oyuse, Court Assistant, Milimani, Nairobi.**

**Advocates**

**Mr. SM Keyonzo, the Advocate for the appellant.**

**Mr. Githinji, instructed by Githinji Mwangi & Associates, Advocates for the respondent.**