



REPUBLIC OF KENYA



**Flywise Consultancy Services v Njeru (Civil Case E217 of 2024)  
[2025] KEHC 14723 (KLR) (Civ) (8 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 14723 (KLR)

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

**CIVIL  
CIVIL CASE E217 OF 2024**

**NW SIFUNA, J**

**OCTOBER 8, 2025**

**BETWEEN**

**FLYWISE CONSULTANCY SERVICES ..... PLAINTIFF**

**AND**

**DAVID GITONGA NJERU ..... DEFENDANT**

**RULING**

1. Flywise Consultancy Services Limited, is a limited liability company registered in Kenya under the now repealed *Companies Act* (Cap 486 Laws of Kenya); and carrying on business in Kenya.
2. This suit which is filled in the Company's name, has been filed by Peter Njeru Ndwiga a director of the company, against the Defendant David Gitonga Njeru another director. It accuses the Defendant of certain acts that the said Peter Njeru Ndwiga considers to be against the company's interests.
3. This ruling is on the Defendant's Preliminary Objection dated 9<sup>th</sup> February 2025. The same is on the ground that while this suit is filed as a derivative suit, the procedure for filing derivative suits was not followed. The Objection was canvassed by way of written submissions. With each party filing its submissions.
4. In their rival submissions, Peter Njeru Ndwiga the suit's initiator argued that the suit is a proper derivative suit and compliant with the law and procedure for such suits. On the other hand, the Defendant David Gitonga Njeru has in his submissions contended that the suit does not qualify as a derivative action. Majorly citing what he believes is the correct procedure for such actions.

**Analysis and Determination**

5. I have considered the parties' rival submissions on the Preliminary Objection. I have also perused the Complaint as well as the Witness Statement of the said Peter Njeru Ndwiga the initiator of this suit.



6. A proper Preliminary Objection is one that raises a pure point(s) of law that does not delve in factual issues. It should thus be on pure point(s) of law, be so plain to the eye that it does not require an interrogation of the facts, and should not delve into the merits of the suit itself or the facts in issue. The Defendant's Objection is not one such. I find it to be an objection that it is scapegoating procedure, while delving into the merits of the suit. At the pre-trial stage the court does not go into the merits of the suit. Those should be challenged in the pleadings, and at the trial.
7. The issues being raised by this Objection are such as require the adduction of evidence, the calling of witnesses, and their subsection to cross-examination. That is not the legitimate province of a Preliminary Objection.
8. I must emphasize that a Preliminary Objection should neither be a mock trial or a trial within trial. It should be crisp, be on pure point(s) of law, and be such as once raised has the potential of terminating the suit in limine. The Defendant's Objection is not one such. On this I rely on the celebrated legal authority of *Mukisa Biscuit Manufacturing Company Ltd v. West End Distributors Ltd* [1969] EA 696.
9. In the end I find that the Defendant's Objection is an improper Preliminary Objection and dismiss it accordingly. The costs of the Objection shall be in the cause.

**DATED AND DELIVERED AT NAIROBI ON THIS 8<sup>TH</sup> DAY OF OCTOBER 2025.**

**PROF (DR) NIXON SIFUNA**

**JUDGE**

