



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL APPELLATE DIVISION
(CORAM: CHERERE-J)
HCCA E1105 OF 2024

BETWEEN
PLATINUM CREDIT LIMITED
APPELLANT
AND
DAMARIS KEMUNTO NYABUTI
RESPONDENT

**(An Appeal from the Ruling and Order in MSET E007 OF
2024
Delivered on 30th August 2024)**

JUDGMENT

Background

1. The Respondent, **Damaris Kemunto Nyabuti**, instituted proceedings before the Tribunal on 04th July 2024 seeking release of her motor vehicle, a Range Rover Evoque (KDE 691E), which she had offered as security for a business loan of KES. 1,987,650 advanced by the Appellant in October 2023.
2. The Respondent averred that by July 2024 she had repaid KES.1,228,272.32, leaving an outstanding balance of

approximately KES.290,000. The Appellant declined her request for additional time to clear the balance and issued a notice of disposition threatening to sell the motor vehicle.

3. On 08th July 2024, the Appellant filed a Notice of Preliminary Objection contending that—

1)The Tribunal lacked jurisdiction under Section 55 of the Micro and Small Enterprises Act (“the Act”); and

2)The claim amounted to an abuse of court process.

4. The Tribunal heard both parties and by its ruling of 30th August 2024, dismissed the objection and held that it had jurisdiction to hear and determine the dispute between the parties herein.

The Appeal

5. Aggrieved by the Tribunal’s decision, the Appellant lodged a Memorandum of Appeal dated 19th September 2024, setting forth the following four grounds:

1)That the Tribunal erred in holding that it had jurisdiction;

2)That the Tribunal erred in finding that the objection could not conclusively determine the matter;

- 3) That the Tribunal erred in disregarding the Respondent's failure to prove her status as a micro or small enterprise; and**
- 4) That the Tribunal erred in holding that the dispute fell within Section 55(2) of the Act.**
6. The appeal was argued by way of written submissions filed on 22nd May 2025 by the Appellant and on 17th June 2025 by the Respondent.
7. This being a first appeal, the Court must reconsider the record and draw its own conclusions, while bearing in mind that it neither saw nor heard the parties. (See **Abok James Odera T/A A.J Odera & Associates v John Patrick Machira T/A Machira & Co. Advocates [2013] eKLR (CA)**).

Analysis

Nature of a Preliminary Objection

8. A preliminary objection is a pure point of law, which, if successful, may dispose of the entire matter. It is argued on the assumption that all facts pleaded by the opposing party are correct, and it cannot be sustained where facts must be ascertained through evidence. (See **Mukisa Biscuit**

Manufacturing Co. Ltd v West End Distributors Ltd [1969] EA 696 and Oraro v Mbaja [2005] eKLR).

9. The burden rests with the party raising the objection to demonstrate from the pleadings that the suit or application is incompetent in law.
10. The Appellant argued that the Respondent had not pleaded facts to show that she qualified as a micro or small enterprise under Section 2 of the Act, and therefore the Tribunal lacked jurisdiction under Section 55.
14. The Respondent, on the other hand, pleaded that she was engaged in business and that the facility advanced was for business purposes.
15. The Tribunal found that whether the Respondent met the statutory thresholds of turnover, number of employees, or registration as an MSE was a factual issue. Since such matters could not be determined at the preliminary stage without evidence, the Tribunal dismissed the objection.

Analysis and Determination

17. Jurisdiction is everything, and if a court or tribunal lacks jurisdiction it must down its tools. (See **Owners of the Motor**

Vessel “Lillian S” v Caltex Oil (Kenya) Ltd [1989] KLR 1 (CA).) However, jurisdictional objections must be clear and based on admitted or indisputable facts.

18. The Respondent had pleaded that she was in business and that the loan related to her business. Whether she indeed qualified as an MSE is a factual issue for proof at the hearing. At the preliminary stage, the Tribunal was bound to assume those pleadings to be correct.
19. In this case, the Appellant did not point to any pleaded fact that, taken as correct, excluded the Tribunal’s jurisdiction. Its objection was premised on the absence of detailed averments on the Respondent’s turnover, employees, or registration. That line of argument required the Tribunal to examine what was not pleaded and to draw factual inferences, an exercise that is outside the scope of a preliminary objection.
20. From the foregoing, I find that the Appellant’s preliminary objection did not raise a pure point of law but invited the Tribunal to investigate facts, which rendered it unsustainable. The Tribunal was therefore right to dismiss it.

21. I note, however, that the real misstep in the Tribunal's reasoning was not expressly raised as a ground of appeal. Even so, this Court cannot ignore it, for jurisdiction is foundational and must always be determined on the basis of fact and law. It is therefore necessary to address the error in order to properly resolve the controversy before me.
22. Having rightly dismissed the preliminary objection, the Tribunal was still required to appreciate that jurisdiction in this dispute depended on factual proof yet to be adduced. Whether the Respondent fell within the statutory definition of a micro or small enterprise could not be resolved in the abstract, but only upon evidence. Instead, the Tribunal, while correctly rejecting the objection, went on to assume jurisdiction on the strength of a "commercial relationship" between the parties. That assumption was erroneous, for jurisdiction could not properly be grounded without the necessary jurisdictional facts.

Disposition

23. In the result, the appeal succeeds in part. The Tribunal was correct in dismissing the preliminary objection, but it erred in assuming jurisdiction without a factual foundation. Accordingly, while the dismissal of the preliminary objection is upheld, the

Tribunal's assumption of jurisdiction is set aside. Jurisdiction shall be determined based on evidence properly placed before the Tribunal.

24. The Appellant shall bear the costs of the appeal.

**DELIVERED AT NAIROBI THIS 02nd DAY OF
October 2025**



**WAMAE.T. W. CHERERE
JUDGE**

Appearances

Court Assistant - Ubah

For Appellant - N/A for C.W.Chege & Co. Advocates

For Respondent - Ms. Mwiti hb for CKM Advocates LLP