



JW Seagon and Company Insurance Brokers (Mauritius) v Magondu t/a Timelife Insurance Agency (Civil Case E150 of 2025) [2025] KEHC 15005 (KLR) (Civ) (23 October 2025) (Ruling)

Neutral citation: [2025] KEHC 15005 (KLR)

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

CIVIL

CIVIL CASE E150 OF 2025

JN MULWA, J

OCTOBER 23, 2025

BETWEEN

**JW SEAGON AND COMPANY INSURANCE BROKERS
(MAURITIUS) PLAINTIFF**

AND

**NANCY WAMBUI MAGONDU T/A TIMELIFE INSURANCE
AGENCY DEFENDANT**

RULING

1. For determination is the Preliminary Objection raised by the Defendant, Nancy Wambui Magondu’s t/a Timelife Insurance Agency (hereafter the Defendant) Preliminary Objection (PO) dated 23/06/2025 on the hearing of the suit for a solitary ground that the Defendant states “as due to the subject contract”.
2. However, leading up to the PO, by way of a motion dated 10/06/2025 seeking various reliefs and plaint of even date, the Plaintiff JW Seagon and Company Insurance Brokers (Mauritius) (hereafter the Plaintiff) filed suit as against the Defendant seeking the following orders-;
 - a. A declaration that the Defendant is liable for civil conspiracy to defraud the Plaintiff.
 - b. A declaration that the Defendant has deliberately and unlawfully converted the Plaintiff’s funds in the sum of US \$195,314.76.
 - c. An order compelling the Defendant to pay to the Plaintiff the sum of US \$195,314.76.
 - d. Special damages for reimbursement of the legal fees in the sum of US \$ 6,638.40 paid to Jared Kangwana & Co. Advocates LLP, to engage with the Defendant in the recovery of a sum of US \$195,314.76.



- e. Special damages for reimbursement of the legal fees in the sum of US \$4,334,20. paid to Jared Kangwana & Co. Advocates LLP, to prepare complaint to the Insurance Regulatory Authority to investigate the Defendant's conduct in relation to the illegal withholding of the Plaintiff's monies.
 - f. General Damages for civil conspiracy.
 - g. Interest on (c), (d) and (e) above at Court rates from the date of filing suit.
3. In the face of the Preliminary Objection and the motion dated 10/6/2025, directions were issued that the PO be determined first by way of written submissions and that submissions on the motion be filed as well for which both parties have complied. By the PO proceedings, the determination of the motion has thus been held at abeyance.
 4. The gist of the Plaintiff's averment in its plaint is that by an agreement dated 25/04/2025 between the parties hereto, the Plaintiff appointed the Defendant as an intermediary to market and promote the Plaintiff's insurance policies in Kenya and to submit application for insurance by prospective policyholders to the Plaintiff. It was further averred that upon placement of business by clients to the Plaintiff, the latter would pay the Defendant a commission, which would be a percentage of commission earned by the Plaintiff from the insurers for policies placed by the Defendant's clients.
 5. Additionally, that in the course of the relationship between the parties, the Plaintiff discovered that from April 2024, the Defendant had engaged in a deliberate and well calculated conspiracy with the Plaintiff's former employee Ms. Anouska Puntaya to defraud the Plaintiff and or received commissions totaling US \$195,314.76 that were not earned by the Defendant and as a consequence, the Plaintiff suffered loss and damage, which it claims as against the Defendant.
 6. Having set out the above, the Court has considered the Plaintiff's pleadings, the PO and submissions filed by the respective parties and thus postulates that the issue for determination concerns -:
 - a. Whether the Defendant's Preliminary Objection is merited?
 - b. Who ought to bear costs on the PO?

a. Whether the Defendants Preliminary Objection is merited?

7. As to the nature of a preliminary objection, the same has since been settled within our jurisdiction in the celebrated decision of *Mukisa Biscuits Manufacturing Company Ltd.* It was held therein that -;

“So far as I am aware, 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, will dispose of the suit. Examples are objection to jurisdiction of the court, a plea of limitation or a submission that the parties are bound by the contract giving rise to the suit to refer the matter to arbitration.....

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. The improper raising of preliminary objections does nothing but unnecessarily increase costs and, or occasion, confuse the issues, and this improper practice should stop.”



8. In the case of *Oraro v Mbaja* (2005) KLR 141, Ojwang J (as he then was) the court reiterated the above by stating that-;

“A preliminary objection correctly understood is now well defined as and declared to be a point of law which must not be blurred by factual details liable to be contested, and in any event, to be proved through the process of evidence. Any assertion which claims to be a preliminary objection, yet it bears factual aspects calling for proof, or seeks to adduce evidence for its authentication is not, as a matter of legal principle, a true preliminary objection which the court should allow to proceed.

Where a court needs to investigate facts; a matter cannot be raised as a preliminary point.... Anything that purports to be a preliminary objection must not deal with disputed facts, and it must not itself derive its foundation from factual information which stands to be tested by normal rules of evidence.”

9. Meanwhile, the Court of Appeal in *Kigwor Company Limited v Samedy Trading Company Limited* [2021] KECA 810 (KLR) cited with approval the decision of the Supreme Court in *Independent Electoral & Boundaries Commission v Cheperenger & 2 others* [2015] KESC 2 (KLR) the latter court emphasized that-:

“(16) It is quite clear that a preliminary objection should be founded upon a settled and crisp point of law, to the intent that its application to undisputed facts, leads to but one conclusion: that the facts are incompatible with that point of law. (See *Hassan Nyanje Charo v. Khatib Mwashetani & 3 Others*, Civil Application No. 14 of 2014, [2014] eKLR).”

10. While the Defendant’s PO as present challenges this Court’s jurisdiction to entertain the suit, it does not cite with specificity which provision of statute or law that ousters this Court’s jurisdiction. Interestingly, by her submissions the Defendant relies on Clause 18.1 of Agreement dated 14/04/2022 executed as between the parties hereto and the decisions in *National Bank of Kenya Ltd v Pipeplastic Samkolit (K) Ltd & Another* [2001] KLR 112, *United India Insurance Co. Ltd & 2 Others v East African Underwriters (Kenya) Ltd* [1985]KLR 998, *Raytheon Aircraft Credit Corporation & Another V Air Al-Faraj Limited* [2005] eKLR, *Leisure Lodges Limited v Patcham Holdings Limited & another* [2016] eKLR and *Areva T & D India Limited vs Priority Electrical Engineers & Another* [2012] eKLR to contend that the parties hereto agreed to exclusive jurisdiction of a foreign Court by way of contract which ousters this Court of jurisdiction to entertain the suit.
11. This Court’s jurisdiction cannot be assumed by implication or inference. It must be explicit either by law, consent or the subject matter falling within the constitutional or statutory limits of the Court.
12. In retort, while calling to aid decisions in *Repes Sairowua v Nareyioen Ologeso & another* [2021] KEELC 1642 (KLR) and *George Owino Mulanya & 4 others v Charles Achieng Odonga & another* [2017] eKLR the Plaintiff summarily posited that it is impossible to discern the basis of the Defendant’s objection on jurisdiction without a deep interrogation of the pleadings. That apart from simply stating that the Court lacks jurisdiction on accord of a contract between the parties, the Defendant has not specified the legal basis for the jurisdictional objection.
13. Aside from the aforecaptioned, the Defendant has equally argued that by its PO, it does not, at this stage, rely on the arbitration clause in – Clause 18.1 of Agreement – as a basis for the objection, however posits that it is evident that the parties agreed to have any dispute between them, governed by a foreign legal framework, namely Mauritian law. Meanwhile, in riposte, the Plaintiff summarily asserted that



its cause of action is tortious in nature and not premised on breach of contract between the parties therefore the objection on jurisdiction is not well founded.

14. The decisions in Rift Valley Products Limited v Plexus Cotton Limited [2012] KEHC 5793 (KLR), Charles Onchari Ogoti v Safaricom Limited & another [2020] KEHC 8849 (KLR) *Henderson v Merrett Syndicates Ltd* [1995] 2 AC 145, Emmanuel Fresco v Camusat Kenya Limited & another [2019] KEELRC 297 (KLR), Universal Pharmacy (K) Limited v Pacific International Lines (PTE) Limited & another [2015] KEHC 3518 (KLR) and Dorcas Kemunto Wainaina v IPAS [2018] KEELRC 2065 (KLR) were cited in the latter regard.
15. It is well-trodden that a preliminary objection is a point of law which must not be blurred by factual details liable to be contested, and in any event, to be proved through the process of evidence. The gist of the Plaintiff's pleadings appears to premise its claim on conspiracy and conversion by the Defendant, which occurred within the jurisdiction of this Court on the backdrop of an Agreement dated 14/04/2022.
16. As earlier noted, by its PO, the Defendant seems to tacitly rely on an arbitration clause and a jurisdiction exclusion clause as captured in the Agreement dated 14/04/2022, yet does not anchor its objection on jurisdiction on any specific statutory provision that would oust this Court of jurisdiction. While, I agree that jurisdiction is a preliminary question that ought to be determined in limine, as exhorted by Nyarangi. JA (as he then was) in the locus classicus case of Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd [1989] KLR 1, here, the Defendant's objection on jurisdiction does not arise from clear implication of the Plaintiffs pleading but is blurred by factual and evidential questions given the latter reliance on a Clause in Agreement dated 14/04/2022, which would invariably require this Court's interpretation and or determination.
17. Whereas arbitration clauses and a jurisdiction exclusion clause have been the subject of replete litigation within the superior Courts, see Raytheon Aircraft Credit Corporation (*supra*), my understanding of the dicta in Evergreen Marine (Singapore), PTE Limited & Gulf Badar Group (Kenya) Limited v Petra Development Services Limited [2016] KECA 260 (KLR), which was faced with a similar situation, is that where a party seeks to oust the Court of jurisdiction on the premise of a contractual clause(s), a preliminary objection cannot sustain where its determination requires the Court to examine or interpret a contractual provision.
18. As is, the Defendant objection does not strictly meet the test and or confines of a PO as exhorted in Mukisa Biscuits Manufacturing Company Ltd (*supra*) and Oraro v Mbaja (*supra*) given the factual aspect of the clauses relied on to oust or limit this Court's jurisdiction. The appropriate approach would have been to file an application seeking the requisite reliefs in light of the clause(s) argued in the Defendant submissions.
19. Consequently, without having to belabor further on the issue it is the Court's reasoned conclusion that the Defendant's preliminary objection on jurisdiction as presented does not meet stricto sensu the muster of what constitutes a preliminary objection. Therefore, the Defendant's preliminary objection is dismissed with Costs to the Plaintiff.

Orders Accordingly.

DELIVERED DATED AND SIGNED AT NAIROBI THIS 23RD DAY OF OCTOBER 2025.

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JANET MULWA.

JUDGE

