

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT NAIROBI
CAUSE NO. E1052 OF 2024
OUMA OLIECH AUGUSTINE
CLAIMANT
v
FOR YOU CHINESE RESTAURANT LTD
RESPONDENT**

**EMPLOYMENT AND LABOUR RELATIONS COURT
RULING**

1. Ouma Oliech Augustine (the Claimant) sued For You Chinese Restaurant Ltd (the Respondent) on 7 December 2024, and he stated the Issue in Dispute as:

- (i) Unfair and unlawful termination of employment.
- (ii) Non-payments of dues.

2. Upon service, the Respondent raised a Notice of Preliminary Objection on 20 June 2025, contending that:

- (i) By virtue of the provisions of section 29(4)(b) of the Employment and Labour Relations Court Act and

Gazette Notice No 6024 dated June 2018, this case should not proceed before this Court, as clearly disclosed in the pleadings, the Claimant's salary was less than Kshs 80,000/-.

(ii) Consequently, the claim against the Respondent herein is improperly before this Court.

3. The Respondent filed its submissions on 13 July 2025.
4. In the submissions, the Respondent submitted that according to the employment contract, the Claimant was earning Kshs 70,000/- and therefore by dint of Gazette Notice No 6024 of June 2018, the proper forum for the dispute was the Magistrates' Court (*Onyango v Ken Knit Kenya Limited* (2024) KEELRC 1569 (KLR)).
5. In the view of the Respondent, the incentive of 1% provided in the contract was conditional and not part of the fixed salary, and therefore the Cause

should be struck out (*Ehenzo v Cosmos Limited* (2024) KEELRC 666 (KLR))

6. The Claimant filed his submissions on 21 July 2025, asserting that the Objection required the Court to interrogate contested facts as to the actual salary agreed on.

7. According to the Claimant Gazette Notice No. 6024 of 2018 did not derogate the primary and original jurisdiction of the Court (*Masibo v Amalemba & Ar* (2025) KEELRC 1983 (KLR) and *Onyango v Kenknit Kenya Ltd* (2024) KEELRC 1569 (KLR)).

8. The Court has considered the pleadings on record, the Notice of Preliminary Objection and submissions.

9. The Magistrates' Courts exercise delegated jurisdiction where the monthly salary in dispute is below Kshs 80,000/-.

10. In paragraph 6 of the Statement of Claim, the Claimant pleaded that although his basic salary

was Kshs 70,000/-, he was also entitled to an incentive of 1% of the net profits as part of his remuneration.

11. The Respondent denied in the Response that the incentive was part of the salary.

12. At this interlocutory stage, the Court cannot determine whether the Claimant's salary was inclusive of the 1% incentive or not. That determination can only be made after the production and interrogation of evidence (*Mukisa Biscuits Manufacturing Ltd v West End Distributors* (1969) EA 696).

Orders

13. The Court finds that the Notice of Preliminary Objection requires it to interrogate disputed facts and thus is outside the ambit of a Preliminary Objection.

14. The Preliminary Objection is dismissed with costs in the cause.

Delivered virtually, dated and signed in Nairobi on this 13th day of November 2025.

**Radido Stephen, MCI Arb
Judge**

Appearances

For Claimant

Faith Akoth Oketch &
Co. Advocates

For Respondent

Kuloba Wasike & Co.
Advocates

Court Assistant

Wangu



NAIROBI