

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE NO. E136 OF 2025

KENDI ANSITY CHRISTINE.....
.....CLAIMANT

VERSUS

SOLZA LIMITED.....RESPONDENT

RULING

1. What is before this Court for determination is the Respondent's Notice of Preliminary Objection dated 17th April 2025, premised on the following grounds:-

- a) THAT the Plaintiff has instituted a suit herein against the Defendant, praying for compensation of Kshs. 15,000,000/= for development of Logbook loans product and breach of contract.*
- b) THAT the subject matter in the Plaintiff's suit is that of breach of contract as particularized in the Plaint as opposed to a dispute between employer and employee which falls within the ambit of this court.*
- c) THAT this honourable court does not have jurisdiction to hear and determine this suit pursuant to Section 12 of the Employment and Labour Relations Act No. 18 of 2024.*

d) THAT the Plaintiff's suit is incompetent, fatally defective, bad in law and an abuse of the court process and ought to be struck out with costs to the Defendant.

Submissions

2. The Preliminary Objection was canvassed by way of written submissions. Both parties filed written submissions which the Court has duly considered.

Analysis and Determination

3. The parameters for considering a Preliminary Objection are well established and have been settled through a series of judicial decisions, including the celebrated case of **Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd [1969] EA 696**, where the Court held that:

“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 had to be ascertained or if what is sought is the exercise of judicial discretion. The improper raising of points by way of Preliminary Objection does nothing but unnecessarily increase costs and, on occasion, confuse the issue. The improper practice should stop.” Emphasis mine

4. In summary, for a Preliminary Objection to succeed, the following conditions must be satisfied:

a) It must raise a pure point of law;

b) It must be argued on the assumption that all the facts pleaded by the opposing party are correct; and


c) It cannot be sustained if any fact has to be ascertained or if what is sought is the exercise of judicial discretion.

5. The crux of the Respondent's Preliminary Objection is that this Court lacks jurisdiction to hear and determine the present suit pursuant to **Section 12 of the Employment and Labour Relations Court Act**. In this regard, the Respondent contends that the Claimant's claim arises from a breach of contract rather than a dispute between an employer and an employee.

6. The Respondent further submits that the Claimant's claim is purely founded on a commercial contract and not an employment relationship. The Respondent has further posited that the Claimant's suit is not premised on any employment relationship, nor does it relate to unfair termination, unpaid salaries, employment benefits, or violation of employment rights.

7. Conversely, the Claimant maintains that there existed an employer–employee relationship which was breached by the Respondent. She asserts that on 25th August 2022, she entered into an employment contract with the Respondent to develop logbook loan products and that, upon successful launch of the said products and the opening of new branches, she was to be given priority for promotion to the position of Country Manager.

8. In light of the parties’ rival positions, it is evident that the question of whether an employment relationship existed between the parties is a factual issue that can only be determined upon the Court undertaking a factual analysis and considering the evidence on record. Needless to say, this is not a matter that can be properly resolved at this preliminary stage. It must be heard and determined on its merits.



9. It has been established through a long line of judicial authorities that a Preliminary Objection must be founded on a pure point of law and should not be entangled with factual controversies.

10. In the present case, the nature of the relationship between the Claimant and the Respondent is not a pure question of law; it is a factual matter that can only be ascertained through evidence.

11.Revisiting the dicta in **Mukisa Biscuit Manufacturing Co. Ltd vs West End Distributors Ltd (supra)**, a preliminary objection cannot be raised if any fact has to be ascertained.

12.Similarly, in the case of **George W M Omondi & another vs National Bank of Kenya Ltd & 2 others [2001] eKLR**, Ringera J (as he then was) held as follows:-

“What is forbidden is for counsel to take, and the Court to purport to determine, a point of preliminary objection on contested facts or in the exercise of a judicial discretion.”

13.And further, in the case of **Oraro vs Mbaja [2005] eKLR**, Ojwang J (as he then was), reckoned thus: -

“I think the principle is abundantly clear. A “preliminary objection”, correctly understood, is now well identified as, and declared to be a point of law which must not be blurred with factual details liable to be contested and in any event, to be proved through the processes of evidence. Any assertion which claims to be a preliminary objection, and 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. I am in agreement with learned counsel, Mr. Ougo, that “where a Court needs to investigate facts, a matter cannot be raised as a preliminary point.”

14. In the present case, it is evident that the Preliminary Objection has been improperly raised, as it is intertwined with factual issues that are hotly contested and require proof by way of evidence. This approach is inconsistent with the principles laid down in **Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd (supra)**.

15. Needless to say, the instant Preliminary Objection falls short of the threshold of what properly constitutes a preliminary objection.

16. The Court adopts the position taken in **UFM v KFM [2022] KEHC 14589 (KLR)**, that a preliminary objection is not a tool which should be used as a matter of course to prematurely bring to an end a suit which should be subjected to thorough interrogation through adduction of evidence and that where factual issues are involved, the best approach is to let parties litigate their case up to the end and a determination made on merit.

17. For the reasons set out above, the Preliminary Objection dated 17th April 2025 cannot be sustained and is hereby overruled, with an order that costs shall be in the cause.

DATED, SIGNED and DELIVERED at NAIROBI this 14th day of November 2025.

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STELLA RUTTO

JUDGE

In the presence of:

For the Claimant	Mr. Adipo
For the Respondent	Mr. Mutwiri
Court assistant	Elijoy

ORDER

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with **Order 21 Rule 1 of the Civil Procedure Rules**, which requires that all judgments and rulings be pronounced in open court.

In permitting this course, this court had been guided by Article 159(2)(d) of the Constitution which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of the Constitution and the provisions of **Section 1B** of the **Civil Procedure Act (Chapter 21 of the Laws of Kenya)** which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

STELLA RUTTO

JUDGE