

**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT & LABOUR RELATIONS COURT AT**  
**NAKURU**

**CAUSE NO. E058 OF 2024**  
***(Before Hon. Lady Justice Anna Ngibuini Mwaure)***

**KENYA NATIONAL PRIVATE SECURITY UNION...**  
.....**CLAIMANT**

**VERSUS**

**MR. SANJEEV KHAGRAMS**  
**(Sued as the Executor of the Estate of Kantilal D. Khagram).....RESPONDENT**

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**R U L I N G .**

**Introduction.**

- 1.** The Claimant had initially filed a Memorandum of Claim dated 13<sup>th</sup> September 2024 and later filed an Amended Memorandum of Claim dated 25<sup>th</sup> February 2024 seeking compensation for unfair termination, annual leave for 15 years, off days, underpayments, public holidays, gratuity and overtime.
  
- 2.** The Respondent filed a Notice of Preliminary Objection dated 20<sup>th</sup> November 2025 on the following grounds that:
  - 1. *The Claimant's suit/claim is improperly before this Honourable Court.***

**2. This Honourable Court lacks jurisdiction to entertain this claim at first instance by dint of section 29(3) of the Employment and Labour Relations Act, (Cap 234B) and Gazette Notice No. 6024 dated 10th June 2018 in which the Chief Justice appointed Magistrate of the rank of Senior Resident magistrates and above, to hear employment matters within their areas of jurisdiction limited to pecuniary not exceeding Kshs. 80,000 gross monthly salary.**

3. Parties canvassed the preliminary objection by way of written submissions.

#### **Claimant's submissions**

4. The Claimant submitted that this Honourable Court has jurisdiction to hear and determine this suit. The Claimant argued that the Respondent challenged this court's jurisdiction, pursuant to Gazette Notice No. 6024 of 2018, which conferred senior magistrates and above to handle employment matters.
5. The Claimant submitted that the matter is a trade dispute under the Labour Relations Act, 2007, which remains within the jurisdiction of ELRC. The Claimant emphasized that the dispute had been reported to a conciliator, confirming its nature as a trade dispute. The Claimant relied on the case of **Benta Achieng Odinyo V**

**University of Nairobi [2021] KEELRC 1768 (KLR),**  
the court stated as follows:

***“My understanding of the foregoing gazette notice is that a Senior Resident Magistrate's Court has been conferred with jurisdiction to hear and determine all employment and labour relations disputes arising from contracts of employment, but not dispute under the Labour Relations Act.”***

6. In ***Kenya Plantation & Agricultural Workers Union V Eastern Produce (K) Ltd [2024] KEELRC 73 (KLR),***  
the court at paragraphs 34 to 37 held as follows:

***“Indeed, the gazette notice as cited excludes the same jurisdiction from the same subordinate court where the issue falls under the Labour Relations Court. The claim has been filed by a trade union, which is a creature under the Labour Relations Act. This fact alone ousts the magistrate from this claim. It is therefore true that this claim ought to be handed by the ELRC, which has jurisdiction to handle.”***

7. The Claimant submitted that magistrates, as alluded to in the Gazette Notice No. 6024 of 10th June 2018, lack jurisdiction over trade union disputes; therefore, urged this Honourable court to dismiss the preliminary objection and proceed with hearing the case.
8. At the time of writing this ruling, the Respondent had not filed their respective submissions.

### **Analysis and Determination.**

9. The court has considered the preliminary objection and submissions on record: the issue for determination is whether the preliminary objection is merited.
10. In ***Joho & another V Shahbal & 2 others [2014] KESC 34 (KLR)***, the Supreme Court cited the case of ***Mukisa Biscuit Manufacturing Co. Ltd V West Distributors (1969) EA 696***, stated on preliminary objection as follows:

***“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 may dispose of the suit. Examples are an objection to the 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 dispute 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”.***

- 11.** In this instant case, the Respondent stated that this Honourable Court does not have jurisdiction to handle this suit filed herein. At the same time, the Claimant argued that this Honourable Court has jurisdiction to handle this suit.
  
- 12.** This Honourable Court is established under **Article 162(2)(a) of the Constitution** to deal with employment and labour relations and has equal status as the High Court. **Section 12(1) of the Employment and Labour Relations Court Act** provides as follows:

***“The Court shall have exclusive original and appellate jurisdiction to hear and determine all disputes referred to it in accordance with Article 162(2) of the Constitution and the provisions of this Act or any other written law which***

***extends jurisdiction to the Court relating to employment and labour relations, including—***

- (a) disputes relating to or arising out of employment between an employer and an employee;***
- (b) disputes between an employer and a trade union;***
- (c) disputes between an employers' organisation and a trade union's organisation;***
- (d) disputes between trade unions;***
- (e) disputes between employer organisations;***
- (f) disputes between an employers' organisation and a trade union;***
- (g) disputes between a trade union and a member thereof;***
- (h) disputes between an employer's organisation or a federation and a member thereof;***
- (i) disputes concerning the registration and election of trade union officials; and***
- (j) disputes relating to the registration and enforcement of collective agreements."***

**13.** Gazette Notice No. 6024 dated 10<sup>th</sup> June 2018, published on 22<sup>nd</sup> June 2018 vide Vol. CXX—No. 74 provides as follows:

***"IN EXERCISE of the powers conferred by section 29 (3) and (4) (b) of the***

***Employment and Labour Relations Court Act, 2011, and in consultation with the Principal Judge of the Court, the Chief Justice appoints all Magistrates of the rank of Senior Resident Magistrates and above as Special Magistrates designated to hear and determine the following employment and labour relations cases within their respective areas of jurisdiction:***

***1. Disputes arising from contracts of employment (excluding trade disputes under the Labour Relations Act, 2007) where employees gross monthly pay does not exceed KSh.. 80,000.00 as commenced and continued in accordance with the Employment and Labour Relations Court (Procedure) Rules, 2016.”***

- 14.** The court is of the view that this Honourable Court has jurisdiction to hear and determine this suit, as it has been filed by a union to represent the grievant, **Mr. Albert Okoth Alichu**, despite him earning less than the pecuniary sum set out in the Gazette Notice 6024 dated 10<sup>th</sup> June 2018 vide Vol. CXX—No. 74. The Magistrate Courts do not have jurisdiction to handle matters pertaining to unions. In ***Modern Soap Factory V Kenya Shoe and Leather Workers Union [2020]***

**KECA 4 (KLR)**, the Court of Appeal held that a trade union can represent its members in court even without a recognition agreement with the employer. The court emphasized constitutional protections of labour rights and statutory provisions that allow unions to act on behalf of its members.

**15.** By the nature of the case the parties had even been invited for a conciliation meeting vide a letter dated 17<sup>th</sup> July, 2024 but the Respondent did not appear for the meeting.

There were several other meetings called by the conciliator but Respondent did not show up.

**16.** In any event even if the salary of an employee is less than 80,000/= the Chief Justice vide gazette Notice E024/2018 mandated magistrates to hear such cases. That did not take away the jurisdiction of employment and labour relations court as provided in **Section 12(1)** of the **Employment of Labour Relations Court Act**. In the worst case if case is erroneously filed in ELRC Court it can be transferred to the subordinate court by the said ELRC where the issue is the ceiling of the salary.

**17.** Is this Preliminary Objection premised on a pure point of law capable of disposing of the case as provided in various case laws among them **MUKISA BISCUIT MANUFACTURING CO. LTD VS WEST END DISTRIBUTION (1969) E.A 696?** The court in the above

case stated that a Preliminary Objection consists of a pure point of law which has been pleaded on which arises by clear implication out of pleadings and which if argued as a preliminary point may dispose of a suit.

**18.** Having considered the affidavits and claimant's submissions the court finds the Applicant's Preliminary Objection is not merited and is right to proceed with the hearing of the main suit before this court and the court will be in a better position to give its determination.

**19.** The preliminary objection application is therefore dismissed. Costs will be in the cause.

**20.** Orders accordingly.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT KERICHO  
THIS 16<sup>TH</sup> DAY OF DECEMBER, 2025.**

**ANNA NGIBUINI MWAURE  
JUDGE.**

**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 15<sup>th</sup> March 2020 and subsequent directions of

21<sup>st</sup> 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 has 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.

A signed copy will be availed to each party upon payment of Court fees.

**ANNA NGIBUINI MWAURE**  
**JUDGE.**

