



REPUBLIC OF KENYA



**KENYA LAW**  
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**Muthoka v Mehta Electricals Limited (Cause E048 of 2025)  
[2026] KEELRC 188 (KLR) (29 January 2026) (Ruling)**

Neutral citation: [2026] KEELRC 188 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA  
CAUSE E048 OF 2025  
K OCHARO, J  
JANUARY 29, 2026**

**BETWEEN**

**MUINDI MBITHI MUTHOKA ..... CLAIMANT**

**AND**

**MEHTA ELECTRICALS LIMITED ..... RESPONDENT**

**RULING**

1. By a Notice of Preliminary Objection dated 25th May 2025, the Respondent asserts that this court lacks jurisdiction to entertain the Claimant's claim because the employment contract dated 18th March 2021, the subject matter of the instant suit, is governed by Seychelles law.
2. On 10th June 2025, this Court directed that the preliminary objection be canvassed by way of written submissions. Pursuant to that direction, Counsel for the parties have filed their respective submissions.

**The Respondent's submissions**

3. Counsel for the Respondent submits that a preliminary objection must be purely on a point of law, and that, indeed, the instant preliminary objection is. To buttress this submission, he places reliance on the case of Mukisa Biscuits Manufacturing Co. Ltd v West End Distribution Ltd [ 1969] EA 696.
4. . It is additionally submitted that, undeniably, the Claimant entered into an agreement with the Respondent Company, which is headquartered in the Republic of Seychelles, with his remuneration being paid in Seychelles Rupees. This fact is explicitly acknowledged in his pleadings.
5. The General Provisions of the contract set out in paragraphs 13 and 14 of the contract provide;
  - " 13. For anything not foreseen in the present contract, Seychelles Laws and Regulations shall apply.



14. In the event of any disputes arising between the Employer and Employee, such disputes shall be resolved by reference to the Seychelles Employment Legislation.”
6. Considering the foregoing, this Court lacks territorial jurisdiction to hear and determine the present suit. The suit ought to have been instituted in a court of competent jurisdiction within the Republic of Seychelles, as contemplated by the parties' contractual agreement.

### **The Claimant's Submissions**

7. Counsel for the Claimant submits that in the contract dated 18<sup>th</sup> March 2021, the employer, Mehta Electrical [Seychelles][PTY]Limited, is described as a Company registered in the Republic of Seychelles and an affiliate of the Respondent. The employer described in the agreement is different from the Respondent herein; as such, the said contract cannot be termed to form the substance of the instant suit.
8. Clearly, the Respondent seeks to enforce a contract to which it isn't a party. In the circumstances of this matter, it would be necessary to ascertain the facts to establish the true relationship between the parties. Consequently, the Respondent's objection cannot be said to meet the legal threshold for a valid preliminary objection. To support this point, he relies on the case of Attorney General & Another v Andrew Maina Githinji & Another [2016] eKLR.
9. The contract pleaded under paragraph 4 dated 1<sup>st</sup> August, 2019, is between the Claimant and the Respondent. At clause 18, it provides;

“This Agreement is governed by and shall be construed in all respects in accordance with the laws of Kenya, and the Parties submit to the exclusive jurisdiction of Kenyan Courts.”
10. Clause 3 provides for the Place of Employment, thus;

“Your place of employment will be at Mombasa or any other site where Meheta Electricals Limited has presence within and outside Kenya. You are required to be flexible to work in any other Company establishment, either on a temporary or a permanent basis, according to the needs of the Company that may change from time to time.”
11. It is on the basis of Clause 3 of the contract that the Claimant pleaded at paragraph 8 of the Statement of Claim that the Respondent provided him with short-term contracts to enable him work in Seychelles and on his return, he resumed his duties at the Respondent's workshop in Mombasa. This arrangement is provided for in the employment contract dated 1<sup>st</sup> August, 2019, being the main contract, and the termination of the Claimant's employment occurred while he was in Kenya.
12. Undoubtedly, there are two employment contracts and a dispute as to which of the two forms the substance of the instant suit. Such a dispute can be resolved only through a full hearing. A preliminary objection cannot be based on disputed facts.



## Analysis and Determination

13. It is trite law that a preliminary objection must be on a pure point of law. It cannot be held to be properly raised if any fact has to be ascertained. See *Oraro v Mbaja* [2005] eKLR, where the Court held;

“As already remarked, 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.”

14. In the locus classicus case of *Mukisa Biscuit Co Ltd vs West End Distributors Ltd* [1969] EA 696, as Waki JA aptly put it in *Attorney General & Another v Andrew Maina Githinji & another* [2016] eKLR, the epochal pronouncement on what constitutes a properly raised preliminary objection, were the statements by LAW JA, thus:

“So far as I’m 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 may dispose of the suit. Examples are an objection to the jurisdiction of the court, or 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.”

And by Sir Charles Newbold JA, thus;

“The first matter relates to the increasing practice of raising points, which should be argued in the normal manner, quite improperly by way of Preliminary Objection. A preliminary Objection is in nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all 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.”

15. A jurisdictional issue relating to the place of suing can be properly raised as a Preliminary Objection. However, its success is not automatically guaranteed, as it typically depends on the circumstances of each case. In cases where the pleadings appear inarguably to contain a contested point that, as such, could require the taking of evidence to settle it, such a point cannot be held to be a properly raised preliminary objection.
16. The Claimant in paragraph 2 of his Statement of Claim described the Respondent as a limited liability company incorporated under the provisions of the *Companies Act* and having its registered office in Mombasa within the Republic of Kenya. This description is admitted by the Respondent in paragraph 2 of its Memorandum of Response. Inarguably, the question regarding the relationship between the Respondent and that Company, Mehta Electricals [Sey][PTY] Limited, that the Claimant asserted is an affiliate of the Respondent but which the Respondent firmly describes as an independent entity, would need to be interrogated and answered, inter alia if the contest as regards the appropriate place of filing of the instant matter has to be justly determined. This would require taking evidence.
17. I have further carefully considered the respective pleadings by the parties, and note that Claimant contended that he first came into the employment of the Respondent on 1<sup>st</sup> October, 2001, and on 1<sup>st</sup> August, 2019, a contract of employment regulating their employee-employer relationship was issued. The Claimant argued that this contract was the main Contract that governed the employment



relationship, and that the contract dated 18<sup>th</sup> March 2021 was executed solely to enable him to obtain permission to work in Seychelles. The Respondent contests this assertion. The point regarding the place where this suit ought to have been filed can therefore be determined adequately only if the interplay between these two contracts and their purpose[s] is ascertained. To determine these, evidence must be taken.

18. In the upshot, I come to the inevitable conclusion that the Respondent's Preliminary Objection doesn't meet the legal threshold for a properly raised preliminary objection. It is hereby dismissed with costs.

**READ SIGNED AND DELIVERED THIS 29<sup>TH</sup> DAY OF JANUARY 2026.**

**OCHARO KEBIRA**

**JUDGE**

