



REPUBLIC OF KENYA



**KENYA LAW**  
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**Kyalo v DT Dobie & Company (Kenya) Limited & 2 others (Cause E507 of 2024) [2025] KEELRC 266 (KLR) (31 January 2025) (Ruling)**

Neutral citation: [2025] KEELRC 266 (KLR)

**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI**  
**CAUSE E507 OF 2024**  
**AK NZEI, J**  
**JANUARY 31, 2025**

**BETWEEN**

**JOHN ROY KYALO ..... CLAIMANT**

**AND**

**DT DOBIE & COMPANY (KENYA) LIMITED ..... 1<sup>ST</sup> RESPONDENT**

**CFAO MOBILITY KENYA LIMITED (FORMERLY KNOWN AS CFAO  
MOTORS KENYA LIMITED ..... 2<sup>ND</sup> RESPONDENT**

**CFAO SAS ..... 3<sup>RD</sup> RESPONDENT**

**RULING**

1. The Claimant sued the 1<sup>st</sup>, 2<sup>nd</sup> and the 3<sup>rd</sup> Respondents herein vide a Memorandum of Claim dated 1<sup>st</sup> July, 2024 and filed in this Court on 5<sup>th</sup> July, 2024 and sought the following reliefs against the three Respondents:-
  - a. A declaration that the Termination of Service Agreement dated 28<sup>th</sup> March, 2023 between the Claimant and the 1<sup>st</sup> Respondent is illegal, unenforceable and a nullity.
  - b. A declaration that the constructive termination of the Claimant's dual employment with the First Respondent on 9<sup>th</sup> May, 2024 was unlawful, unfair and wrongful.
  - c. A declaration that termination of the Claimant's employment by the 2<sup>nd</sup> Respondent on purported redundancy grounds was unlawful, unfair and wrongful and in violation of Articles 41 and 47 of *the Constitution* of Kenya.
  - d. A declaration that the 3<sup>rd</sup> Respondent induced breach of the Employment Contract between the Claimant and the 2<sup>nd</sup> Respondent.
  - e. An award of Kshs.25,441,750/= as against the 1<sup>st</sup> Respondent.



- f. An award of Kshs.13,341,963/= as against the 2<sup>nd</sup> Respondent.
  - g. An award of Kshs.123,193,057.60 as against the 3<sup>rd</sup> Respondent.
  - h. General, exemplary and punitive damages against the Respondents.
  - i. Interest at court rates on (e), (f) and (g) above from the date of filing suit until payment in full.
  - j. Costs of the suit.
2. Whereas the 1<sup>st</sup> and 2<sup>nd</sup> Respondents are shown to have defended the suit herein vide a statement of Response dated 30<sup>th</sup> July, 2024, the 3<sup>rd</sup> Respondent is not shown to have filed any pleadings so far. Indeed, service of summons on the 3<sup>rd</sup> Respondent, which I have gathered from the Court's record herein is a foreign company, is the subject in the Claimant's pending application herein dated 10<sup>th</sup> July, 2024.
3. On 9<sup>th</sup> July, 2024, the 1<sup>st</sup> and 2<sup>nd</sup> Respondents filed an evenly dated Notice of Preliminary Objection stating as follows;-
- “TAKE NOTICE that the 1<sup>st</sup> and 2<sup>nd</sup> Respondents herein will at or before the hearing of this suit, raise a preliminary objection to the claim against the 3<sup>rd</sup> Respondent on the ground that:-
- 1. Pursuant to the provisions of Section 12 of the *Employment and Labour Relations Court Act*, this Court lacks Jurisdiction to determine the claim between the Claimant and the 3<sup>rd</sup> Respondent for reasons that:-
    - a. There is no employment or any relationship between the Claimant and the 3<sup>rd</sup> Respondent.
    - b. Between the period of 22<sup>nd</sup> December, 2020 and 30<sup>th</sup> March, 2023, the Claimant was employed by the 1<sup>st</sup> Respondent.
    - c. Between 1<sup>st</sup> April, 2023 and 9<sup>th</sup> May, 2024, the Claimant was employed by the 2<sup>nd</sup> Respondent.
    - d. The 3<sup>rd</sup> Respondent is a foreign company and a shareholder of the 2<sup>nd</sup> Respondent. It is a separate legal entity.
  - 2. The statement of claim dated 1<sup>st</sup> July, 2024 as against the 3<sup>rd</sup> Respondent should be struck out with costs.”
4. On 30<sup>th</sup> July, 2024, this Court (Jacob Gakeri, J) gave directions on disposal of the preliminary objection, by way of written submissions; which both the Claimant and the 1<sup>st</sup> and 2<sup>nd</sup> Respondents duly filed. The preliminary application is before me for determination.
5. The Preliminary Objection, which I have deliberately reproduced in paragraph 3 of this Ruling, sounds like a piece of a pleading. It raises matters of fact which cannot be verified and determined by this



Court without first taking evidence. It was held as follows in the case of Mukisa Biscuit Manufacturing Co. Ltd –vs- West End Distributors Ltd [1969] E.A. 696:-

“ . . . 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.”

6. A Preliminary Objection can only be taken where what is involved is a pure point of law. In a situation where what is involved is a conflict or a clash of facts, a trial must be conducted, witnesses must be called, testimonies must be given and evidence produced for assessment by the trial court and determination of the case on merit.
7. In the present case, rival and/or clashing facts have been pleaded regarding the Claimant’s employment relationship with the Respondents. The issue of whether or not there existed an employment relationship between the Claimant and the 3<sup>rd</sup> Respondent is a matter of fact, and can only be determined upon consideration of evidence presented in a trial.

8. In the Mukisa Biscuit Case (Supra), Sir Charles Newbold stated as follows:-

“ . . . A preliminary objection is in the nature of what used to be called a demurrer. It raised a pure point of law, which was argued on assumption that all the other facts pleaded by the other party were 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 unnecessary increase of costs and, on occasion confuse the issue. The improper practice should stop.”

9. On the extend of this Court’s Jurisdiction and the 1<sup>st</sup> and 2<sup>nd</sup> Respondents’ assertion that this court lacks jurisdiction to determine the claim between the Claimant and the 3<sup>rd</sup> Respondent as the 3<sup>rd</sup> Respondent, a shareholder of the 2<sup>nd</sup> Respondent which had employed the Claimant between 1<sup>st</sup> April, 2023 and 9<sup>th</sup> May, 2024, it is to be noted that this Court’s Jurisdiction is not confined to employers and employees. As stated by the Court of Appeal in the case of Paramount Bank Limited – vs – Vaqvi Syed Qamara & Another [2017] eKLR:-

“ . . . The preamble to *Employment and Labour Relations Court Act* states that the Court is established to hear and determine disputes relating to “employment and labour relations” and “for connected purposes”. Among its powers under Section 12, the Court hears and determines all disputes relating to and arising out of employment and labour relations. In the exercise of that Jurisdiction, the Court has the power to award compensation or damages in any circumstances contemplated under the Act or any other written law and to grant any other appropriate relief that it may deem fit.”

10. In Hassan Magiya Kiage – vs – Attorney General and Another [2017] eKLR, the Court of Appeal, referring to its earlier decision in Stanley Mungai Muchai – vs – National Oil Corporation [2012] eKLR, stated as follows:-

“The Jurisdiction of the Employment and Labour Relations Court extends to all disputes relating to employment and labour relations. Personal Jurisdiction is no longer confined to employers and employees but to all persons implicated in an employment and labour relations dispute.”



11. Could the 3<sup>rd</sup> Respondent be a person and/or legal entity likely to be implicated in the employment dispute herein.” Evidence will tell.
12. Article 162(2)(a) of *the Constitution* of Kenya establishes this Court and demarcates its jurisdiction to include all disputes relating to employment and labour relations. This goes far beyond employers and employees, and more often than not ropes in established doctrines and principles applicable in the law of contract.
13. Having considered submissions filed by both parties, I find no merit in the 1<sup>st</sup> and 2<sup>nd</sup> Respondents’ Preliminary Objection dated July 9, 2024, and the same is hereby dismissed with costs.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 31<sup>ST</sup> DAY OF JANUARY 2025**

**AGNES KITIKU NZEI**

**JUDGE**

**ORDER**

This Ruling has been delivered via Microsoft Teams Online Platform. A signed copy will be availed to each party upon payment of the applicable Court fees.

**AGNES KITIKU NZEI**

**JUDGE**

Appearance:

Mr. Kiplang’at for the Claimant

Miss Muthiani for the 1<sup>st</sup> and 2<sup>nd</sup> Respondents

No appearance for 3<sup>rd</sup> Respondent

