



REPUBLIC OF KENYA



**KENYA LAW**  
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**Munguti v General Plastics Limited (DVR Rao) (Administrator) (Cause E067 of 2023) [2025] KEELRC 215 (KLR) (29 January 2025) (Ruling)**

Neutral citation: [2025] KEELRC 215 (KLR)

**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI**  
**CAUSE E067 OF 2023**  
**DKN MARETE, J**  
**JANUARY 29, 2025**

**BETWEEN**

**DAN MUNGUTI ..... CLAIMANT**

**AND**

**GENERAL PLASTICS LIMITED (DVR RAO)**  
**(ADMINISTRATOR) ..... RESPONDENT**

**RULING**

1. This is an application by way of a Preliminary Objection dated 20th February, 2024 and comes out as follows;

Take notice that at the hearing of the Claim herein on the same date, Counsel for the Respondent will contend as a preliminary point of law, to be determined in limine, that the Claimant's continuation of legal proceedings especially the hearing of the application filed against the Respondent is hopelessly misconceived, totally devoid of merit and mala fides for the reason inter alia, that legal proceedings began or continued against the Respondent (being a Company under Administration per Gazette Notice No. 931 – extended by the attached Court Order) are prohibited under the provisions of the *Insolvency Act*, No. 18 of 2015 Laws of Kenya.

2. The Respondent in a Replying Affidavit sworn on 21st February, 2024 opposes the application and submits that it is a non starter in view of the court ruling dated 31st January, 2023 on her subject. This comes out thus;

“...I am bound by the said precedents from the Supreme Court and the court of Appeal. The *Constitution of Kenya*, *Insolvency Act* and the *ELRCA* have not donated to this Court the Jurisdiction to determine Insolvency disputes. As correctly submitted by the administrator, an application for leave to continue the suit pending administration under the Act and to



enjoin the administrator as a Defendant in the suit constitutes an administration dispute. The dispute must be investigated and determined by the court having the jurisdiction under the law to do so...”

3. The Respondent’s further case and submissions is that the *insolvency Act*, 2015 prohibits continuation of cases on commencement of the same against companies under Administration. Further, this court lacks jurisdiction to issue the orders sought herein as they contravene section 430 of the *Insolvency Act*, 2015.
4. The Respondent / Objector also relies on the doctrine of exhaustion and submits that the claimant was not exhausted the first option of seeking the consent of the administration to proceed with the suit. No proof has been filed on the request to the Administrator.
5. On jurisdiction, the Respondent/Objector submits thus;

... it is our humble submission that only the High Court – Commercial Division has jurisdiction to grant leave to proceed with a suit against a company that has been placed under administration.
6. The claimant submits that the objection is frivolous, vexatious and an abuse of the process of court, he having sought leave and authority of this court in Misc Application E143 of 2022 to institute this proceeding. Such leave was fully canvassed and leave granted thereby diluting the preamble to the Respondent’s objection.
7. Again, it will be a travesty of justice for this court to purport to sit on an appeal through the backdoor of a court of equal stature and jurisdiction.
8. The Claimant/Respondent in the penultimate seeks to rely on authority of in Nairobi High Court Petition No. 613 of 2014 – *Patrick Musimba v. The National Land Commission and Others*, where the court observed as follows;

“it would be ridiculous and fundamentally wrong in our view, for any court to adopt a separationistic view or approach and insist on splitting issues between the Courts where a court is properly seized with a matter but a constitutional issue not within its obvious exclusive jurisdiction is raised.”
9. In conclusion, the Claimant/Respondent submits that this court is competent to entertain the dispute between the Applicant and the Respondents since it is a Servant – Master relationship (Employer - Employee dispute). The fact that the 1st Respondent is in administration is not a bar and further doesn’t make the dispute an insolvency or commercial dispute.
10. Again, approval and authority was granted by this court to institute these proceedings having taken into account all the circumstances of the case.
11. I agree with the objection by the Claimant/Respondent. It would be foolhardy to claim that this court lacks jurisdiction to hear and determine this application and intended cause. Like is argued and submitted by the objector, the subject matter at hand is master/servant or employer, employee. This is far removed from insolvency or commercial disputes.
12. I therefore inclined to dismiss the preliminary objection with costs to the Claimant / Respondent.

**DELIVERED, DATED AND SIGNED THIS 29<sup>TH</sup> DAY OF JANUARY 2025.**

**D. K. NJAGI MARETE**



## **JUDGE**

### **Appearances:**

Mr. Muoka instructed by Philip Muoka & Co. Advocates for the Objector.

Mr Ogola instructed by Toglaw & Co. Advocates for the Claimant/Respondent.

