



**Mureithi v Steel Structures Limited (Cause E517 of 2022)  
[2025] KEELRC 621 (KLR) (28 February 2025) (Ruling)**

Neutral citation: [2025] KEELRC 621 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E517 OF 2022  
JW KELI, J  
FEBRUARY 28, 2025**

**BETWEEN**

**LEWIS MUREITHI ..... CLAIMANT**

**AND**

**STEEL STRUCTURES LIMITED ..... RESPONDENT**

**RULING**

1. The Respondent raised a Notice Preliminary Objection dated 28<sup>th</sup> October 2024 to the Claimant's Statement of Claim to the effect that the whole claim be dismissed with costs as the same is incompetent, misconceived, and an abuse of the court process of this Honourable court on grounds that:-
  1. The Claimant's claim is grounded on the tort of contract which is not within the jurisdiction of this Honourable Court as provided for in Article 162(2)(b) of *the Constitution* of Kenya 2010.
  2. That this Honourable court has no jurisdiction since there is no employer-employee relationship between the Claimant and the Respondent herein.
  3. The Claimant's claim is contrary to Article 162 (2) (a) of *the Constitution*. Parliament passed the *Employment and Labour Relations Court Act*, which, in addition to establishing the court, set out the jurisdiction of the court as follows:-

“ 12. Jurisdiction of the Court

- (1) 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;.."

4. That the Claimant's claim be struck out.
5. The application was canvassed by way of written submissions. Only the Respondent filed.

### Decision

2. The preliminary objection was based on lack of employee-employer relations under the jurisdiction of the court pursuant to section 12 of the *Employment and Labour Relations Court Act*. The claimant pleaded he was a former employee of the respondent and sought for payment of contractual amounts and retention fees for work done in employ as sub-contractor of the respondent in December 2020.
3. At paragraph 6 of the statement of claim, the Claimant pleaded:- "The respondent has at all material times provided a sub contract agreement based on site for steel erection where the claimant has always signed on belief that the contractual amount would be paid in time after a successful completion of work at site." Further, in paragraph 7 the claimant stated:- "The respondent has always advocated for paying the claimant 80% of the total agreed contractual amount with an agreement that the balance of 20% which is the retention fee, would be paid after a successful completion of steel erection on site."
4. An employee and employer are defined under the *Employment Act*; "employee" means a person employed for wages or a salary and includes an apprentice and indentured learner. "Employer" means any person, public body, firm, corporation or company who or which has entered into a contract of service to employ any individual and includes the agent, foreman, manager or factor of such person, public body, firm, corporation or company; "The employment relationship is governed by contracts of service where oral or written, and includes minimum terms of employment like salary, working hours, rest days, leave and social security like pension or gratuity, and fair hearing before any termination. Taking into account the pleadings in paragraph 6 and 7 of the statement of claim (supra). The court finds that the claimant was not an employee. The claimant was contracted for steel erection at the site of the respondent. The Claimant had a sub- contract agreement for that project and not a contract of service. The terms of payment were defined for the project and it was not indicated the claimant received the contractual benefits of employee of house allowance, leave etc . The court holds this was a contractual relationship for execution of a project and a claim for breach of terms of the agreement on payment. The claim on prima facie basis did not disclose an employer-employee relationship. The defence was that there was no employee-employer relations and consequently the court lacked jurisdiction.
5. The respondent relied on the decision in *Mukisa Biscuits Manufacturing Co Ltd vs West end Distribution Ltd* [1969] E.A.696 where the courts defined a preliminary objection as; -

“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 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 ... 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”



The court found the instant notice of preliminary objection was proper as it raised issue of jurisdiction of the court.

6. The court having held that the statement of claim did not disclose an employee-employer relationship, the suit falls outside the jurisdiction of the court under Article 162(2)(a) of the Constitution which states:- “162(1) The superior courts are the Supreme Court, the Court of Appeal, the High Court and the courts referred to in clause (2).  
  
(2) Parliament shall establish courts with the status of the High Court to hear and determine disputes relating to— (a) employment and labour relations;” Jurisdiction flows from either the Constitution and the legislation or both as observed by the Supreme court in Samuel Kamau Macharia & Another v Kenya Commercial Bank Limited & 2 others [2012] eKLR. The court lacks jurisdiction to hear the suit for want of jurisdiction, having found there is no employee-employer relationship between the parties.
7. The court upheld the notice of preliminary objection dated 28<sup>th</sup> October 2024 raised by the respondent and struck out the suit for want of jurisdiction with costs.
8. It is so Ordered.

**DATED, SIGNED, AND DELIVERED IN OPEN COURT AT NAIROBI THIS 28<sup>TH</sup> DAY OF FEBRUARY, 2025.**

**J.W. KELI,**

**JUDGE.**

In the presence of:

Court Assistant: Otieno

Claimant :- Ndongu

Respondent: Aencha

