



**Osoro v Blockchain Cybertech Limited (The B-Hub) (Cause E228 of 2024) [2025] KEELRC 1006 (KLR) (28 March 2025) (Ruling)**

Neutral citation: [2025] KEELRC 1006 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E228 OF 2024  
SC RUTTO, J  
MARCH 28, 2025**

**BETWEEN**

**GLORIA NYAKERARIO OSORO ..... CLAIMANT**

**AND**

**BLOCKCHAIN CYBERTECH LIMITED (THE B-HUB) ..... RESPONDENT**

**RULING**

1. What is before this Court for determination is the Respondent's Notice of Preliminary Objection dated 30<sup>th</sup> November 2024, which is premised on the following grounds: -
  - a. This Honorable Court lacks jurisdiction to admit, hear and entertain the present suit as it would offend the provisions of Section 2 of the *Employment Act* as the suit relates to a dispute over a consultancy Contract and the terms thereto as the court is legally incapable of granting the Plaintiff's (sic) prayers enshrined in the Statement of Claim.
  - b. In the circumstances the Plaintiff's (sic) Application and suit should be struck out in the first instance with costs to the Defendants (sic).
2. Upon being served with the Preliminary Objection, the Claimant responded by filing Grounds of Opposition dated 7<sup>th</sup> January 2025 through the firm of Kuria & Associates, her Advocates on record. It is contended on behalf of the Claimant that:
  1. The Claimant admits and supports that this Honorable Court has inherent jurisdiction to hear and determine this matter as the dispute arose from an employer-employee relationship.
  2. The Claimant worked for gain as an UX Designer at the Respondent Company vide a Confidentiality Agreement dated 26<sup>th</sup> July 2021.
  3. The Claimant was not engaged as a consultant but as an employee.



4. The Respondent Company breached its contractual obligations by failing to pay the outstanding salary arrears owed to the Claimant and are to be deemed as coming to equity with unclean hands.
  5. The Respondent Company is not in denial that they owe the Claimant salary arrears.
  6. The Respondent has not presented any evidence before this Honorable Court in support of their purported averment that the Claimant was a consultant.
  7. The Respondent failed to pay accrued salary arrears of one and a half months for February 2023, March 2023, April 2023, May 2023, and June 2023.
  8. The Claimant continued to perform her duties but owing to the unfavorable work environment, was forced to issue the respondent a resignation letter.
  9. The Claimant has on numerous occasions, reached out to the C.E.O. of the Respondent Company but was met with hostility.
  10. The Respondent's Notice of Preliminary Objection is a delay tactic and unmeritorious on the side of the Respondent Company to derail the suit at hand.
  11. The Notice of Preliminary Objection filed by the Respondent dated 30<sup>th</sup> November 2024 is frivolous, abuse of court process, lacks merit and ought to be dismissed with costs.
3. In response to the Claimant's Grounds of Opposition, the Respondent filed a Replying Affidavit sworn on 7<sup>th</sup> March 2025 by Mr. Musyoki, its Advocate on record. Mr. Musyoki deposes that the Confidentiality Agreement was not an employment contract but rather a contract of consultancy. That the Respondent thus cannot be deemed to have been the Claimant's employer as defined in the [Employment Act](#).
  4. That the Respondent is a stranger to the alleged salary arrears under any contract of employment between it and the Claimant since no such contract existed.
  5. Mr. Musyoki further avers that the Respondent shall at the hearing of the Notice of Preliminary Objection dated 30<sup>th</sup> November 2024, adduce facts and evidence to prove that the relationship between the Respondent and the Claimant was a consultancy one.
  6. The Respondent further filed an undated Supplementary Affidavit sworn by Granvil Wafula, who describes himself as the Respondent's Chief Executive Officer. In the Supplementary Affidavit, Mr. Wafula has reiterated the averments contained in the Replying Affidavit of Mr. Musyoki dated 7<sup>th</sup> March 2025.
  7. The Claimant further filed an Affidavit sworn on 18<sup>th</sup> February 2025 in which she reiterates her Grounds of Opposition dated 7<sup>th</sup> January 2025.

### **Submissions**

8. The Preliminary Objection was canvassed by way of written submissions. Both parties complied and the Court has paid due consideration to the said submissions.



## Analysis and Determination

9. The parameters of consideration of a Preliminary Objection are now well-trodden and have been settled through a series of case law, including the celebrated case of Mukisa Biscuit Manufacturing Co. Ltd vs West End Distributors Ltd (1969) EA 696, where the Court held that:
- “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 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.” Emphasis mine
10. In a nutshell, for a Preliminary Objection to succeed, the following tests ought to be satisfied:
- a. it should raise a pure point of law;
  - b. it is argued on the assumption that all the facts pleaded by the other side are correct; and
  - c. it cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion.
11. The crux of the Respondent’s Preliminary Objection is that this Court lacks jurisdiction to entertain the suit herein as the dispute is over a consultancy contract hence the Court is incapable of granting the prayers enshrined in the statement of claim.
12. This position has been strongly opposed by the Claimant, who contends that she was an employee of the Respondent and was not engaged as a consultant.
13. Evidently, the assertion by the Respondent that the Claimant was not its employee and was engaged as a consultant is a factual issue requiring parties to be heard and a determination made on merit. Indeed, that is a factual issue that cannot be litigated at this point.
14. It has been held in a long line of authorities that a Preliminary Objection should be based on a pure point of law and should not be marred with issues of fact.
15. As it is, the nature of the relationship that existed between the Claimant and the Respondent is not a pure question of law. It is a question that can only be ascertained by evidence.
16. Indeed, this is confirmed by the fact that both parties herein have filed Affidavits and extensively made averments on factual issues regarding their relationship. The Respondent has even gone ahead and annexed a copy of the Confidentiality Agreement to the Replying Affidavit sworn by Mr. Musyoki to support its position. This further reinforces the position that the Preliminary Objection cannot be settled without resorting to a factual analysis and evidence.
17. In addition to the foregoing, Mr. Musyoki has averred as follows in his Replying Affidavit: “The Respondent shall at the hearing of the Notice of Preliminary Objection dated 30<sup>th</sup> November 2024, adduce facts and evidence to prove that the relationship between the Respondent and the claimant was a consultancy one”.
18. Revisiting the dicta in Mukisa Biscuit Manufacturing Co. Ltd vs West End Distributors Ltd (supra), a preliminary objection cannot be raised if any fact has to be ascertained. In other words, there is no place for facts and evidence in a point of preliminary objection.



19. In the case of George W M Omondi & another vs National Bank of Kenya Ltd & 2 others [2001] eKLR, Ringera J (as he then was) held as follows: -

“What is forbidden is for counsel to take, and the Court to purport to determine, a point of preliminary objection on contested facts or in the exercise of a judicial discretion.”

20. And further, in the case of Oraro vs Mbaja [2005] eKLR, Ojwang J (as he then was), reckoned thus: -

“I think the principle is abundantly clear. A “preliminary objection”, correctly understood, is now well identified as, and declared to be a point of law which must not be blurred with factual details liable to be contested and in any event, to be proved through the processes of evidence. Any assertion which claims to be a preliminary objection, and yet it bears factual aspects calling for proof, or seeks to adduce evidence for its authentication, is not, as a matter of legal principle, a true preliminary objection which the Court should allow to proceed. I am in agreement with learned counsel, Mr. Ougo, that “where a Court needs to investigate facts, a matter cannot be raised as a preliminary point..”

21. In the present case, it is clear that the preliminary objection has been raised improperly and is blurred with factual details which have been hotly contested through rival Affidavits and which require proof by way of evidence. This is not in consonance with the principles enunciated in Mukisa Biscuit Manufacturing Co. Ltd vs West End Distributors Ltd (Supra).

22. Needless to say, the instant preliminary objection cannot be determined without revisiting the factual issues which entail an examination of evidence thus, it falls outside the threshold of what constitutes a preliminary objection.

23. The Court adopts the position taken in the case of UFM v KFM [2022] KEHC 14589 (KLR) that a preliminary objection is not a tool which should be used as a matter of course to prematurely bring to an end a suit which should be subjected to thorough interrogation through adduction of evidence. That where factual issues are involved, the best approach is to let parties litigate their case up to the end and a determination made on merit.

24. For the reasons set out above, the Preliminary Objection dated November 30, 2024, cannot be sustained hence it is overruled with an order that costs shall be in the cause.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 28<sup>TH</sup> DAY OF MARCH 2025.**

.....

**STELLA RUTTO**

**JUDGE**

In the presence of:

For the Claimant Mr. Kuria

For the Respondent No appearance

Court assistant Millicent

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 had 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.

