



Maisha Mapya Kenya Foundation Limited v Shikuku & another (Employment and Labour Relations Cause E043 of 2024) [2025] KEELRC 761 (KLR) (7 March 2025) (Ruling)

Neutral citation: [2025] KEELRC 761 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU
EMPLOYMENT AND LABOUR RELATIONS CAUSE E043 OF 2024**

AN MWAURE, J

MARCH 7, 2025

BETWEEN

MAISHA MAPYA KENYA FOUNDATION LIMITED CLAIMANT

AND

MICHAEL WAFULA SHIKUKU 1ST RESPONDENT

DANSON MWAURA 2ND RESPONDENT

RULING

1. The Claimant commenced this suit vide a Memorandum of Claimant dated 5th July 2024 through the firm of Letangule & Co. Advocate for judgment to be entered against the Respondents for the following orders:
 - a. Special damages for the money loss of Kshs. 63,201,897.27/=
 - b. General damages for conversion, fraud, negligence and breach of duty as well as trust
 - c. Costs of this suit
 - d. Interest on a, b and c above at court rates until payment in full
 - e. Any other relief that this Honourable Court may deem fit in the circumstances.
2. The 2nd Respondent filed a Notice of Preliminary Objection dated 31st October, 2024 in opposition to the Claimant's memorandum of claim dated 5th July 2024 on the following grounds that:
 1. The Employment and Labour Relations Court lacks jurisdiction to hear and determine this matter as it does not fall within the scope of employment-related disputes envisioned under the *Employment and Labour Relations Court Act*, 2011.



2. The Claimant suit primarily seeks special damages in the form of funds allegedly stolen by the Respondents, as well as general damages, which are civil recovery claims rather than employment-related matters.
 3. The claims for special damages related to theft or fraud are typically categorized as tort or criminal matters, which are handled by civil or criminal courts.
 4. If the primary goal is to recover stolen funds rather than resolve an employment contract dispute.
 5. Consequently, the Claimant suit ought to be struck out or dismissed, with costs, as it improperly invokes the jurisdiction of this court.
3. The Notice of Preliminary Objection was canvassed by way of written submissions.

2nd Respondent's written submissions

4. The 2nd Respondent submitted that this Honourable Court (ELRC) was established under Article 162(2) of *the Constitution*, and its mandate was to hear and determine the matters relating to employment and labour relations. Section 12(1) of the *Employment and Labour Relations Court Act* provides for the jurisdiction of the court as follows:

“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;
 - b. disputes between an employer and a trade union;
 - c. disputes between an employers' organisation and a trade unions organisation;
 - d. disputes between trade unions;
 - e. disputes between employer organizations;
 - f. disputes between an employers' organisation and a trade union;
 - g. disputes between a trade union and a member thereof;
 - h. disputes between an employer's organisation or a federation and a member thereof;
 - i. disputes concerning the registration and election of trade union officials; and
 - j. disputes relating to the registration and enforcement of collective agreements.”
5. The 2nd Respondent submitted that ELRC does not have jurisdiction over this case as it pertains to financial impropriety and fraud, which are outside the scope of employment disputes. The ELRC is mandated to handle disputes directly related to employment contracts, statutory rights, or labour laws, not tortious claims or recovery of debts.
 6. The 2nd Respondent submitted that the claim should be heard in a court with general jurisdiction over civil disputes, and the preliminary objection should be allowed as prayed and awarded with costs.



Claimant's submissions

7. The Claimant reiterated section 12(1) of the Employment Labour Relations Court Act, which has been mentioned above in the earlier part of the ruling.
8. The Claimant submitted that this Honourable Court(ELRC) has jurisdiction to hear and determine the claim as it emanates from an employment relationship between the Claimant and the Respondents.
9. The Claimant submitted that the 1st Respondent was employed as Assistant Executive Director from July 2021 to 9th May 2023, while the 2nd Respondent held various positions from June 2016 to March 2023. The Claimant alleges that the Respondents withdrew and misappropriated funds from specific bank accounts. The Claimant submitted that the 1st Respondent resigned while the 2nd Respondent was terminated, leading to a separate case of unfair termination, which he filed in Nakuru Chief Magistrate MCELRC No. 146 of 2023.
10. The Claimant submitted that the Preliminary Objection is an attempt by the Respondents to evade justice and that the case should be heard before this Honourable Court (ELRC) since it has jurisdiction.
11. The Claimant relied on the case of Mukhisa Biscuits Manufacturers Ltd V West End Distribution Ltd [1969] EA 696, and the Court of Appeal stated as follows:

“ A preliminary objection is in the name and 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 has to be ascertained or if what is sought is the exercise of judicial discretion.”
12. The Claimant urges this Honourable Court to dismiss the Preliminary Objection with costs and allow the full hearing of the suit to proceed forward.
13. The 1st Respondent did not file any written submissions.

Determination

14. Having considered the Notice of Preliminary Objection and the submissions, the issue for determination is whether the Notice of Preliminary Objection is merited.
15. In the case of Mukhisa Biscuits Manufacturers Ltd v. West End Distribution Ltd(supra), the court stated that a preliminary objection explicitly deals with the pure point of the law.
16. The establishment of this Honourable Court (ELRC) is enshrined under Article 162(2) of *the Constitution*, and Section 12(1) of the *Employment and Labour Relations Court Act* lays down the jurisdiction of ELRC.
17. In this instant case, the Respondents were the Claimant's employees who were allegedly involved with the misappropriation of funds amounting to Kshs.63,201,897.27/=. The 1st Respondent resigned while the 2nd Respondent was terminated by the 1st Respondent and then filed a claim for unfair termination in Nakuru Chief Magistrate MCELRC No. 146 of 2023.
18. The 1st Respondent resigned from his employment on 9th May 2023 and the 2nd Respondent's employment was terminated on 3rd March 2023.



This claim was filed on 5th July 2024. By then the Respondents had no employee relationship with the claimant.

Therefore, their case cannot be said to fall under Section 12 of *Employment and Labour Relations Court Act*.

19. Further, the claim is for special damages for money apparently stolen by the two Respondents during their term of employment.

This is a suit that should be in the High Court and clearly not this court. This would be better tried in a Civil court.

20. The court agrees with the Respondent's Preliminary objection that this court has no jurisdiction to hear this claim.

As is trite law where the court has no jurisdiction it has no option but to down its tools.

21. The court holds that the Preliminary objection herein dated 31st October 2024 is merited and is allowed.

22. Each party will meet the costs of this application.

Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAKURU THIS 7TH DAY OF MARCH, 2025.

ANNA NGIBUINI MWAURE

JUDGE

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 15th March 2020 and subsequent directions of 21st 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 has 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 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.

A signed copy will be availed to each party upon payment of Court fees.

ANNA NGIBUINI MWAURE

JUDGE

