



REPUBLIC OF KENYA



KENYA LAW
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**Wanyama v Malaria No More UK (Cause E108 of 2024)
[2025] KEELRC 698 (KLR) (6 March 2025) (Ruling)**

Neutral citation: [2025] KEELRC 698 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E108 OF 2024
S RADIDO, J
MARCH 6, 2025**

BETWEEN

NERIMA MARIA WANYAMA CLAIMANT

AND

MALARIA NO MORE UK RESPONDENT

RULING

1. Nerima Maria Wanyama (the Claimant) sued Malaria No More UK (the Respondent) alleging unfair termination of employment and breach of contract.
2. When served, the Respondent filed a Notice of Preliminary Objection on 21 November 2024, contending:
 - i. That this Honourable Court lacks jurisdiction to hear and determine any disputes arising from the contract of employment dated 20th January 2023.
 - ii. That clause 22.4 of the contract of employment dated 20th January 2023 expressly provides for the choice of law being English law and that parties submit to the exclusive jurisdiction of the English Courts.
3. The Court gave directions on the Notice of Preliminary Objection on 22 January 2025, and the Respondent filed its submissions on 31 January 2025, and the Claimant on 20 February 2025.
4. When the Court retreated to prepare this Ruling, it established that the parties had not filed in Court a copy of the employment contract, a crucial document to the Preliminary Objection.
5. The Court therefore directed the Deputy Registrar to notify the parties to appear in Court on 5 February 2025 for further directions.
6. Consequent to the directions, the Claimant filed her documents on 6 February 2025.



7. The Court has considered the Statement of Claim, Notice of Preliminary Objection and submissions.
8. In its submissions, the Respondent cited Owners of the Motor Vessel “Lillian S” v Caltex Oil (Kenya) Ltd. (1989) eKLR, Arthur Kawino v Population Services International (PSI) (2017) eKLR, Kenya Union Of Employees of Voluntary and Charitable Organizations v Sudan Catholic Bishops Regional Conference (2013) eKLR and Kamurasi v Absa Bank Kenya PLC & Ar (2023) KEELRC 3229 (KLR) to assert that jurisdiction flows from the Constitution or law and where a Court finds it has no jurisdiction, it must down its tools.
9. The Claimant on her part contested the Preliminary Objection on the ground that her work station was Kenya and therefore, the choice of forum was Kenyan Courts.
10. The Claimant further urged that she would be prejudiced if left to pursue justice outside the Kenyan Courts and she cited a passage in Alusa v Mobile Consultation Association Ltd t/a Tibu Health (2024) KEELRC 13438 (KLR):

Whilst the court agrees that the principle of party autonomy requires that individuals be allowed the latitude to determine the terms upon which they should engage, it is noted that this presupposes that the parties were enjoying equality of power at the point of entering into the agreement. This reality does not find favour in employment relations where there is perceived imbalance of power between employers and employees. And hence the minimalistic application of the principle to employment contracts as a matter of public policy (Maina v Kenya Commercial Bank PLC & another (Constitutional Petition E003 of 2023) [2024] KEELRC 2287 (KLR) (26 September 2024) (Ruling).

11. Clause 22.4 of the employment contract between the parties provided that:

This Agreement shall be governed by and construed in accordance with English law and the parties to this Agreement shall submit to the exclusive jurisdiction of the English courts.

12. The employment contract between the parties indicates that the parties voluntarily agreed on the choice of law and forum in case of disputes. The choice of law, English Law. The forum of choice, English Courts.
13. With the clear exercise of party autonomy as set out in the employment contract, this Court cannot rewrite the parties’ mutual agreement but must yield to the Notice of Preliminary Objection and down its pen for want of jurisdiction.

Orders

14. The Court declines jurisdiction in light of the parties' choice of law and forum. The Cause is struck out with costs to the Respondent.

DELIVERED VIRTUALLY, DATED AND SIGNED IN NAIROBI ON THIS 6TH DAY OF MARCH 2025.

Radido Stephen, MCI Arb

Judge

Appearances

For Claimant Kwamboka Marie & Associate Advocates

For Respondent Ogutu & Gichuhi Advocates LLP



