



**Nyabwala v Elevate HR Limited (Cause E276 of 2024)
[2025] KEELRC 1549 (KLR) (29 May 2025) (Ruling)**

Neutral citation: [2025] KEELRC 1549 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E276 OF 2024**

**L NDOLO, J
MAY 29, 2025**

BETWEEN

KENNEDY ODHIAMBO NYABWALA CLAIMANT

AND

ELEVATE HR LIMITED RESPONDENT

RULING

1. The Claimant filed a Statement of Claim dated 12th April 2024 against Elevate HR Limited as 1st Respondent and Impact Africa Network Ltd, as 2nd Respondent.
2. By a subsequent Notice of Motion dated 10th May 2024, Impact Africa Network challenged its joinder in the proceedings. This Motion was allowed by consent recorded before me on 23rd January 2025, leaving Elevate HR Limited as the sole Respondent.
3. In its Response to the Statement of Claim, the Respondent raised a counterclaim against the Claimant, seeking the following:
 - a. That the Claimant be compelled to provide satisfactory narratives with proof for the uncategorised payments totalling Kshs. 617,812;
 - b. In the absence of satisfactory narratives, recovery of the amounts in item (a) from the Claimant;
 - c. The Claimant to make payment of the outstanding amounts advanced to him in his personal capacity, totalling Kshs. 826,408.12;
 - d. Interest on items (a), (b) and (c) above from the termination date (30th January 2024);
 - e. Recovery of amounts in items (a), (b) and (c) above from any monies currently held in lien by the Respondent;
 - f. Costs of the counterclaim.



4. In response, the Claimant filed a Notice of Preliminary Objection dated 11th March 2025, challenging the jurisdiction of this Court to hear and determine the counterclaim filed by the Respondent.
5. The parties urged the Preliminary Objection by way of written submissions. In his submissions dated 18th March 2025, the Claimant states that the Respondent's counterclaim does not clearly bring out the actual cause of action. The Claimant however goes ahead to infer fraud, embezzlement and/ or misappropriation of company funds.
6. According to the Claimant, the Respondent's counterclaim does not raise an employment-related dispute.
7. In its submissions dated 28th March 2025, the Respondent refers to the decision in *Mukisa Biscuit v West End Distributors Ltd (1969) EA, 696* where the following definition of a preliminary objection was rendered:

“...a preliminary objection consists of 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 of the suit...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.”
8. The Respondent submits that the Claimant's objection does not meet the above threshold.
9. The Claimant's Preliminary Objection is based on an apparent belief that while this Court can entertain his claim against his former employer, it is precluded from entertaining the employer's complaints emanating from the employment relationship, he himself relies upon.
10. I cannot see any legal basis for such a proposition. Once a party subjects themselves to the jurisdiction of this Court, they must be prepared to go the whole hog. It could not have been the intention of parliament to make a law which splits a case into fragments.
11. The jurisdiction of the Employment and Labour Relations Court is anchored in Article 162(2)(a) of the *Constitution* which provides as follows:
 - (2) Parliament shall establish courts with the status of the High Court to hear and determined disputes relating to-
 - (a) employment and labour relations; and
 - (b) ...
12. Pursuant to this constitutional provision, Section 12(1) (a) of the *Employment and Labour Relations Court Act* provides that:
 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 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. ...



13. In its decision in *Abraham Nyambane Atsiago v Barclays Bank of Kenya* [2013] eKLR this Court stated the following:

“By its nature, the employment relationship generates a multiplicity of rights and obligations, some of which are not to be found in the express provisions of the employment contract. In my view, all these fall under employment and labour relations as intended by the law makers. To rule otherwise would be to create a situation where an employer or an employee traverses different courts to enforce different rights arising from the employment relationship. That in my view could not have been the intention of the legislators.”

14. In the present case, the dispute set out in the Respondent’s counterclaim flows directly from the employment relationship between the parties. Such a dispute falls squarely within the jurisdiction of this Court.

15. The Claimant’s Preliminary Objection is therefore ill advised and is overruled with costs to the Respondent.

16. Orders accordingly.

DELIVERED VIRTUALLY AT NAIROBI THIS 29TH DAY OF MAY 2025

LINNET NDOLO

JUDGE

Appearance:

Mr. Kimutai for the Claimant

Mr. Chege for the Respondent

