



**Mwobobia v Steel Structures Limited (Cause E518 of 2022)
[2025] KEELRC 1907 (KLR) (27 June 2025) (Ruling)**

Neutral citation: [2025] KEELRC 1907 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E518 OF 2022**

SC RUTTO, J

JUNE 27, 2025

BETWEEN

ISAAC MUTHONI MWOBOBIA CLAIMANT

AND

STEEL STRUCTURES LIMITED RESPONDENT

RULING

1. What comes up for determination is the Respondent's Notice of Preliminary Objection dated 5th March 2025, in which the following grounds have been raised:
 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).
 4. That the Claimant's suit be struck out.
2. On 17th March 2025, the Court directed that the Preliminary Objection be canvassed by way of written submissions. Only the Respondent filed written submissions.

Submissions

3. In support of the Preliminary Objection, the Respondent has submitted that this Court has no jurisdiction to hear and determine the Claimant's claim since there is no employer-employee relationship. The Respondent contends that the Claimant is an independent contractor and in the event he has any claim against the Respondent, it can only be addressed in the commercial court.



Analysis and Determination

4. It is the Respondent's contention in the Preliminary Objection dated 5th March 2025, that this Court lacks the requisite jurisdiction to hear and determine the entire suit as there is no employer-employee relationship between the Claimant and the Respondent.
5. As was held in the celebrated case of *Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd* (1969) EA 696:

“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.” Underlined for emphasis
6. Fundamentally, for a preliminary objection to succeed, the following elements 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.
7. Accordingly, this Court must now consider whether the issues raised in the instant Preliminary Objection are matters of fact or law, with the assumption that the facts are correct.
8. In paragraph 3 of the Statement of Claim dated 24th February 2022, the Claimant has pleaded that he worked as a subcontractor at the Respondent's head office.
9. The Claimant goes ahead to make assertions at paragraph 5 of the Statement of Claim relating to the “terms of his employment”.
10. Further to the foregoing, in paragraph 11 of the Statement of Claim, the Claimant makes further assertions regarding his performance while in the Respondent's employment.
11. In light of the foregoing averments contained in the Statement of Claim and bearing in mind the gist of the Respondent's Objection, the lingering question is whether or not there was an employment relationship between the parties herein. Evidently, this issue cannot be resolved at this point in time and can only be determined following hearing and evaluation of evidence to be adduced during the trial.
12. The question as to whether the Claimant was employed by the Respondent under a contract of service or whether he was engaged as an independent contractor is not a pure question of law. Indeed, that is a factual issue that cannot be litigated at this point.
13. 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.
14. Revisiting the dicta in *Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd* (*supra*), a preliminary objection cannot be raised if any fact has to be ascertained.
15. Accordingly, it is apparent that in the present case, the Preliminary Objection has been raised improperly and is blurred with factual details which require proof by way of evidence. This is not



in consonance with the principles enunciated in *Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd (supra)*.

16. To this end, the Respondent's Preliminary Objection dated 5th March 2025 is overruled with an order that costs shall be in the cause.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 27TH DAY OF JUNE 2025.

STELLA RUTTO

JUDGE

In the presence of:

For the Claimant No appearance

For the Respondent Mr. Nyaencha

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 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 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.

STELLA RUTTO

JUDGE

