



**Kabiruri v Namanga Forex Bureau Limited (Cause E1061 of 2024)  
[2025] KEELRC 2134 (KLR) (18 July 2025) (Ruling)**

Neutral citation: [2025] KEELRC 2134 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E1061 OF 2024**

**AK NZEI, J  
JULY 18, 2025**

**BETWEEN**

**JOSEPH NGUGI KABIRURI ..... CLAIMANT**

**AND**

**NAMANGA FOREX BUREAU LIMITED ..... RESPONDENT**

**RULING**

1. The Claimant sued the Respondent herein vide a Memorandum of Claim dated 11<sup>th</sup> December, 2024 and filed in Court on 13<sup>th</sup> December, 2024, claiming a total sum of Kshs.3,135,000/= made up of notice pay, house allowance, salary arrears, leave days and compensation for unfair termination of employment. The Claimant also prays to be issued with a certificate of service and to be paid costs of the suit and interest.
2. The Claimant pleads that he was employed by the Respondent on or about 7<sup>th</sup> February, 2022 as a General Manager in the Respondent's Forex Bureau located along Muindi Mbingu Street in Nairobi CBD at a salary of Kshs.135,000/= per month; and worked diligently until 30<sup>th</sup> August, 2024 when his employment was wrongfully and unlawfully terminated by the Respondent.
3. The Respondent filed a Statement of Response and a Counter-claim dated 24<sup>th</sup> February, 2025, and subsequently filed a Notice of Preliminary Objection dated 28<sup>th</sup> February, 2025 objecting to the Claimant's suit on ground:-
  - a. That this Court lacks Jurisdiction to hear and to determine the claim herein pursuant to Gazette Notice No. 6024 of 22<sup>nd</sup> June, 2018, Section 29(3) and (4)(b) of the *Employment and Labour Relations Court Act* and Article 169(2)(a) of the *Constitution*.
  - b. That the Claimant's monthly salary was a gross pay of Kshs.50,000/=, a fact admitted in the Claimant's contract of employment.



- c. That vide Gazette Notice No. 6024 of 22<sup>nd</sup> June, 2018, the Honourable Chief Justice directed that all Magistrates of the rank of Senior Resident Magistrate and above shall be clothed with Jurisdiction to handle cases where the salary of the employee does not exceed Kshs.80,000/=, with the exception of cases filed under the *Labour Relations Act*.
4. On 12<sup>th</sup> March, 2025, the Court directed both parties to file written submissions on the preliminary objection. Written submissions have since been filed, and I have considered the same.
5. The issue of what a preliminary objection really is and when it can be raised was exhaustively addressed by the Court of Appeal for Eastern Africa in the case of *Mukisa Biscuits Manufacturing Co. Ltd – vs – West End Distributors Limited* [1969] E.A. 696 where the Court stated as follows:-
- “ . . . 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. Examples are an objection to jurisdiction of the court, or a plea of limitation, or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration.”
6. The Court further stated in the *Mukisa Biscuits Case (Supra)*:-
- “ . . . A preliminary objection is in the nature of what used to be called a demurrer. It raised a pure point of law, which was argued on assumption that all the other facts pleaded by the other party were 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 unnecessary increase of costs and, on occasion confuse issues. The improper practice should stop.”
7. In the present case, the Respondent’s preliminary objection is on grounds that the Claimant, according to the Respondent, was earning a gross salary of Kshs.50,000/= and that by virtue of Gazette Notice No. 6024 of 22<sup>nd</sup> June, 2018 vide which some Magistrates’ Courts were given/clothed with Jurisdiction to handle matters whereby the employees’ salary does not exceed Kshs.80,000/=; the suit herein ought to have been filed in the Magistrate’s Court.
8. It is to be noted that in the statement of claim, paragraph 4 thereof, it is pleaded that the Claimant was earning a salary of Kshs.135,000/=. The Respondent denies this pleading at paragraph 4 of its Statement of Response and Counter-claim, and states as follows:-
- “ 4. . . . the Respondent states that the . . . salary was Kshs.50,000/= and not Kshs.135,000/= as alleged by the Claimant. Even in the Claimant’s bundle of documents Marked A, the gross salary is indicated as Kshs.50,000/=. ”
9. The issue of the amount of the Claimant’s salary is disputed and has to be ascertained. It cannot be raised as a preliminary objection. It is an issue that can only be determined upon a full trial. Witnesses will have to be called to testify, and evidence on the issue will have to be taken. The allegation that this Court lacks jurisdiction to hear and to determine the suit herein based on the foregoing disputed matter must fall by the way side.
10. Further, and for record purposes, it must be noted that this Court, the Employment and Labour Relations Court, is the only Court that has exclusive and unlimited Jurisdiction over employment and labour relations matters, except where that jurisdiction has been expressly taken away (divested) by an Act of Parliament. The Jurisdiction given to the Magistrates’ Courts vide Gazette Notice No. 6024



of 22<sup>nd</sup> June, 2018 is a delegated Jurisdiction, and the Gazette Notice does not divest this Court of its exclusive and unlimited jurisdiction over matters referred to in the said Gazette Notice. However, and for good order, when such matters are filed in this Court (the Employment and Labour Relations Court), the Court ordinarily transfers the matters to the Magistrates' Courts.

11. Article 162(2)(a) and (3) of the Constitution of Kenya 2010 establishes a Superior Court, this Court, to hear and to determine employment and labour relations matters, and obligated Parliament to legislate a law determining the jurisdiction and functions of the Court. That law is the Employment and Labour Relations Court Act. Under Section 12(1) of the Act, this Court is given exclusive original and appellate jurisdiction to hear and to determine all disputes referred to it in accordance with Article 162(2) of the Constitution and provisions of the 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 . . .”

12. I return a finding that the Claimant's suit herein is properly before this Court.

13. The improper raising of points by preliminary objection purporting to challenge this Court's jurisdiction over employment and labour relations matters, which does nothing but unnecessarily increases costs, confuses issues and delays hearing and determination of suits, should stop. I echo the Court's sentiments in the *Mukisa Biscuits case* (Supra).

14. That said, I find no merit in the Respondent's Preliminary Objection dated 28<sup>th</sup> February, 2025. The same is overruled, and is hereby dismissed with costs to the Claimant.

15. Orders accordingly.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 18<sup>TH</sup> DAY OF JULY 2025**

**AGNES KITIKU NZEI**

**JUDGE**

ORDER

This Ruling has been delivered via Microsoft Teams Online Platform. A signed copy will be availed to each party upon payment of the applicable Court fees.

**AGNES KITIKU NZEI**

**JUDGE**

Appearance:

Miss Kariuki for the Claimant

No appearance for the Respondent

