



Gichamba & Co. Advocates v Morara Omoke & Co. Advocates & 2 others (Employment and Labour Relations Cause 1352 of 2018) [2024] KEELRC 277 (KLR) (13 February 2024) (Ruling)

Neutral citation: [2024] KEELRC 277 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS CAUSE 1352 OF 2018
AN MWAURE, J
FEBRUARY 13, 2024**

BETWEEN

GICHAMBA & CO. ADVOCATES CLAIMANT

AND

MORARA OMOKE & CO. ADVOCATES 1ST RESPONDENT

**BOARD OF TRUSTEE, KENYA BROADCASTING CORPORATION (KBC)
STAFF RETIREMENT BENEFITS SCHEME (SUING ON BEHALF OF THE
SCHEME) 2ND RESPONDENT**

KENYA BROADCASTING CORPORATION 3RD RESPONDENT

RULING

1. The 1st respondent filed a preliminary objection dated 9th October 2023 seeking the following prayers:-
 1. That the honourable court lacks jurisdiction to entertain the application for review of the courts directions issued on November 16th November 2022 as it is time barred.
 2. That the application does not meet the threshold for review as the applicant has not identified any mistake or error apparent on the face of record as prescribed by rule 33(1) of the *Employment And Labour Relations Court (Procedure) Rules, 2016*.
 3. That the prayers sought in the application are not capable of being granted through review. The issues raised are more suited for appeal and not review.
 4. That the applicant is attempting to file an appeal out of time by framing his issues in form of an application for review.
 5. That the applicants primarily moves the court to sit on appeal on a decision made by the court
 6. That the application is an abuse of the court process.



7. That the application is scandalous and frivolous for using a language that is demeaning to the court namely, “..... render the court as an agent for collection of legal fees”. Further, the language used in the application is disrespectful to the 1st respondent specifically the words, “.... Our attempt to arrest a runaway train before any harm is occasioned on account of its derailment.”.....
2. The court considered the issues raised by the 1st respondent in his prayer for preliminary objection dated 9th October 2023.
3. The applicant Messrs Gichamba & Company Advocates filed their submissions dated 4th November 2023 which the court keenly considered. The 1st respondent did file his submissions dated 30th October 2023. The court also considered the submissions by the first respondent.
4. The court has considered the grounds raised by the 1st respondent in support of the application for Preliminary objection. The same will all need to be litigated and to have the court consider the facts and the law in order to make a determination.
5. It is trite law as well set out in the often cited case of *Mukbisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd* (1969) EA 696 the Court of Appeal held:-

“so far as I am aware, a preliminary objection consist of a pure 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 on the jurisdiction of the court, or a plea of limitation or a submission that he parties are bound by the contract giving rise to the suit to refer the dispute to arbitration.” Newbold, P “ a preliminary objection is in the nature of what used to be 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 has 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 butt unnecessarily increase costs and, on occasion, confuse the issues, this improper practice should stop.

6. A preliminary objection is therefore raised only as a point of law and as held in the case of *Independent Electoral and Boundaries Commission v Jane Cheperenger & 2 Others* (2015) eKLR cited by the claimant Preliminary objection serves a public cause sparing scarce judicial time and so is committed only to deserving cases of dispute settlement. The court further proceeded to state:

“it’s distinctly improper for a party to resort to preliminary objection as sword for winning a case otherwise destined to be resolved Judicially and on the merits.”

7. The issues raised in this application are facts that require evidence and so application does qualify to be determined under judicial review.
8. The preliminary objection dated 9th October 2023 therefore is not merited and is dismissed accordingly. Costs are in the cause.

Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 13TH DAY OF FEBRUARY, 2024.

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

