



**Obita v Teachers Service Commission & 7 others (Cause E053 of 2024)
[2024] KEELRC 13417 (KLR) (17 December 2024) (Ruling)**

Neutral citation: [2024] KEELRC 13417 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
CAUSE E053 OF 2024
JK GAKERI, J
DECEMBER 17, 2024**

BETWEEN

FRED APIMA OBITA CLAIMANT

AND

TEACHERS SERVICE COMMISSION 1ST RESPONDENT

KISII (TSC) COUNTY DIRECTOR 2ND RESPONDENT

FORMER NYAMACHE (TSC) SUB-COUNTY DIRECTOR ... 3RD RESPONDENT

**PRINCIPAL, ST GABRIEL RIYABO SECONDARY SCHOOL 4TH
RESPONDENT**

**BOARD OF MANAGEMENT, ST GABRIEL RIYABO SECONDARY
SCHOOL 5TH RESPONDENT**

NYAMACHE, SUB-COUNTY DIRECTOR OF EDUCATION 6TH RESPONDENT

**KENYA UNION OF POST PRIMARY EDUCATION TEACHERS 7TH
RESPONDENT**

**THE COMMISSION OF ADMINISTRATION OF JUSTICE (OFFICE OF THE
OMBUDSMAN) 8TH RESPONDENT**

RULING

1. Before the Court for determination is the 5th Respondents Notice of Preliminary Objection dated 5th October, 2024 seeking the dismissal of the suit against the 5th Respondent on the premise that there is no employer/employee relationship between the Claimant and the 5th Respondent and the Court has no jurisdiction to entertain the suit.



2. The Notice of Preliminary Objection has not cited any provision or proposition of law as its foundation. When the matter came up for hearing of the Preliminary Objection on 27th November, 2024, only the Claimant and the counsel for the 5th Respondent were present. All other parties were absent. Mr. Nyamweya, counsel for the 5th respondent submitted that he represented the Board of Management (B.O.M) of the 5th Respondent and the Preliminary Objection on record was grounded on section 12 of the [*Employment and Labour Relations Court Act*](#).
3. Counsel argued that his client was neither an employer nor employee of the claimant and the Court had no jurisdiction to hear the suit against the B.O.M of the 5th Respondent and the same should be dismissed.
4. Mr. Apima, the Claimant submitted that the Notice of Preliminary Objection was unsigned and could not be rescued by Article 159 of [*the Constitution*](#) of Kenya and prayed that it be struck off for want of signature.
5. In rejoinder, Mr. Nyamweya submitted that the Notice of Preliminary Objection was signed electronically by the law firm and was properly filed and served.
6. The claimant stated that he sued the B.O.M because he was teaching at the school.
7. None of the parties expressed an intention to file written submissions and no directions were given to that effect.
8. However, in a strange turn of events, the claimant delivered a hand copy of 12 page submissions.
9. The salient argument by the claimant is that the 5th Respondent's Notice of Preliminary Objection dated 5th October, 2024 is undated and thus ineffectual for purposes of determination.
10. The claimant argues that the notice is incompetent, fatally defective and incurable.
11. Reliance was made on Order 2 of the Civil Procedure Rules and a catena of decisions such as *Goodman V Eban Ltd* [1954] IQB 550, *Van Vuuren V Van Vuuren* [1854] Searle 116, *African Continental Bank V Hatson (Nigeria) PLC* [1997] 8 NWLR 110, *Benjamin Bivbere V Francis Bivbere* (no citation) *Guaranty Trustee Bank PLC V Innoson Nigeri Ltd* (SC 694/2014 [2017] NGSC 22, *Southern Engineering Co. Ltd V Heady Berge Ltd & Another* (no citation), *Phoebe Wangui V James Kamore Njumo* [2012] eKLR and *Stephen Karanja & 4 Others V Thomas Barasa* [2007] eKLR among others to urge that unsigned pleadings belong to nobody and lack legal validity as it lacks authentication.
12. As to whether Mr. Nyamweya can raise a Notice of Preliminary Objection for the 2nd Respondent the Claimant submitted that he could not as the 2nd Respondent is represented by Mr. Sitima as per the Notice of Appointment dated 24th July, 2024, and 29th July, 2024 and when he entered appearance and filed a defence dated 30th September, 2024.
13. Finally, the claimant submits that the Notice of Preliminary Objection dated 5th October, 2024 was simply a tactic by the 5th Respondent to waste judicial time and delay the suit.

The issues for determination are:

- i. Whether the 5th Respondent's Notice of Preliminary Objection dated 5th October, 2024 is competent and properly before the court.
- ii. Whether the Notice of Preliminary Objection meets the threshold in *Mukisa Biscuit Manufacturing Co. Ltd V West End Distributors Ltd* [1969] EA 696.



14. As to whether the Notice of Preliminary Objection is signed or authenticated parties have adopted opposing positions with the 5th Respondent's counsel maintaining that it was electronically signed.
15. The signature in this case are the letters vrsc. The issue for determination is whether these four (4) letters constitute the 5th Respondent's counsel's signature.
16. The claimant argues that the document is not signed and cites Order 2 of the Civil Procedure Rules 2010 Order Rule 2 Rule 16 provides that:

Every pleading shall be signed by an advocate, or recognized agent as defined by Order 9 rule (2) or by the party if he sues or defends in person.

17. Under Section 2 of the *Interpretation and General Provisions Act* 'sign' with reference to a person who is unable to write his name, includes mark.
18. It is common ground that a signature can take various forms including a mark or name of the person among others.

Blacks Law Dictionary 10th Edition defines sign as Sign implies insertion of an authentication mark on something be it a document or other surface. It associates the person to the instrument or surface.

It implies an act by a human being.
19. Although the advance in digital technology will change the conception that only a human being can authenticate a document, as of now a human act is essential as it is a mark of acknowledgment, ownership and responsibility for the contents. Order 2 rule 16 and Order 9 rule 2 are explicit as to who may sign a pleading.
20. The several decisions by Courts in Nigeria, cited by the Claimant demonstrate the Nigerian jurisprudence on signatures and authentication of documents and are merely persuasive.
21. In *Kiptoo Arap Korir Salat V IEBC & Others Civil Application No. 228/2013* the Court of Appeal expressed itself as follows:

“Courts cannot aid and in the bending or circumventing of rules and shifting of goal posts for, while it may seem to aid one side, it unfairly harms the innocent party who strives to abide by the rules. I apprehend that it is the even handed and dispassionate application of the rules that there is clear method in the matter in which things are done so that outcomes can be anticipated with a measure of confidence certainty and clarity where issues of rules and their application are concerned. The above analysis draws us to the conclusion that where a pleading is not signed the same should be struck out”.

22. Similarly, in *Atulkumar Magantal Shah V Investment & Mortgages Bank Ltd & 2 Others Civil Appeal No. 13 of 2001 consolidated with Vipin Maganlal Shah V Investment & Mortgages Bank Ltd & 2 Others Civil Appeal No. 19 of 2001 [2001] EA 274 [2001] KLR 190*, the Court of Appeal stated as follows:

“where a pleading is not signed the same would struck out rather than being dismissed...”

A pleading must be signed by the advocate or the party himself where he sues or defends in person or by his recognised agent and this is meant to be a voucher that the case is not a mere fiction...



In Kenya a party who files an unsigned pleading runs a very grave risk of having that pleading struck out as not complying with the law”.

23. Finally, in Regina Kavenya Mutuku & 3 Others V United Insurance Co. Ltd [2002] IKLR 250 A. Ringera J stated:

“ An unsigned pleading has no validity in law as it is the signature of the appropriate person on the pleading which authenticates the same an authenticated document is not a pleading of anybody. It is a nullity”.
24. The foregoing authorities lay it bare that a pleading must be authenticated by an advocate, the party suing or an authorised agent failing which it does not qualify to be a pleading.
25. Needless to emphasize, Order 2 Rule 16 is couched in mandatory terms to underscore the centrality of the signature or authentication of pleadings.
26. Guided by the foregoing statutory and judicial authorities, it is the finding of this Court that the letters ‘vrsc’ on the 5th respondents Notice of Preliminary Objection are not a signature within the meaning of Order 2 rule 16 of the Civil Procedure Rules.
27. In the upshot, the 5th Respondent’s Notice of Preliminary Objection dated 5th October, 2024 is struck out with no orders as to costs.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KISUMU ON THIS 17TH DAY OF DECEMBER, 2024.

DR. JACOB GAKERI

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 *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.

DR. JACOB GAKERI

JUDGE

