



**Kitheka v Equity Bank (K) Limited (Cause E622 of 2021)
[2023] KEELRC 818 (KLR) (23 March 2023) (Ruling)**

Neutral citation: [2023] KEELRC 818 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E622 OF 2021
MN NDUMA, J
MARCH 23, 2023**

BETWEEN

PETER KIOKO KITHEKA CLAIMANT

AND

EQUITY BANK (K) LIMITED RESPONDENT

RULING

1. The suit was filed on August 2, 2021 by a Statement of Claim of even date in which the claimant pleads that he was an employee of the respondent until August 6, 2018 when his employment was unlawfully terminated. He prays for various reliefs including the equivalent of 12 months' salary in compensation for the unlawful dismissal. He prays for damages for the breach of his constitutional rights under Section 27, 41, 47 and 50 of the Constitution. He prays for costs of the suit.
2. The respondent filed a notice of preliminary objection to the claim dated September 15, 2022 to wit:-
 1. This Honourable Court lacks the requisite jurisdiction to entertain, hear, determine and/or grant the orders sought against the Respondent.
 2. The application filed offends Section 12 of the Employment and Labour Relations Court Act, 2011.
 3. The suit is incompetent, fatally defective, utter abuse of the Court process and a waste of the precious judicial time.
3. The parties filed submissions on the Preliminary Objection.
4. The Court finds outrightly that the Preliminary Objection is vague, lacks precision and is not a pure point of law as defined in *Mukisa Biscuit Manufacturing Company Limited v West end Distributors*



Limited (1969) EA 696 and as restated in the case of *Margaret Nyiba Gatambia & 2 Others v Peninah Ngechi Njaaga & 3 Others [2019] eKLR* thus:-

“When preliminary points are raised, they should be capable of disposing the matter preliminarily without the Court having to result to ascertaining the facts from elsewhere apart from looking at the pleadings.”

5. Indeed a perusal of the pleadings in this matter leads the Court to the conclusion that this Court has jurisdiction over this matter. The Preliminary Objection is misconceived and an abuse of the Court process. The same is dismissed with costs.

DATED AND DELIVERED AT NAIROBI (VIRTUALLY) THIS 23RD DAY OF MARCH, 2023.

MATHEWS N NDUMA

JUDGE

Appearances

Mr Kimathi for respondent

M/s Chimei for the claimant

Ekale – Court Assistant

