



**Murugi v Diani F& B Limited t/a Funky Monkey Ventures & Salty Squid
(Cause E012 of 2023) [2023] KEELRC 2440 (KLR) (12 October 2023) (Ruling)**

Neutral citation: [2023] KEELRC 2440 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
CAUSE E012 OF 2023
AK NZEI, J
OCTOBER 12, 2023**

BETWEEN

MOUREEN MURUGI CLAIMANT

AND

**DIANI F& B LIMITED T/A FUNKY MONKEY VENTURES & SALTY
SQUID RESPONDENT**

RULING

1. The suit herein was filed on 24/2/2023 vide a memorandum of claim dated 23/2/2023. The Claimant pleaded, inter-alia, that she was employed by the Respondent as a General Manager vide a Letter of Appointment dated 7/10/2021, by dint of which the Claimant’s employment commenced on 1/12/2021. That in terms of a letter dated 1/6/2022, the Claimant was earning a net monthly salary of ksh. 180,000, net of taxes, which was later revised to ksh. 190,000, net of taxes, as at the date of the termination on 7/12/2022.
2. The Claimant further pleaded that her dismissal was unlawful, and sought the following reliefs:-
 - a. a declaration that the Respondent’s termination/dismissal of the Claimant’s employment amounted to constructive dismissal and/or illegal and/or unfair dismissal.
 - b. one month salary in lieu of notice.....ksh. 190,000
 - c. relocation costsksh. 190,000
 - d. six months’ salary being damages for unjustified terminationksh, 1,140,000
 - e. 12 months salary in compensation for unfair termination
.....ksh. 2,280,000



- f. failure to provide a safe work environmentksh 1,140,000
 - g. costs of the suit and interest at Court rates.
3. The Respondent entered appearance on 14/3/2023, and on 23/3/2023 filed a Notice of Preliminary Objection dated 22/3/2023 and called for the Claimant's suit to be struck off on the following grounds:-
 - a. that the suit is ex-facie incompetent and an abuse of the Court's process, and cannot be ventilated before this Court.
 - b. that the suit does not comply with mandatory requirements of Section 7(1) and 9(b) of the Magistrate's Court Act (No. 26 of 2015 Laws of Kenya). That Kwale Law Courts has the requisite pecuniary jurisdiction to handle and competently determine the Claimant's claim.
 - c. that there is no registered legal entity bearing the business name as the Respondent named herein, but rather these are two separate and independent business entities that cannot be conglomerated to form one business name.
 - d. that the suit is misconceived, malicious, offensive, frivolous, vexatious and/or is an abuse of the Court's process, and ought not to be entertained by the Court.
 - e. that the respondent prays that the Claimant's suit be dismissed and/or struck off with costs.
4. The twin issue emerging for determination from the foregoing is whether the Claimant's suit is incompetent, and whether this Court has jurisdiction to entertain, to hear and to determine the same.
5. I must state, right at the onset, that this Court, the Employment and Labour Relations Court, is constitutionally the only Court that has unlimited jurisdiction over employment and labour relations matters. This is by dint of Article 162(2) (a) of the Constitution of Kenya 2010 and Section 12 of the Employment and Labour Relations Court Act (No. 20 of 2011). *Vide* gazette Notice No. 6024 dated 10th June 2018, the Honourable Chief Justice appointed specified Magistrates' Courts to hear employment matters within their areas of jurisdiction where an employee's gross monthly salary does not exceed ksh. 80,000.
6. In the present suit, the Claimant pleaded that he was earning ksh. 190,000 per month as at the time of termination, and has demonstrated as much vide an affidavit sworn by her on 5th April 2023 and filed herein on 6th April 2023 in response to the Respondent's Notice of Preliminary Objection. In view of this, the Claimant rightfully, lawfully and competently filed her suit in this Court; and the Court shall proceed to hear and to determine it on merit.
7. On the Respondent's assertion that "there is no legal entity bearing a business name as the Respondent named herein", I find and hold that this is an issue of fact that can only be proved, if at all, upon taking of evidence in a trial. The issue cannot be raised by way of a preliminary objection as it has to be ascertained. This leads to the question, what is a preliminary objection?
8. It was held as follows in the celebrated case of Mukisa Biscuits Manufacturing Co. Ltd -vs- West End Distributors Ltd [1969] E.A 696:-

“.....a Preliminary Objection consist of a point of law which has been pleaded, or which arises by clear implication out of pleadings and which if urged as a preliminary point may dispose of the suit. Examples are an objection to the 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.”

9. It was further stated as follows 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...”

10. Having said that; I find no merit in the Respondent’s preliminary objection dated 13th March 2023. The same is hereby dismissed with costs.

DATED, SIGNED AND DELIVERED AT MOMBASA THIS 12TH DAY OF OCTOBER 2023.

AGNES KITIKU NZEI

JUDGE

