



**Muriithi v Autochek Kenya Limited t/a Cheki Kenya Ltd (Petition  
E138 of 2023) [2023] KEELRC 2954 (KLR) (20 November 2023) (Ruling)**

Neutral citation: [2023] KEELRC 2954 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
PETITION E138 OF 2023  
B ONGAYA, J  
NOVEMBER 20, 2023**

**BETWEEN**

**BILHAH NJOKI MURIITHI ..... PETITIONER**

**AND**

**AUTOCHEK KENYA LIMITED T/A CHEKI KENYA LTD ..... RESPONDENT**

**RULING**

1. The Petitioner filed a Chamber Summons dated 14.08.2023 through Mutuma Gichuru & Associate Advocates seeking the following orders:
  - a. That the Honourable Court to certify the matter or application as urgent and hear the application ex-parte in the first instance.
  - b. That the Honourable Court be pleased to issue an order and direct the respondent to furnish security for costs to the tune of Kshs.10,000,000 within 14 days and the same be deposited in an escrow account agreeable to parties herein.
  - c. That the Honourable Court be pleased to issue any such other orders as it deems just and expedient, to give effect for the payment of the security for costs.
  - d. That the costs of the summons be provided for.
2. The said application was supported by the affidavit of Bilhah Njoki Muriithi and upon the following grounds:
  - a. That the petitioner is a former country manager of the respondent.
  - b. That it is within the petitioner's own knowledge and information that the respondent has no known assets within the jurisdiction of the Honourable Court.



- c. That it is within the petitioner's own knowledge and information that the respondent is impecunious, as it wholly relies upon its mother company (Vees International Holding Inc) which is domiciled and registered in Delaware USA for all its operation affairs and the same is requested every month.
  - d. That it would be fair, just and equitable that pending the hearing and determination of the petition the prayers for security for costs against the respondent be issued.
  - e. That the petitioner is apprehensive that, if the prayers sought are not granted, her rights and interests will be defeated, the Court's time and resources will be wasted, and she will be prejudiced.
3. The respondent has in reply filed a preliminary objection dated 07.08.2023 through COL Advocates LLP.
  4. The preliminary objection was urged upon the following grounds:
    - a. That the Honourable Court lacks jurisdiction to hear and determine the issues raised in this petition as there was no employment relationship that existed between the claimant and the respondent.
    - b. That the Honourable Court is divested of jurisdiction to hear, entertain and determine the petition dated 05.07.2023 by dint of the dispute resolution clause in the letter of offer of employment dated 09.01.2021, which provides that all disputes arising out of or connected to the letter of offer of employment shall be referred to the Lagos court of arbitration for mediation to be conducted in accordance with the [Lagos Court of Arbitration Mediation Guidelines](#).
  5. The parties filed their respective submissions. This ruling is on the preliminary objection. The court has considered the parties' respective cases and makes finding as follows.
  6. The 1<sup>st</sup> issue is whether the preliminary objection passes the test for a proper preliminary objection. As submitted for the petitioner, it appears that the preliminary objection is based upon disputed facts. It alleges that there was no contract of service between parties and at the same go alleges that there was a mediation clause in the letter of offer. The Court finds that indeed such are matters which can only be resolved after taking of the evidence. It is for instance submitted for the respondent that Autocheck Nigeria Limited and Autocheck Kenya Limited are two distinct and separate legal entities. It appears to the Court that the respondent urges contradictory facts, that there is no contract between parties, and the, that there is a mediation clause that is binding. Such contradictions render the preliminary improper as the disputed or even contradictory facts must go to full hearing. The preliminary objection fails to raise a pure point of law based upon pleaded and undisputed facts as was held in *Mukisa Biscuit Manufacturing C. Ltd -Versus-West End Distributors Ltd* (1969) E.A 696. Upon that finding the preliminary objection must collapse.
  7. To answer the 2<sup>nd</sup> issue, it is that the petitioner has pleaded and alleged matters of violation of constitutional rights and fundamental freedoms which go beyond the alleged contract of service. She specifically alleges discrimination on account of pregnancy arising out of the employment relationship. It appears to the Court that it will be just and proper to hear the petition so as to define the parties' relationship, rights, obligations, and remedies.
  8. The Court finds that the notice of preliminary objection dated 07.08.2023 is liable to dismissal with costs in the cause.



In conclusion the preliminary objection is hereby dismissed with costs in the cause and parties to fix date for further steps in the petition.

**SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS MONDAY 20<sup>TH</sup> NOVEMBER, 2023.**

**BYRAM ONGAYA**

**PRINCIPAL JUDGE**

