



**Mutua v Kenya Women Teachers Association (Cause E285 of 2021)  
[2023] KEELRC 2818 (KLR) (9 November 2023) (Ruling)**

Neutral citation: [2023] KEELRC 2818 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E285 OF 2021  
L NDOLO, J  
NOVEMBER 9, 2023**

**BETWEEN**

**SETH KAKUSYE MUTUA ..... CLAIMANT**

**AND**

**KENYA WOMEN TEACHERS ASSOCIATION ..... RESPONDENT**

**RULING**

1. When the main claim came up for hearing on 4<sup>th</sup> October 2023, the attention of the Court was drawn to a Preliminary Objection raised by the Respondent, challenging the jurisdiction of the Court to hear and determine the claim.
2. The Preliminary Objection is contained in a notice dated 3<sup>rd</sup> October 2023 and is based on the following grounds:
  - a. The Employment and Labour Relations Court has no pecuniary jurisdiction to hear and determine the suit pursuant to Gazette Notice No. 6024 of 10<sup>th</sup> June 2018 appointing Magistrates of the rank of Senior Resident Magistrate and above as special Magistrates to hear and determine inter alia:

Disputes arising from contracts of employment (excluding trade disputes under the *Labour Relations Act*, 2007) where the Employee's gross pay does not exceed Kshs. 80,000 as commenced and continued in accordance with the Employment and Labour Relations Court (Procedure) Rules, 2016.
  - b. The Memorandum of Claim dated 7<sup>th</sup> April 2021 is incompetent to proceed before this Court and ought to be transferred to the Chief Magistrate's Court, for hearing and determination since the Claimant was earning a gross salary of Kshs. 80,000.



3. The Claimant responded to the Preliminary Objection by her replying affidavit sworn on 6<sup>th</sup> October 2023.
4. The Claimant depones that she was employed by the Respondent vide a contract of employment dated 1<sup>st</sup> September 2019 at a monthly salary of Kshs. 80,000. She adds that in November 2019, her gross salary was enhanced to Kshs. 140,000.
5. According to the Claimant, the Respondent did not generate payslips when paying salaries. She states that the payslips annexed as Appendix 2 in her list of documents were obtained from the Respondent's Accountant sometime in January 2020, when the Claimant requested for payslips as a requirement to obtain a loan facility.
6. The Claimant asserts that the payslips annexed at pages 10 to 19 of the Respondent's list of documents dated 1<sup>st</sup> November 2021 are false for the following reasons:
  - a. The Respondent never generated any payslips;
  - b. The Respondent has produced a payslip for November 2020, yet the Claimant worked up to June 2020 and she did not receive any salary in November 2020.
7. The Claimant depones that in the month of October 2019, she was paid in cash by the Accountant and not through the Bank. She adds that the Respondent did not pay NSSF or NHIF dues as required by law.
8. The Claimant asserts that that after her salary was increased effective November 2019, she was paid as follows:
  - a. From November 2019 to February 2020-Kshs. 61,087.70 & Kshs. 40,000 paid through the Claimant's bank account number 0150191246033 and Kshs. 20,000 in cash;
  - b. From March 2020 to June 2020-Kshs. 61,087.70 & Kshs. 30,000 paid through the Claimant's bank account number 0150191246033 and Kshs. 30,000 paid in cash.
9. In response to the Claimant's affidavit, the Respondent filed its own affidavit sworn by Benter Akinyi Opande on 18<sup>th</sup> October 2023.
10. Opande depones that the Claimant was paid a standard gross monthly salary throughout her period of employment and there was no increment. She adds that any other monies paid to the Claimant were refunds.
11. By definition, a Preliminary Objection arises from a pure point of law that is taken on the presumption that all matters of fact are not in dispute.
12. In the celebrated case of Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd (1969) EA, 696 Law JA stated as follows:

“A preliminary objection consists of a 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...”
13. In the same case Sir Charles Newbold P rendered himself thus:

“A preliminary objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all 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...”

14. From the pleadings filed by the parties, the issue of the Claimant’s salary is a highly contested matter of fact that can only be determined in full trial. That being the case, this issue cannot be the subject of a Preliminary Objection.
15. For this reason, the Preliminary Objection raised by the Respondent by way of notice dated 3<sup>rd</sup> October 2023 is overruled with costs in the cause.
16. Orders accordingly.

DELIVERED VIRTUALLY AT NAIROBI THIS 9<sup>TH</sup> DAY OF NOVEMBER 2023

**LINNET NDOLO**

**JUDGE**

Appearance:

Ms. Kabita for the Claimant

Ms. Kataghai h/b Mr. Rakoro for the Respondent

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