



**Maina v Synthecon Kenya Ltd & another (Cause 472 of 2019)  
[2022] KEELRC 3925 (KLR) (22 September 2022) (Ruling)**

Neutral citation: [2022] KEELRC 3925 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE 472 OF 2019  
L NDOLO, J  
SEPTEMBER 22, 2022**

**BETWEEN**

**MARGARET KAMUYU MAINA ..... CLAIMANT**

**AND**

**SYNTHECON KENYA LTD ..... 1<sup>ST</sup> RESPONDENT**

**SYNTHECON SUTURES MANUFACTURERS SA ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. This ruling stems from a preliminary objection raised by the respondents by notice dated March 2, 2022 by which the jurisdiction of this court to hear and determine the claim has been challenged.
2. The respondents give the following reasons for their objection:
  - a. The contract of employment between the claimant and the 2<sup>nd</sup> respondent was entered into in the Republic of South Africa and is thus governed by the laws of the Republic of South Africa (*Basic conditions of Employment Act, 1997*);
  - b. After her disciplinary hearing and consequent summary dismissal by the 2<sup>nd</sup> respondent, the claimant lodged her appeal to the Republic of South African commission for conciliation mediation and arbitration (CCMA) under the Republic of South African laws, which appeal was dismissed;
  - c. By filing her appeal to the said Republic of South African CCMA, any further adjudication on the matter is, pursuant to section 80(4) of the *Basic conditions of Employment Act, 1997* to be referred to the Republic of South African Labour Courts;
  - d. The 2<sup>nd</sup> respondent company is duly incorporated under the laws of the Republic of South Africa and as such the laws applicable to it are those of the Republic of South Africa;



- e. The claimant was being paid in the Republic of South Africa Rand (the official Republic of South African currency) and her remuneration was subject to the Republic of South African tax laws;
  - f. The claimant was answerable to the 2<sup>nd</sup> respondent's directors whose offices are in the Republic of South Africa.
3. In opposing the objection, the claimant filed a replying affidavit sworn on June 22, 2022.
  4. The claimant depones that she was initially employed by the 2<sup>nd</sup> respondent through a contract of employment dated March 7, 2011 and was stationed in South Africa.
  5. The claimant further depones that she was subsequently promoted and transferred to run the 1<sup>st</sup> respondent as the country manager effective January 1, 2012 where she worked until her dismissal on March 15, 2019.
  6. The claimant adds that upon her transfer to Nairobi, her contract was amended and all her allowances were paid by the 1<sup>st</sup> respondent and that she thus became an employee of both the 1<sup>st</sup> and 2<sup>nd</sup> respondents.
  7. The claimant asserts that her present claim is different from the one she had filed in South Africa as the South African courts did not have jurisdiction to deal with her employment by the 1<sup>st</sup> respondent.
  8. The claimant contends that this court has jurisdiction to entertain her claim by dint of sections 87 and 89 of the *Employment Act*. She points out that her employment contract was concluded and performed in the territory of Kenya and the termination occurred in Kenya.
  9. She further contends that the issues raised in the preliminary objection are factual and not legal and as such the objection does not meet the criteria set in *Mukisa Biscuit Limited v West End Distributors [1969] EA, 696*.
  10. By their objection, the respondents challenge the jurisdiction of this court to hear and determine the claimant's claim. A preliminary objection was defined in the *Mukisa Biscuit Case* (supra) in the following terms:

“A preliminary objection consists of a pure 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. 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.”
  11. The respondents contend that the law governing the claimant's employment contract is the labour law of the Republic of South Africa.
  12. In interpreting an employment contract, the court aims at giving effect to the intention of the parties. In its decision in *Mary Wairimu Moturi v Emirates Group* [2015] eKLR this court held that where the intention of the parties on applicable law and jurisdiction is clear and unequivocal, the court should not interfere.
  13. I have looked at the claimant's employment contract and did not find a clear provision on this issue. However, by their conduct, the parties elected to be governed by South African law rather than Kenyan law. First, the currency of payment of the claimant's salary was the South African Rand, even when the claimant was deployed in Kenya. Second, the claimant's annual leave entitlement was pegged at 18



days, which would accord with South African law and not Kenyan law. Third, upon her dismissal, the claimant invoked South African labour law by filing an appeal before the CCMA.

14. In the result, I find and hold that the claimant's employment with the respondents was wholly governed by the labour law of the Republic of South Africa and this court therefore lacks jurisdiction to entertain the claim herein.
15. The claim is consequently struck out.
16. Each party will bear their own costs.
17. Orders accordingly.

**DELIVERED VIRTUALLY AT NAIROBI THIS 22ND DAY OF SEPTEMBER 2022**

**LINNET NDOLO**

**JUDGE**

Appearance:

Mr. Kingara for the Claimant

Mr. Mageto for the Respondents

