



**Njagi v Tharaka Nithi County Government (Cause 7 of 2020)
[2022] KEELRC 3904 (KLR) (16 September 2022) (Ruling)**

Neutral citation: [2022] KEELRC 3904 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MERU
CAUSE 7 OF 2020
DKN MARETE, J
SEPTEMBER 16, 2022**

BETWEEN

STEPHEN MUNENE NJAGI CLAIMANT

AND

THARAKA NITHI COUNTY GOVERNMENT RESPONDENT

RULING

1. This is an application by way of a Preliminary Objection dated March 21, 2021. It comes out as follows;
 1. It is fatally defective;
 2. The applicant has not complied with the relevant mandatory provisions of the Contempt of Court Law applicable in Kenya as set out by the Court of Appeal in *Christine Wangari Gachege v Elizabeth Wanjiru Evans & 11 others* (2014) eKLR;
 3. The court lacks jurisdiction to entertain the same;
 4. As held in *Owners of the Motor Vessel Lillian S v Caltex Oil Kenya Ltd* (1989) KLR 1, where a court lacks jurisdiction, it must down its tools.

The respondent/objector brings out her case and submits as follows;

3. The respondent submits that the leading authority on the nature of a preliminary objection is found in *Mukisa Biscuits vs West End* (1969) EA 696. In that case, the East African Court of Appeal held that a preliminary objection raises a pure question of law. Law JA stated the law as follows;

So far as I am aware, 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, will dispose of the suit. Examples are an objection to jurisdiction of



the court, a plea of limitation or a submission that the parties are bound by the contract giving rise to the suit to refer the matter to arbitration.

Hon Justice Newbold stated as follows;

A preliminary objection is in the nature of what used to be a demur. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct.

2. She further seeks to rely on the authority of *John Mundia Njoroge and 9 others v Cecilia Muthoni Njoroge and Another* (2016) eKLR, where the High Court outlined the grounds which could form the basis of a preliminary objection thus;

In my view, a preliminary objection can be raised on any of the following grounds:-

- a. Lack of jurisdiction over the subject matter of the action or the person of the defendant, improper venue or improper form or service of a writ of summons or a complaint;
- b. Failure of a pleading to conform to law or rule of court or inclusion of scandalous or impertinent matter;
- c. Insufficient specificity in a pleading;
- d. Legal insufficiency of a pleading (demurrer);
- e. Lack of capacity to sue, non-joinder of a necessary party or mis-joinder of a cause of action; and
- f. Pendency of a prior action or agreement for alternative dispute resolution.

Again, the objector submits as follows;

It is worthy of note that the Court of Appeal struck out the application before it with costs for failure to follow the procedure as set out in part 81 of the England Civil Procedure Rules, 2012. Similarly, in the case before this honourable court, the claimant/applicant has not complied with the set procedure in the said rules. He has not filed an application notice, he has not filed a verifying affidavit, he has not set out the acts of contempt allegedly committed by the respondent and lastly such an application has not been personally served on the respondent or its agents as mandated by the law. For good order and consistency in the law, we urge this honourable court to strike out the said application with costs. It is submitted that any mis- step in the application of the contempt of court law is fatal and as such the said Notice of Motion should and ought to be struck out for non-compliance with the law. The respondent further submits that it has been stated by the courts, times without number, that the rules of procedure are the handmaidens of justice and where a litigant does not comply with such set rules, then this Honourable court will have no option but to strike out an invalid/non –compliant claim.

3. The claimant has not filed any response written submissions on the preliminary objection. Instead, he has made submissions on the application dated December 8, 2021 which are intended to answer the preliminary objection and compliment his application.



4. The claimant argues and submits that other than denying this court's jurisdiction, the respondent/objector has not tendered any argument, legal provision or precedent in support of the objection. To him, the objection is only explanatory and not grounded in nature and effect.
5. It is the claimant/respondent's further submission that this court is, through section 5 of the Judicature Act, particularly section 5(2) accorded the power of punishment for contempt of court. He further seeks to rely on the authority of section 3 and 3A of the CPA confirming special jurisdiction in the absence of any specific provision of the law, section 3A accords unfettered jurisdiction and power to court to emit the ends of justice. It is his penultimate submission that on this ground, the objection to jurisdiction must fail.
6. The claimant chooses to argue and dispense with the disposition of the application for contempt. It is his submission that the respondent/objector is estopped from filing any further response to the application. This is an admission of facts and therefore conclusive in nature.
7. It is opportune that at this stage, we are able to separate the main applications by way of a preliminary objection and contempt. Handling them simultaneously would render the exercise clumsy and cloud the issues in contention.
8. The respondent has not demonstrated the defect on the application dated December 8, 2021 as pleaded. The application is premised on the respondents failure to comply and implement a judgment of court dated December 8, 2017 on the subject.
9. The respondent has also failed to demonstrate a case of lack of jurisdiction for this court to indulge in this matter.
10. The claimant further wishes to buttress his case by relying on order 51 rule 4 of the Civil Procedure Rules provides as follows;

“ Every notice of motion shall state in general terms the grounds of the application, and where any motion is grounded on evidence by affidavit, a copy of any affidavit intended to be used shall be served.”
11. He further seeks to rely on order 51 rule 10(2) of the Civil Procedure Rules which provides thus;

No application shall be defeated on a technicality or for want of form that does not affect the substance of the application.
12. The claimant/respondent in the penultimate further relied on article 159 (2) (d) of the Constitution which provides that justice shall be administered without undue regard to procedural technicalities. The claimant submits that technicalities of form are not for consideration either whilst in the pursuit of justice.
13. The claimant's case in opposition to the preliminary objection takes sway. It overwhelms that of the objector. This is because the objector/respondent has not ably demonstrated a case of violation of the law in the claimant raising his application. She has also not demonstrated a case of lack of jurisdiction for this court to entertain this application. It must therefore fail.
14. I am therefore inclined to dismiss the application and the preliminary objection with costs to the claimant/respondent.
15. This now sets us to a hearing and determination of the application in issue. This is the application for contempt of court dated December 8, 2021.



DATED AND DELIVERED AT NYERI THIS 16TH DAY OF SEPTEMBER 2022.

D K Njagi Marete

JUDGE

Appearances

1. Mr Kimaita holding brief for Munene instructed by Munene Njiru & Co Advocates for the claimant/ respondent
2. Mr Munyori instructed by Kamau Kuria & Co Advocates for the respondent/objector.

