



Kenya Long Distance Truck Drivers and Allied Workers Union v Primefuels (Kenya) Ltd (Cause E022 of 2022) [2022] KEELRC 12823 (KLR) (6 October 2022) (Ruling)

Neutral citation: [2022] KEELRC 12823 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
CAUSE E022 OF 2022
AK NZEI, J
OCTOBER 6, 2022**

BETWEEN
KENYA LONG DISTANCE TRUCK DRIVERS AND ALLIED WORKERS UNION CLAIMANT
AND
PRIMEFUELS (KENYA) LTD RESPONDENT

RULING

1. The suit herein was filed in court on March 25, 2022, and was filed contemporaneously with a notice of motion dated the same date (March 25, 2022). The claimant sought the following orders:-
 - a) that pending the final disposal of the claim, the respondent be temporarily enjoined from declaring redundancies on members of the claimant employed by the respondent or in any other way continuing with the redundancy process.
 - b) that costs of the application be provided for.
2. On being served with the said application and suit documents filed herein, the respondent file a notice of preliminary objection on May 17, 2022 and stated as follows:-

‘Take notice that the respondent shall at the earliest opportune time raise a preliminary objection on the following grounds:-

 - a) This court lacks jurisdiction to hear and determine the statement of claim dated March 24, 2022 as the trade dispute between the claimant and the respondent regarding the respondent’s notice of intention to declare redundancies was resolved after conciliation.



- b) The statement of claim dated March 24, 2022 offends express provisions of the *Labour Relations Act*, 2007 and is consequently incompetent and bad in law.'
3. On May 17, 2022, I directed that the preliminary objection be heard first. I further directed parties to file written submissions thereon. Submissions have since been filed, and I have considered the same.
4. It is clear from the preliminary objection filed by the respondent that the alleged incompetence of the claimant's claim and lack of jurisdiction on the part of this court are anchored on the respondent's assertion that 'the trade dispute between the claimant and the respondent regarding the respondents' notice of intention to declare redundancies was resolved after conciliation.'
5. The foregoing is a statement and/or allegation of fact that cannot be verified by the court without first calling for evidence in proof of the same. The objection is not based on a pure point of law that has been pleaded or one which arises by clear implication out of pleadings as presented. It was stated as follows in the celebrated case of *Mukisa Biscuits Manufacturing Co Ltd vs West End Distributors Ltd* [1969] EA 696:-

' 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 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.'

6. Once an otherwise clear point of law becomes clouded with matters of fact, it ceases to be a point of law. It becomes an allegation of fact on which evidence must be presented before a determination thereon can be made by the court. In the present case, the respondent's allegation of there having been a conciliation which 'resolved the trade dispute between the claimant and the respondent regarding the respondent's notice of intention to declare redundancies' is an allegation of fact which can only be proved by evidence.
7. In the *Mukisa Biscuits case* (supra), Sir Charles Newbold stated as follows:-

' ...a preliminary objection is in the nature of what used to be called demurrer. It raised a pure point of law, which was urged 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. The improper raising of points by way of preliminary objection does nothing but unnecessarily increases costs and, on occasion confuse the issue. The improper practice should stop.'

8. In sum, the respondent's preliminary objection is disallowed, and is dismissed with costs.

DATED, SIGNED AND DELIVERED AT MOMBASA THIS 6TH DAY OF OCTOBER, 2022.

AGNES KITIKU NZEI

JUDGE

ORDER

In view of restrictions on physical court operations occasioned by the COVID-19 pandemic, this ruling has been delivered via Microsoft Teams Online Platform. A signed copy will be availed to each party upon payment of court fees.

AGNES KITIKU NZEI



JUDGE

Appearance:

Okello for Claimant

Wachira for Respondent

