



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI**  
**CAUSE NO. 1888 OF 2017**

**MIRIAM CHEROGONY** **CLAIMANT**

v

**AFRICAN RURAL AND AGRICULTURAL**  
**CREDIT ASSOCIATION** **1<sup>ST</sup> RESPONDENT**

**INTERNATIONAL FUND FOR**  
**AGRICULTURAL DEVELOPMENT** **2<sup>ND</sup> RESPONDENT**

**RULING**

1. Before Court is a *Notice of Preliminary Objection* dated 19 December 2018 by the 1<sup>ST</sup> Respondent to the effect that

1. The very foundation of the suit before this Honourable Court is a consultancy agreement for the provision of consultancy services signed by the Claimant on 16<sup>th</sup> July 2015.
2. The agreement is purely between the Claimant and PCIO Knowledge Net who alone are responsible for the payment of the contract price if any is due.
3. There being no privity of contract between the Claimant and the 1<sup>ST</sup> Respondent the Claimant has no legal right to sue the 1<sup>ST</sup> Respondent.
4. There being no privity of contract between the Claimant and the 1<sup>ST</sup> Respondent the Claimant has no reasonable and/or actionable cause of action as against the 1<sup>ST</sup> Respondent.
5. Even assuming that the Claimant has an actionable cause against the 1<sup>ST</sup> Respondent, the subject contract has an arbitration clause and this Honourable Court therefore lacks jurisdiction to entertain any claim arising therefrom.
6. Consequently the present suit is fatally defective and ought to be struck out and/or dismissed with costs.

2. The Claimant filed a replying affidavit and list of authorities in opposition to the *Notice of Preliminary Objection* on 31 January 2019, and the Court took arguments on 6 February 2019.

3. The Court has anxiously considered the submissions and come to the conclusion that a determination of the objections raised would require a detailed examination and interpretation of the tenure and import of the several contracts signed by all the parties, thus removing the objection from the ambit of what a *preliminary objection* ought to be.

4. A preliminary objection in the words of the Court in *Mukisa Biscuit Manufacturing Co. Ltd vs West End Distributors Ltd (1969) EA 696* presupposes

**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 the facts pleaded by the other side are 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 increase costs and, on occasion, confuse the issue. The improper practice should stop**

5. The 1<sup>st</sup> Respondent's objections extend beyond the legal parameters set out in the *Mukisa* case.

6. The Court therefore dismisses the *Notice of Preliminary objection* dated 19 December 2018 with costs to the Claimant.

**Delivered, dated and signed in Nairobi on this 15<sup>th</sup> day of March 2019.**

**Radido Stephen**

**Judge**

**Appearances**

For Claimant Mr. Ambala instructed by Odindo & Co. Advocates

For 1<sup>st</sup> Respondent Ms. Opondo instructed by Oluoch Olunya & Associates

Court Assistant Lindsey