



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT NAIROBI

CAUSE NO. 1427 OF 2018

(Formerly Cause 99 of 2018)

Before Hon. Lady Justice Maureen Onyango

LAMECK NYARANGU OGECHI.....CLAIMANT

VERSUS

DPL FESTIVE LIMITED.....1ST RESPONDENT

KENYA COMMERCIAL BANK LIMITED.....2ND RESPONDENT

RULING

The Preliminary Objection before the Court is dated 20th April 2018, filed by the 2nd Respondent, premised on the grounds:

1. That this Court lacks Jurisdiction under Article 162(2)(a) of the Constitution of Kenya and Section 12 of the Employment and Labour Relations Court Act, 2011 to entertain the entire claim against the 2nd Respondent herein.
2. That the claim fails to meet the threshold set out under the Employment and Labour Relations Court Act, 2011 and the Employment and Labour Relations Court (Procedure) Rules, 2016.

The Claimant filed grounds of opposition in response to the Preliminary Objection stating that the Court has jurisdiction and that the entire claim cannot be determined in a piecemeal manner as suggested by the 2nd Respondent.

Submissions

The 2nd Respondent submits that the Court lacks jurisdiction to entertain a claim against it as there was no employer-employee relationship with the Claimant. That without jurisdiction the Court cannot make one more step as stated in the case of *Owners of Motor Vessels 'Lillian S' Vs Caltex Oil Limited (1989) eKLR*.

That the law clearly indicates that disputes arising from the employment relationship lie with this Court whereas there is no such relationship between the claimant and the 2nd Respondent. That at no point will the 2nd Respondent be in a position to answer to any element of employment by the Claimant and it is thus wrongly enjoined.

The Claimant on the hand submits that the Court has jurisdiction and he cannot be required to file multiple suits in different Courts against the same parties just because the 2nd Respondent thinks it is convenient for them. He relies on the case of *Naqvi Syed Omar vs Paramount Bank Limited & Another (2015) eKLR* where it was held that jurisdiction of this Court extends to all disputes relating to employment and labour relations. The court's jurisdiction is no longer confined to employers and employees as was the case under the Trade Disputes Act Cap 234 to all persons implicated in an employment and labour relations dispute. He urges the Court to dismiss the Preliminary Objection with costs.

Determination

The issue for determination herein is whether the preliminary objection raised meets the threshold set in the *Mukisa Biscuits Manufacturing Company Limited vs West End Distributors Ltd [1969] EA 696*

The case of Mukisa Biscuits case defined a preliminary objection to be one that raises a pure point of law, which is argued on the assumption that all the facts pleaded by the other side are correct.

The 2nd Respondent argues that it is not suited in this cause and should be removed as a party for the reason that an employer-employee relationship does not exist between them and the Claimant.

The issues raised by the respondent through valid, are not suitable for preliminary objection. They are issues that turn on the facts and not the law. For the court to determine an issue of misjoinder, it has to examine the facts as pleaded by the parties as well as arguments of the parties.

The issue herein is in my view not one of jurisdiction but rather a question of misjoinder and/or lability. The mere fact that there was no employer/employee relationship between the claimant and the respondent does not automatically oust the jurisdiction of this court. It is the nature of the prayers sought as applied to the facts that would determine whether or not this court has jurisdiction.

I therefore find that this is not a case suitable for determination by way of a preliminary objection as it is a matter where the court will rely on evidence. The result that the same fails and is accordingly dismissed with no orders for costs.

DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 5TH DAY OF JULY 2019

MAUREEN ONYANGO

JUDGE