



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT & LABOUR RELATIONS**

**COURT OF KENYA AT NYERI**

**CAUSE NO. 534 OF 2017**

**AGNES KAVINDU NYEVU.....CLAIMANT**

**VERSUS**

**WILHAM (K) LIMITED.....RESPONDENT**

**RULING**

1. The application before me is the Notice of Motion Application seeking transfer of the suits to Nairobi for hearing and disposal. In the application by the Respondent, it is asserted that the suits should be heard and disposed of in Nairobi where the Respondent carries on business and where the cause of action accrued. This suit is in a series alongside causes 535 of 2017 Grace Nduta Kamande v Wilham (K) Ltd, 536 of 2017 Joyce Waihengeri Karimi v Wilham (K) Ltd, 537 of 2017 Anna Moraa Masita v Wilham (K) Ltd, 538 of 2017 Nicholas Oirere Onyancha v Wilham (K) Ltd, 539 of 2017 Augustine Indakala Mmasi v Wilham (K) Ltd, 540 of 2017 Mutinda Mboya v Wilham (K) Ltd, 541 of 2017 Ann Wayua Ndivo v Wilham (K) Ltd, 542 of 2017 Josephine Wanjiru Mwangi v Wilham (K) Ltd and 543 of 2017 Caren Achieng Sera v Wilham (K) Ltd. The Respondent admitted the jurisdiction of this court in the pleadings filed per paragraph 17 of the Memorandum of Response though the Respondent asserted that the matter ought to have been filed in Nairobi. It was also averred that the matter ought to be referred to conciliation.

2. The Claimants on their part are of the view that the suits can be heard in Nyeri. They filed a replying affidavit by Samuel Nyambane the advocate for the Claimants. He deponed that the parameters for a preliminary objection were the subject of the decision in **Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd (1969) EA 696** and argued that the objection taken does not fit within the parameters of a preliminary objection. It was argued that this court has the jurisdiction to hear and determine the case.

3. The remit of a preliminary objection is well set out in law. In the case of **Mukisa Biscuits Ltd v West End Distributors Ltd (1969) EA 696. In that case, Law JA and Newbold P. held 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 the pleadings, and which if argued as a preliminary objection 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."*

**Sir Newbold P. stated in the same decision as follows:-**

*"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 has 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 unnecessary increase costs and, on occasion, confuse the issues. This improper practice should stop."*

4. **This has stood the test of time and** the objection taken before me is on the issue of jurisdiction and therefore fits within the prism of the **Mukisa Biscuits** case. The jurisdiction of the Employment and Labour Relations Court then known as the Industrial Court was and still is country wide. The previous sittings of the court were mainly in Nairobi but the court would go on circuit to Mombasa, Kisumu and Nakuru. It was only in 2013 and 2014 that other stations of the court were established and judges posted to man the court stations outside of Nairobi. Nyeri was one of the stations set up. Nyeri ELRC covers the following areas Nyeri, Marsabit, Samburu, Meru, Tharaka Nithi, Embu, Kitui, Kirinyaga, Murang'a, Laikipia, Nyandarua and Samburu. I have countrywide jurisdiction and though the claim can be competently heard by me here in Nyeri, the interests of justice will be best served if the suit is heard and determined in Nairobi as that is where the cause of action occurred and where parties reside per their pleadings. I will allow the transfer of the suits to Nairobi for hearing and disposal. Costs for the application to be borne by each party.

It is so ordered.

**Dated and delivered at Nyeri this 3<sup>rd</sup> day of May 2018**

**Nzioki wa Makau**

**JUDGE**