



REPUBLIC OF KENYA



KENYA LAW
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**Akomo v Light and Life Broadcasting Station (Cause 36 of 2018)
[2018] KEELRC 953 (KLR) (9 October 2018) (Ruling)**

Jane Akomo v Light & Life Broadcasting Station [2018] eKLR

Neutral citation: [2018] KEELRC 953 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KERICHO**

CAUSE 36 OF 2018

DKN MARETE, J

OCTOBER 9, 2018

BETWEEN

JANE AKOMO CLAIMANT

AND

LIGHT AND LIFE BROADCASTING STATION RESPONDENT

RULING

1. This is an application by way of a Preliminary Objection dated 26th June, 2018. It comes out as follows;

Take notice that the Respondent herein shall raise a preliminary objection on a point of law seeking that the claimant's claim be dismissed with costs to the respondent for reasons of being non-suited.
2. In support of preliminary objection the respondent submits that the respondent came into being on 22nd April, 2015 vide a certificate of incorporation No.CPR/2015/187099.
3. It is her further submission that companies are persons in law and borne on registration with the Registrar of companies. On such registration they are issued with a common seal and continue to live by it as the instrument of registration. Indeed, companies are legally clothed fictitious person living under legal instruments as enunciated under section 17, 18 and 19 of the *Companies Act*, Chapter 486, Laws of Kenya. It is therefore not possible for the claimant to have been employed by the respondent between December, 2012 and March, 2015 when he purports to have been sacked.
4. The claimant did not file written submission in opposition to the preliminary objection. However, when the matter came for hearing on 26th June, 2018, she submitted that the respondent has been in existence since time immemorial and only changed name in 2015. Further, a preliminary objection



only comes out on issues of law and not fact. When issues of fact arise, a preliminary objection loses tract and is not sustainable.

5. In response, Mr. Meroka counsel for the respondent submitted that this is a matter of law and should therefore be awarded its rightful place in these proceedings. He prayed for a dismissal of the suit as presented.
6. The place of preliminary objection is clearly illustrated in the authority of Mukhisa Biscuit Manufacturing Co. Ltd vs. West Distributors Company Limited, (1969) E.A. 696 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 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.”

Further,

“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 has to be ascertained or if what is sought is exercise of the judicial discretion. The improper raising of points by way of preliminary objection does nothing but unnecessarily increase cost and, on occasion, confuse the issues. This improper practice should stop.”

7. Does the preliminary objection in this instance incorporate the ingredients of the authority of Mukhisa Biscuits above? My answer is no. This is because it is not based on a pure point of law. It would require an analysis of facts to establish the issues raised in support of the preliminary objection.
8. I am therefore inclined to dismiss the preliminary objection with orders that each party bears their own costs of the same.

DELIVERED, DATED AND SIGNED THIS 9TH DAY OF OCTOBER, 2018.

D.K.Njagi Marete

JUDGE

Appearances

1. Mr. Meroka instructed by Meroka & Company advocates for the respondent/objector.
2. Mr. Koko instructed by Obondo Koko & Company Advocates for the claimant/respondent.

