



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR**  
**RELATIONS COURT AT MOMBASA**  
**CAUSE NUMBER 345 OF 2016**

**BETWEEN**

**ABDULKADIR KADER MAMDANI .....**  
**CLAIMANT**

**VERSUS**

**AHMED SALYANI & MOHAMMED EBRAHIM T/A ACE ASSOCIATES.....**  
**RESPONDENT**

**RULING**

1. The Claimant raises a point of preliminary objection, against the Counter-Claim filed by the Respondents. The Counter-Claim is in the following terms:

*“... the Claimant sold a faulty laptop to the firm [Respondents] and also caused huge losses of revenue and the Clientele goodwill due to the reasons above-stated, and claim by way of Counter-Claim, general damages, plus costs and interest.”*

2. The Claimant states although he may have been an Employee at the time he sold the laptop to the Respondents, the transaction was one between a Seller and Buyer of Goods, regulated by Sale of Goods Act.

3. The Employment and Labour Relations Court’s jurisdiction is confined to Employment and Labour Relations Disputes, as held in the ***Court of Appeal Decision Karisa Chengo & 2 Others v. Republic [2015] e-KLR.***

4. The Respondents filed Grounds of Opposition. The Grounds are dated 23<sup>rd</sup> September 2016, filed on 26<sup>th</sup> September 2016. Respondents hold the Court has jurisdiction to deal with the Counter-Claim, under Section 87 [1] [b] of the Employment Act 2007. The point raised by the Claimant is not a pure point of law. The Respondents rely on ***Mukhisa Biscuit Manufacturers Limited v. West End Distributors Limited [1969]***.

5. Parties agreed to have the Preliminary Objection considered on the strength of the Written Submissions. They confirmed filing of these Submissions to the Court on 21<sup>st</sup> November 2016.

**The Court Finds:-**

6. The Parties were in an employment relationship which ended with the letter of termination dated 31<sup>st</sup> August 2015. They also had an agreement whereof the Claimant was meant to become a Partner after the passage of a certain period of time.

7. The Claimant was to make cash contribution as contribution to the Partnership. His contribution was refundable, but would be held as his investment in a company owned by the Respondents. His investment would be worth 3% of the value of the investment vehicle.

8. The Claimant seeks compensation for unfair termination, and refund of his contribution to the botched Partnership.

9. As shown in the Counter-Claim, the Employee was also engaged in sale of merchandise to the Employer. The relationship went beyond mere employment. The preliminary view of the Court is that the dispute revolves around Partnership, Commercial and Employment Law.

10. It is not proper to sever one claim by either Party at a preliminary stage, and decline jurisdiction. Parties have to give evidence and show how their peripheral claims relate to employment. It is noted that the Respondents themselves, dispute refund of the Claimant's contribution to the Partnership, is within the jurisdiction of the Court.

11. The proper approach would be to allow Parties to give evidence, and show the linkage between the peripheral claims, and their employment relationship. They are at the very least in agreement there was, at the core, an employment relationship. The preliminary objection is premature. ***It is declined and Parties directed to schedule the Claim for full hearing.***

Dated and delivered at Mombasa this 10<sup>th</sup> day of February 2017.

**James Rika**

**Judge**