



**REPUBLIC OF KENYA**  
**EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA**

**AT KERICHO**

**CAUSE NO. 152 OF 2016**

***(Before D. K. N. Marete)***

**VINCENT OSORO ONSONGO.....CLAIMANT**

**VERSUS**

**LWALA COMMUNITY ALLIANCE.....RESPONDENT**

**RULING**

This is a preliminary objection filed with the defence as follows;

*The Respondent shall at hearing of the Claimant's Statement of Claim dated 1<sup>st</sup> November 2016 will raise a preliminary objection for lack of territorial jurisdiction.*

When the matter came up for hearing on 23rd February 2017, the parties agreed on a disposal of the preliminary objection by way of written submission.

The Respondent bases his preliminary objection on a point of geographical jurisdiction. The cause of action having arose at Rongo, the applicable court is the Employment and Labour Relations Court – Kisumu and not Kericho.

*It is our submission that the Respondent is aware that the Employment and Labour Relations Court herein has unlimited and original jurisdiction over employment and labour matters all over Kenya. However, the Respondent submits that it will be just and expedient that this matter be heard in Kisumu. This is on the premises that the Respondent resides in Rongo, conducts its business operations in Rongo and that the cause of action arose in Rongo. The Witnesses that the Respondent are planning to call, all come from Rongo where it is situated and conducts it business. Therefore, it would be just and expedient, that the matter be heard in the nearest Employment and Labour Relations Court at Kisumu.*

She prays that the preliminary objection as raised by the Respondent be allowed with costs to the Respondent to pave way for the matter to be justly and expeditiously determined for the reasons elucidated above.

The claimant's rejoinder to the preliminary objection vide his written submissions dated 6th March, 2017 is as follows;

*The point was the subject of consideration very recently by Justice Nzioka wa Makau in Industrial Cause No. 1981 of 2011 as considered workers Union vs Moi University and Rivatex*

***E.A Ltd where the Court reiterated the principles for preliminary objection as;***

*a) A preliminary objection raises a point of law.*

*b) A preliminary objection 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.*

*c) It cannot be raised if what is sought is the exercise of judicial discretion.*

Again,

*The respondent's preliminary objection does not fit the definition of a preliminary objection per the leading authority of **Mukhisa Biscuit Manufacturing Co. Ltd – vs West end Distributors Ltd (1969) E.A. 696.***

*In the celebrated case Sir Charles Newbold defined a preliminary objection 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 preliminary objection as it stands does not state its basis on points of law. What the preliminary objection seeks to achieve is, without legal foundation, to determine the issue of whether the honourable court has territorial jurisdiction to hear and determine the suit herein.

The issue of universality of jurisdiction for this court was emphasized in the authority of **TRUSTED SOCIETY OF HUMAN RIGHTS ALLIANCE – VERSUS NAKURU WATER AND SANITATION SERVICES COMPANY and the ATTORNEY GENERAL, NAKURU PETITION NO. 5 OF 2013** where the court observed and held as follows:

*“ That in mapping out the boundaries to determine jurisdiction, the court must consider the four crucial traditional elements of jurisdiction namely parties, territory or geographical area, remedies that may issue and subject matter in dispute. That the authority to decide will relate to the parties, the territory or geographical area of the dispute, the remedies that may issue and the subject matter involved.*

*Depending on the authority to decide as may be conferred, all the four parameters may be pertinent or one or two of them may apply. In the opinion of the court, unless any of the four results into a bar to jurisdiction in the given case or circumstance, presence of any of the four as permitting jurisdiction will be sufficient for the court to assume jurisdiction and proceed to entertain and determine the case at hand. It is given that constitutionally, this court exercises territorial jurisdiction throughout the Republic of Kenya.”*

Lastly,

In **PETER OCHOLA OMBURO V INTER-DIOCESAN PROPERTIES LIMITED [2016]EKLR** this court held as follows;

*I buy the sentiments and submissions of the claimant/respondent that his preliminary objection is not based on a pure point of law as would be required per the authority of Mukhisa Biscuit Manufacturing Co. Ltd – VS- West end Distributors Ltd (1969)E.A 696 afore cited. The issue of geographical jurisdiction like is submitted would require a verification of data and evidence to establish thus falling short of tenets of a preliminary objection. Overall, the issue of the jurisdiction of this court cannot be sustained on geographical or territorial grounds, this court having the exercise of territorial jurisdiction throughout the Republic of Kenya.*

The Respondent, in the Respondent's written submissions on the preliminary objection dated 16th March, 2017 labors to bring out a case in support of the preliminary objection but this falls to a cropper.

It is settled law that this court harbours national as opposed to regional jurisdiction. Existing jurisprudence on the subject overwhelmingly supports this position and view. This application is therefore speculative and must fail *in toto* for want of merit.

I am therefore inclined to dismiss the preliminary objection with costs to the claimant.

Delivered, dated and signed this 26th day of April 2017.

**D. K. Njagi Marete**

**JUDGE**

Appearances

1. Mr. Tombe instructed by Tombe & Company Advocates for the Claimant.
2. Mr Langat holding brief for Mr Muthui instructed by Mugoye & Associates Advocates for the Respondent.