



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU**  
**CAUSE NO. 218 OF 2015**

**JOSEPH PATRICK MUKIRI.....1<sup>ST</sup> CLAIMANT**

**ISABELLA MAKORI.....2<sup>ND</sup> CLAIMANT**

**JAMES KURIA.....3<sup>RD</sup> CLAIMANT**

**SAMUEL KIHU.....4<sup>TH</sup> CLAIMANT**

**JOHN KOSKE.....5<sup>TH</sup> CLAIMANT**

**FRANCIS GIATHI.....6<sup>TH</sup> CLAIMANT**

**v**

**COUNTY GOVERNMENT OF NAKURU.....RESPONDENT**

**RULING**

1. The 6 Claimants were all notified by the County Executive Committee, Member, County Government of Nakuru of their respective appointments as members of a Pyrethrum Revival Team for 2 years through letters dated 6 June 2014. According to the appointment letters, the Claimants were to be paid allowances.
2. On 21 July 2015, the Claimants commenced legal proceedings against the County Government of Nakuru (Respondent) and the issue in dispute was stated as *failure to pay salary and other allowances*.
3. The Respondent filed a Response on 20 August 2015, and a Notice of Preliminary Objection on 4 September 2015 in the following terms

1. That the entire suit is incompetent bad in law, malicious and offends the provisions of the County Government Act, No. 7 of 2012.

2. That the alleged appointments were done in blatant violation of Article 183 of the Constitution of Kenya and section 83 of the County Governments Act and of which the Respondent is not privy.

3. That consequently, there is no cause of action maintainable against the Respondent and the prayers sought are thus redundant.

4. In that behalf, the Respondent maintains that the alleged appointments are bereft of life having been illegally entered into.

5. That suit is therefore, scandalous, frivolous and vexatious and shall entirely abuse the process of the Court.

6. That the suit is, thus, ripe for dismissal with costs.

4. The preliminary objection was taken on 10 February 2016 and is the subject of this ruling.
5. The Respondent in its submissions urged that the officer who purported to appoint the Claimants had no such powers or authority as the mandate to recruit, establish, create and abolish public offices within the county service was the preserve of the County Public Service Board in terms of sections 57, 59, 63 and 74 of the County Governments Act as read with Article 235 of the Constitution.
6. In the view of the Respondent, the mandate and limits of authority of the County Executive are prescribed by sections 36, 37 and 46 of the County Governments Act, and the said provisions did not clothe him with the power to appoint or establish offices within the county public service.
7. The Claimants, in opposing the preliminary objection urged that the preliminary objection was premature and that in any case, it is the Respondent who appointed the Claimants and it was the party before the Court, and not the County Public Service Board and that evidence would need to be led to establish the propriety of the Claimants cases.
8. With those submissions, it is in order to first revisit the nature of a true preliminary objection and standard to be met in such cases.
9. The question was examined and legal principles set out in the celebrated case of *Mukisa Biscuits Manufacturing Company Ltd v West End Distributors Ltd* (1969) EA 696, where it was held by Law J that

***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 off 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...***

10. In the same case, Sir Charles Newbold, P on his part stated

***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***

11. Has the Respondent met the standard in this case, I think not.
12. For one, there are appointment letters signed by the County Executive in the instant case. At this point in time, it is not possible to determine the circumstances that the appointments were made and under whose authority.
13. That is a question best left for resolution after evidence has been led.
14. Secondly, it is equally not clear whether the appointments made the Claimants employees within the county public service or whether the Executive was putting in place a task force to deal with a specific issue for a specific duration and what would be the nature of such appointments vis a vis the powers of County Governments and County Public Service Boards, as many are the times that the Executive at both national and county governments establish task forces to deal with specific questions.
15. In my view, the present preliminary objection does not meet the threshold of a true preliminary objection and in that respect, it would not meet the ends of justice to strike out the suit presented before Court.
16. The preliminary objection is therefore overruled and dismissed with costs to the Claimants.

**Delivered, dated and signed in Nakuru on this 23<sup>rd</sup> day of March 2016.**

**Radido Stephen**

**Judge**

**Appearances**

For Claimants Mr. Kimatta instructed by Kimatta & Co. Advocates

For Respondent Mr. Maina instructed by Ikua Mwangi & Co. Advocates

Court Assistant Nixon