

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO 971 OF 2014

ANTONY MUTHAMA MUSILA.....CLAIMANT

VS

HOTEL INTRA-AFRICA LIMITED.....RESPONDENT

RULING

1. This ruling proceeds from a preliminary objection raised by the Respondent in paragraph 8 of the Response to the Statement of Claim. The Respondent states that the cause of action herein arose outside the jurisdiction of this Court.
2. The Respondent submits that it is a company incorporated in the Republic of South Sudan where it carries on its business and operations. Kenyan Courts therefore lack jurisdiction to entertain a claim arising from an employment contract to which the Respondent is a party.
3. A preliminary objection as defined in *Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd (1969) E.A 696* is one which “*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.*”
4. The Claimant's employment with the Respondent is evidenced by an appointment letter dated 26th December 2011. While this letter contains the terms and conditions of employment, it neither specifies the applicable law nor the courts with jurisdiction to hear and determine any disputes arising from the contract of employment. The Claimant did not respond to the objection and the Court did not therefore have the benefit of his position on these matters.
5. In my view, these are important issues of fact that would aid the Court in determining the issue of jurisdiction. That being the case, I am of the opinion that it would be unsafe to strike out the Claimant's claim on account of lack of jurisdiction *in limine*. In similar vein, I will not rule on the Respondent's objection at this stage. The net effect is that the main claim will proceed to hearing, the issue of jurisdiction remains live and parties are at liberty to adduce evidence on this account.
6. The costs of this objection will be in the cause.
7. Orders accordingly.

DATED SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 8TH DAY OF JULY 2016

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JUDGE

Appearance:

Mr. Amadi for the Claimant

Mr. Njuguna for the Respondent