



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI**

**CAUSE NO 758 OF 2015**

**MARY ANDESO MULUSAH.....CLAIMANT**

**VS**

**AFRICAN TRADE INSURANCE AGENCY.....RESPONDENT**

**RULING**

1. By notice dated 14th December 2015, the Respondent takes a preliminary objection citing the following ground:

*That the Claimant's claim is fatally incompetent and does not lie by virtue of section 9 and 11 of the Privileges and Immunities Act, Cap 179, Part 1 of Schedule 4 and Legal Notice No. 89 of 2001 ((the Privileges and Immunities (the African Trade Insurance Agency)) Order, 2001.*

2. A preliminary objection was defined in *Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd (1969) E.A 696* as 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.**”
3. The Respondent's objection is based on Sections 9 and 11 of the Privileges and Immunities Act as well as Part 1 of the 4th Schedule which grants immunity from suit and legal process to recognised organisations and their officers.
4. However, the Respondent did not produce the particular instrument that would have brought it within the purview of this immunity. This is a crucial part of evidence in the determination of the issue of jurisdiction which is at the heart of the Respondent's objection.
5. In the circumstances, I decline either to overrule or sustain the Respondent's objection at this stage and direct that the claim will proceed to full hearing. The issue raised in the objection remains alive and parties are at liberty to adduce evidence thereon.
6. The costs of the objection will be in the cause.
7. Orders accordingly.

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

**LINNET NDOLO**

**JUDGE**

**Appearance:**

Mary Andeso Mulusah (the Claimant in person)

Mr. Gachuba for the Respondent