



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

**AT KERICHO**

**JUDICIAL REVIEW CAUSE NO.3 OF 2016**

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

**FOOTBALL KENYA FEDERATION.....CLAIMANT**

**VERSUS**

**THE CHAIRMAN SPORT DISPUTES TRIBUNAL.....1ST RESPONDENT**

**ROBERT WILLIAMSON.....2ND RESPONDENT**

**RULING**

This is a preliminary objection dated 21st July, 2016 and comes out as follows;

*TAKE NOTICE that the 2<sup>nd</sup> Respondent herein shall raise a Preliminary Objection on a point of law at the hearing or mention hereof and shall seek that the matter be transferred to the High Court in Nairobi on the following grounds:*

*1. THAT this Honourable court lacks jurisdiction not only to try the matter but also to give directions as to the hearing other than making appropriate ORDERS to transfer the matter to the High Court in Nairobi where all the parties in this suite reside and where the cause of action arose.*

*2. THAT the suite amounts to forum shopping, an abuse of the court process actuated with malice and should not be entertained by this Honourable Court.*

The matter came for hearing and on 25th July, 2016 the parties agreed on a disposal of the preliminary objection by way of written submissions.

The plaintiff/respondent filed their written submissions dated 29th July, 2016 on the same date whereas the respondent/applicant ignored this overture all together.

The Respondent in her written submissions seeks to rely on the authority of **Mukhisa Biscuit Manufacturing Co. Ltd vs. Westend Distributors Limited, Nairobi Civil Appeal NO. 9 of 1969**, where the court of appeal stated that-

*“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 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 applicant has not in any way demonstrated the element of lack of jurisdiction by this court to hear and determine this cause and therefore has no support for the first ground of preliminary objection. It is the Plaintiff/Respondents submission that the preliminary objection is merely speculative and a delay tactic on the part of the applicant. She also seeks to rely on the authority of **Peter Ochola Omburo vs. Diocesan Properties Limited (2016) eKlr, Kericho ELRC No. 211 of 2015** where this court held and observed as follows;

*“The issue of 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.”*

*“Article 162(2) of the Constitution of Kenya, 2010 set out this court with the status of the High Court and therefore it is conferred with unlimited original jurisdiction in matters under its Purview”*

The Plaintiff/Respondent further submits that the issue of forum shopping as raised in the preliminary objection is one of evidence and not law. It would indeed require the tendering of evidence for ascertainment. This is therefore a matter of fact that is outside the province of issues tenable in support of preliminary objections. This cannot be truer as is established in the aforecited authority of **Mukhisa Biscuit Company Limited Verses Westend Distributors Limited (1969) EA 696** at page 701 as follows;

*“A preliminary objection is in the nature of what used to be a demure. It raises a pure point of law which if 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 improper raising of points by way of Preliminary Objection does nothing but unnecessary increase costs and occasion confuse the issues. This improper practice must stop.”*

Again,

*“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 the judicial discretion.”*

I agree with the respondent that in the circumstances of this case there is no sustainable preliminary objection. This is because it does not conform to the well established principles as enunciated in the authority of **Mukhisa Biscuits** above cited. It not only relies on inapplicable positions of law but would require substantiation by way of evidence to establish.

I am therefore inclined to dismiss the preliminary objection with orders that each party bears their own costs of the same.

Delivered, dated and signed this 14<sup>th</sup> day of November 2016.

**D.K.Njagi Marete**

**JUDGE**

Appearances

1. Ms Patricia May Mitei instructed by Sila Munyao Advocate for the Respondent.
2. Mr. Oluoch instructed by Gradus Oluoch & Co. Advocates for the Applicant.

