

REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS COURT

AT MOMBASA

CAUSE NO. 168 OF 2015

SAFARI KADENGE KATHUPA.....CLAIMANT

VS

RIZIKI ENTERPRISES LIMITED.....RESPONDENT

RULING

Introduction

1 The claimant has brought this suit claiming terminal dues and compensation for unfair termination. In response the respondent has denied liability for the unfair termination and raised preliminary objection (P.O) on ground that the suit is *subjudice* in view of suit number CMCC 362 of 2014 at Malindi. She however did not annex the pleadings of the Malindi suit to the defence herein.

2 The Preliminary objection was disposed of by written submissions.

Analysis and Determination

3 There is no dispute that there exist suit number CMCC 362 of 2014 involving the parties herein. The issue in dispute is whether issues in dispute in this suit is materially the same as the ones in CMCC 362 of 2014 at Malindi. I after carefully considering the pleading and the submissions filed, the court agrees with the claimant that the material before the court are not enough upon which to base a decision as to whether the present suit is *subjudice* or not. Had the respondent filed documentary evidence with the defence, the court could have been able to peruse the plaint filed in Malindi.

Although the issue raised is a legal point, the same cannot be decided upon without evidence. The preliminary objection must therefore fail because it cannot stand on its own. It requires evidence prosecute it. It is trite law that objection does not qualify to be a Preliminary objection if it requires evidence to prosecute it.

Disposition

4 For the reasons started above the Preliminary objection by the respondent dated 10.6.2015 is dismissed with costs.

Signed, Dated and Delivered this 4th day of December 2015

ONESMUS MAKAU

JUDGE.