



Abuga v Last Village Cottages Limited & another; Kips Technical College (Interested Party) (Civil Suit E005 of 2024) [2025] KEHC 3979 (KLR) (27 March 2025) (Ruling)

Neutral citation: [2025] KEHC 3979 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MACHAKOS
CIVIL SUIT E005 OF 2024
EN MAINA, J
MARCH 27, 2025**

BETWEEN

RUTH MORAA ABUGA PLAINTIFF

AND

LAST VILLAGE COTTAGES LIMITED 1ST DEFENDANT

THE LAST VILLAGE LIMITED 2ND DEFENDANT

AND

KIPS TECHNICAL COLLEGE INTERESTED PARTY

RULING

1. By a plaint dated 20th March 2024 the Plaintiff sued the Defendants for compensation for injuries sustained when she was undertaking attachment at the Defendants' hotel pursuant to her training in the Interested Party's institution. She averred that she was an intern in that hotel courtesy of an arrangement between the Defendants and the Interested Party.
2. The Defendants have through a Notice of Preliminary objection dated 15th October 2024 opposed the Plaintiff's claim. It is their contention that this court has no jurisdiction to entertain the claim as the alleged injuries are work related hence fall under the *Work Injury Benefits Act* (WIBA).
3. In her rejoinder the Plaintiff averred that at the time of the accident she was a student undertaking a course in Food and Beverage at the Interested Party's institution when she was recruited by the defendants to participate in fun programs which were intended to promote their business. She averred that the zip lining activity that she was assigned to participate in was an utter deviation from the scope of her attachment as a student and was not within the ambit and/or scope of her attachment or school program. She disputed that she was an employee as defined in the WIBA and contended that this court has jurisdiction to hear and determine this claim.



4. Counsel for the parties canvassed the preliminary objection by way of written submissions.
5. I have carefully considered the pleadings, the preliminary objection, the rival submissions and the cases cited. What does or does not constitute a preliminary objection was settled in the case of Mukhisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd [1969] EA 696, where the Court stated 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 of the suit. Examples are an objection to the jurisdiction of the court, 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.”

6. Learned Counsel for the Plaintiff submitted that the present objection is not on a pure point of law which has arisen by clear implication of the undisputed facts, as prima facie presented in the pleadings on record; that the question for determination is the negligence of the defendants and that as what the Plaintiff was undertaking was not within the scope of her industrial attachment then the preliminary objection has no basis.
7. The Plaintiff concedes that she was in the Defendants’ hotel on industrial attachment. She concedes that it was in the course of that attachment that she was recruited by the Defendants to participate in a program that resulted in her injury. Clearly therefore the issue of whether she was an employee or not arises and would have to be determined first as it goes to the jurisdiction of this court. Jurisdiction is an issue of law and without it a court must down its tools hence the preliminary objection herein is competent and properly before this court.
8. By dint of Section 3 of the WIBA an indentured learner, as was the Plaintiff at the material time, is an employee. It is therefore my finding that the proper court to determine whether the exercise the Plaintiff was undertaking was within the scope of her attachment, whether therefore, she sustained the injury within the course of her employment and whether the proper tribunal is or is not WIBA, is the Employment and Labour Relations Court (ELRC) but not this court. It would therefore be an exercise in futility for this court to entertain a claim for which it has no jurisdiction.
9. The upshot is that the preliminary objection is found to have merit and the same is upheld but so as to do justice to the parties the claim shall not be struck out but shall instead be transferred to the ELRC Machakos for determination and an order is made that the case be transferred to that court. The costs of the suit and of the preliminary objection shall abide the proceedings in the Employment and Labour Relations Court (ELRC).

Orders accordingly.

RULING SIGNED, DATED AND DELIVERED VIRTUALLY ON THIS 27TH DAY OF MARCH, 2025.

E. N. MAINA

JUDGE

In the presence of:

Mr. Ojiambo for the Defendants

Ms Nyaboke H/B Kwaboka for the Plaintiff

C/A: Wambua

