



**Njue v Jumbo Nuts Limited & another (Civil Case E002 of 2024)  
[2025] KEHC 11253 (KLR) (30 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 11253 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT EMBU  
CIVIL CASE E002 OF 2024  
RM MWONGO, J  
JULY 30, 2025**

**BETWEEN**

**EUGENIA MUTHANJE NJUE ..... PLAINTIFF**

**AND**

**JUMBO NUTS LIMITED ..... 1<sup>ST</sup> DEFENDANT**

**PIONEER GENERAL INSURANCE LIMITED ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

**The Preliminary Objection**

1. The 2<sup>nd</sup> defendant/objector has filed a preliminary objection dated 25<sup>th</sup> October 2024 against the entire suit on grounds that it discloses no reasonable cause of action. It sought that the entire suit be dismissed with costs in limine on grounds that:
  1. There is a fatal misjoinder of defendants and of alleged causes of action;
  2. There is no contractual agreement between the plaintiff and the 2<sup>nd</sup> defendant upon which it could be joined to this case; and
  3. The plaintiff's claim against the 1<sup>st</sup> defendant appears to be an employment claim to which the 2<sup>nd</sup> defendant is not privy.

**The Plaintiff**

2. The plaintiff filed a plaint dated 25<sup>th</sup> July 2024 seeking judgement against the defendants for a declaration that she is entitled to compensation under the Work Injury Benefit Act 2007, general damages, future medical expenses and costs of the suit with interest. It was her case that while she was working at the 1<sup>st</sup> defendant's (her employer's) facility, she slipped and fell, thus sustaining a back injury.



She had been pursuing treatment for the injury which treatment will continue into the unforeseeable future. The 2<sup>nd</sup> defendant was sued as the 1<sup>st</sup> defendant's insurer.

### **Parties' Submissions**

3. The preliminary objection was canvassed by way of written submissions.
4. The 2<sup>nd</sup> defendant/objector submitted that the plaintiff is employed by the 1<sup>st</sup> defendant, thus there is an employment relationship between them. That the suit herein ought to have been filed before the Employment and Labour Relations Court against the 1<sup>st</sup> defendant. It relied on the case of *Ikuva v Kilifi Plantations (2014) Limited* [2024] KEELC 13434 (KLR) and Order 2 Rule 15 of the Civil Procedure Rules which empowers a court to strike out proceedings where no reasonable cause of action has been disclosed. It also relied on sections 16,23 and 52 of the [Work Injury Benefits Act](#) and argued that the suit ought to have been filed before the Employment and Labour Relations Court.
5. The plaintiff submitted that the 2<sup>nd</sup> defendant/objector had been rightly sued given that there is a contractual relationship between it and the 1<sup>st</sup> defendant. That the 2<sup>nd</sup> defendant investigated the plaintiff's claim and reported its findings to the 1<sup>st</sup> defendant.

### **Issue for Determination**

6. The only issue for determination is whether this Court has jurisdiction to determine the suit and if the preliminary objection has merit.

### **Analysis and Determination**

7. The merit or otherwise of a preliminary objection is determined by considering the nature of issues raised therein. It is trite that a preliminary objection is raised based purely on legal issues. Additionally, the determination of those legal issues should have the overall effect of determining the primary suit if the preliminary objection succeeds.
8. This was the position enunciated in the celebrated case of *Mukisa Biscuits Manufacturing Company Ltd v West End Distributors* [1969] EA 696 where the Court of Appeal held thus:

“...So far as I am aware, a preliminary objection consists of a point of law which has been pleaded, or which arises out of clear implication out of the pleadings, and which if argued as a preliminary point may dispose of the suit....A preliminary objection is in the nature of a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct.”

9. In this case, the 2<sup>nd</sup> defendant has challenged its joinder in the suit and the jurisdiction of the court to determine it. From a reading of the plaint, the plaintiff stated that she is an employee of the 1<sup>st</sup> defendant who is insured by the 2<sup>nd</sup> defendant. She sustained an injury while at work and so she is claiming for injuries sustained for work injury benefits under the Work Injury Benefit Act.
10. According to its pre-amble, the [Work Injury Benefits Act](#) Cap 236 was enacted to provide for compensation to employees for work related injuries contracted in the course of their employment. Section 3 applies the Act to all employees. Sections 4 and 5 define employer and employee. Section 10 grants rights to compensation for employees under specified work-related circumstances. Clearly, the claimant's claim herein is strictly within the context of the employer-employee relationship.
11. Article 162(2)(a) of [the Constitution](#) establishes the Employment and Labour Relations Court whose jurisdiction is laid down under section 12 of the [Employment and Labour Relations Court Act](#). The



plaintiff's claim in the plaint should be determined by that court since the wide jurisdiction of the High Court excludes matters relating to employment and labour relations as provided under Article 165(5) (b) of *the Constitution* which states: "The High Court shall not have jurisdiction in respect of matters falling within the jurisdiction of the courts contemplated in Article 162(2)."

12. The question of whether or not the 2<sup>nd</sup> defendant was rightfully joined as a party to the suit cannot be determined by this court because it lacks jurisdiction to do so.

### **Disposition**

13. Inevitably, the preliminary objection has merit and must succeed. The plaint dated 25<sup>th</sup> July 2024 has been filed in the wrong Court and is hereby struck out, as the High Court lacks jurisdiction to determine the dispute.
14. Orders accordingly.

**DELIVERED, DATED AND SIGNED AT EMBU HIGH COURT THIS 30<sup>TH</sup> DAY OF JULY, 2025.**

.....

**R. MWONGO**

**JUDGE**

Delivered in the presence of:

Muchangi G for Plaintiff

Ms. Nyanjiru holding brief for Opondo for 2<sup>nd</sup> Defendant

Ms. Migwi for 1<sup>st</sup> Defendant

Francis Munyao - Court Assistant

