



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU

CAUSE NO. 231 OF 2016

ALEX WANJALA KANULE

CLAIMANT

v

ROBINSON INVESTMENT LIMITED

RESPONDENT

RULING

1. The Respondent filed a Notice of Preliminary Objection on 5 October 2016 asserting that

1. This matter is concluded having been fully and finally settled between the Respondent's and the Plaintiff's Advocates M/s Keboga & Co. Advocates at Kshs 15,000 which was duly paid to the said Advocates on 30th August, 2016 as per attached two letters dated 20/6/2016 and 28/6/2016.

2. This matter between the two parties having been so compromised and settled as above, this suit is thus a gross abuse of the Court process and ought to be struck out with costs to the Respondent.

2. The Claimant filed a replying affidavit to the preliminary objection on 16 January 2017 (the Claimant had been given up to 9 December 2016 to respond to the preliminary objection).

3. In so far as the preliminary objection requires the Court to examine disputed facts, the Court is of the view that it does not present a real preliminary objection as was stated long ago in the case of *Mukisa Biscuits Manufacturing Company Ltd v West End Distributors Ltd* (1969) EA 696, wherein Sir Charles Newbold, P stated

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 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

4. The Court therefore finds no merit in the preliminary objection and dismisses it with no order as to costs.

5. Because the Respondent has raised a plea of compromise in the Memorandum of Response, it may move Court appropriately to determine that question before a hearing on the merits in order to save the Court's time.

Delivered, dated and signed in Nakuru on this 18th day of January 2017.

Radido Stephen

Judge

Appearances

For Claimant Mr. Opar instructed by M. Korongo & Co. Advocates

For Respondent Mr. Awuonda instructed by Githiru & Co. Advocates

Court Assistant Daisy



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