



Case Number:	Cause 231 of 2016
Date Delivered:	18 Jan 2017
Case Class:	Civil
Court:	Environment and Land Court at Nakuru
Case Action:	Ruling
Judge:	Radido Stephen Okiyo
Citation:	Alex Wanjala Kanule v Robinson Investment Limited [2016] eKLR
Advocates:	Mr. Opar instructed by M. Korongo & Co. Advocates for the Claimant, Mr. Awuonda instructed by Githiru & Co. Advocates for the Respondent
Case Summary:	-
Court Division:	Employment and Labour Relations
History Magistrates:	-
County:	Nakuru
Docket Number:	-
History Docket Number:	-
Case Outcome:	preliminary objection dismissed with no order as to costs
History County:	-
Representation By Advocates:	Both Parties Represented
Advocates For:	-
Advocates Against:	-
Sum Awarded:	-
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**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 30<sup>th</sup> 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 18<sup>th</sup> 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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