



REPUBLIC OF KENYA



**Serenge v Jok & another (Cause 493 of 2017) [2024] KEELRC 1192 (KLR) (9 May 2024) (Ruling)**

Neutral citation: [2024] KEELRC 1192 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI**

**CAUSE 493 OF 2017**

**L NDOLO, J**

**MAY 9, 2024**

**BETWEEN**

**JOSEPHINE VODEKE SERENGE ..... CLAIMANT**

**AND**

**PETER GATWEK LUK JOK ..... 1<sup>ST</sup> RESPONDENT**

**SOUTH SUDAN EMBASSY, NAIROBI ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. The 1<sup>st</sup> Respondent, Peter Gatwek Luk Jok, has moved the Court by way of Notice of Motion dated January 25, 2024, seeking the following orders:
  - a. That this suit be struck out;
  - b. That in the alternative, the matter be transferred to the Magistrate's Court and the 1<sup>st</sup> Respondent be granted leave to amend his Response.
2. The Motion is supported by the 1<sup>st</sup> Respondent's own affidavit and is premised on the grounds that:
  - a. The suit is statute barred under Section 90 of the *Employment Act*;
  - b. The Claimant was dismissed on October 23, 2013 as deposed in her Memorandum of Claim;
  - c. Further, the reliefs claimed are said to be from 2004 to 2013, which is legally untenable;
  - d. The amended Memorandum of Claim dated January 2, 2022 is incurably defective as this Court has no jurisdiction;
  - e. The gross monthly salary of the Claimant is below Kshs. 80,000 as evinced by the Memorandum of Claim at paragraphs 3 (a) and 4;
  - f. By dint of *Gazette Notice No 6024* dated June 10, 2018, issued by the Chief Justice, Magistrates of the rank of Senior Resident Magistrate and above, are to hear employment matters within



their respective areas of jurisdiction, limited to pecuniary jurisdiction not exceeding Kshs. 80,000 gross monthly salary;

- g. By filing this suit in the Employment and Labour Relations Court as opposed to the Senior Resident Magistrate's Court, the Claimant has infringed on the 1<sup>st</sup> Respondent's rights by reducing his tiers of appeal;
  - h. Further, the Court has no jurisdiction to determine issues of the torts of malicious prosecution, defamation, physiological and mental torture, which are a preserve of the High Court;
  - i. The Employment and Labour Relations Court is established under Article 162(2)(a) of the Constitution of Kenya, 2010 to hear and determine all disputes relating to employment and labour relations only;
  - j. It is in the interest of justice and efficient utilisation of precious judicial time and resources that the Statement of Claim be struck out *limine litis*;
  - k. The Claimant has not shown any relationship, employment or otherwise, with the Embassy;
  - l. No relief has been sought against the Embassy;
  - m. The Court has no jurisdiction over the Embassy of South Sudan;
  - n. The named Respondent enjoys diplomatic immunity under Section 4(1) and Article 31 of the First Schedule of the Privileges and Immunities Act;
  - o. The suit is a gross abuse of process, is vexatious, frivolous and a non-starter as it discloses no reasonable cause of action.
3. The Claimant opposes the Motion by her replying affidavit sworn on February 16, 2024. She gives a detailed account of her employment by the 1<sup>st</sup> Respondent and events leading to the termination of her employment.
4. The Claimant states that upon a complaint by the 1<sup>st</sup> Respondent, she was arrested and charged with the offence of stealing by servant, contrary to Section 281 of the Penal Code, in Kibera Chief Magistrate's Court Criminal Case No 4058 of 2013. On August 16, 2016, the Claimant was acquitted under Section 210 of the Criminal Procedure Code.
5. The Claimant states that she became aware that her employment had been terminated through a verbal communication by the 1<sup>st</sup> Respondent on August 17, 2016.
6. Regarding the issue of jurisdiction on account of Gazette Notice No 6024 dated June 10, 2018, the Claimant points out that she filed her suit in this Court before the Gazette Notice came into effect.
7. This is an omnibus Motion raising issues of limitation of action, jurisdiction and joinder of party.
8. With regard to limitation, the 1<sup>st</sup> Respondent relies on Section 90 of the Employment Act which provides as follows:
90. Notwithstanding the provisions of section 4(1) of the Limitation of Actions Act, no civil action or proceedings based or arising out of this Act or a contract of service in general shall lie or be instituted unless it is commenced within three years next after the act, neglect or default complained or in the case of continuing injury or damage within twelve months next after the cessation thereof.



9. Looking at the pleadings filed by the parties, the date of termination of the Claimant's employment is a contested fact, which can only be determined at full trial.
10. On jurisdiction of this Court to hear and determine the dispute, on account of the Claimant's monthly salary, the only thing to say, which is fairly evident, is that [Gazette Notice No 6024](#) dated 10<sup>th</sup> June 2018, by which Magistrates of the rank of Senior Resident Magistrate and above were granted jurisdiction to hear and determine employment matters, where the applicable monthly salary does not exceed Kshs. 80,000 came into force after the suit had already been filed in this Court.
11. I need to add that at the time the [Gazette Notice](#) came into force, the Employment and Labour Relations Court, which by law retains residual jurisdiction, made a policy decision that matters already before the Court would proceed to conclusion and many such matters have since been concluded.
12. As to whether this Court has jurisdiction to entertain claims in the nature of tort, the answer lies in the milieu within which the alleged wrongs were committed; if they were committed in the course of an employment relationship, then this Court has full jurisdiction to hear and determine the claims.
13. Regarding the issue of joinder of the 2<sup>nd</sup> Respondent I will say two things; first, the 2<sup>nd</sup> Respondent has not raised the issue of its joinder and second, if the Court were to find that the 2<sup>nd</sup> Respondent is not a necessary party in these proceedings, there is a way out; either by amendment to the claim or a final order disallowing the claim as against the 2<sup>nd</sup> Respondent.
14. In my ruling dated November 3, 2022, I addressed the issue of diplomatic immunity substantively and there is therefore no need to regurgitate the arguments on this issue at this stage.
15. On the whole, I find the 1<sup>st</sup> Respondent's Motion dated January 25, 2024 to be without merit and proceed to dismiss it with costs to the Claimant.
16. Orders accordingly.

**DELIVERED VIRTUALLY AT NAIROBI THIS 9<sup>TH</sup> DAY OF MAY 2024**

**LINNET NDOLO**

**JUDGE**

Appearance:

Mr. Onyore for the Claimant

Mr. Esami for the 1<sup>st</sup> Respondent

No appearance for the 2<sup>nd</sup> Respondent

