



**Epc Builders Limited v Basha (Miscellaneous Application  
E007 of 2024) [2024] KEELRC 1784 (KLR) (4 July 2024) (Ruling)**

Neutral citation: [2024] KEELRC 1784 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA  
MISCELLANEOUS APPLICATION E007 OF 2024**

**AK NZEI, J**

**JULY 4, 2024**

**BETWEEN**

**EPCO BUILDERS LIMITED ..... APPLICANT**

**AND**

**ADAM HAMISI BASHO ..... RESPONDENT**

**RULING**

1. Before me is the Applicant's Notice of Motion dated 22/1/2024. The Applicant seeks the following orders:-
  - a. that notice of this application to the Respondent be dispensed with in the first instance on the grounds of urgency, and that there be a stay of the proceedings in Mombasa Chief Magistrate's Court ELR Cause No. E724 of 2023 (*Adam Hamisi Basha -vs- Epc Builders Limited*) (hereinafter referred to as the said Cause No. E724 of 2023) pending the hearing and determination of this application.
  - b. that the said cause No. E724 of 2023 be transferred to the Chief Magistrate's Court at Nairobi for hearing and determination.
  - c. that costs of the application be provided.
2. The application is predicated on the affidavit of Bernard Owino sworn on 22/1/2024. It is deponed in the said affidavit, inter-alia:-
  - a. that the Applicant carries on a business of building and civil engineering contractor in Nairobi County.
  - b. that on 11/11/2023, the Respondent instituted Mombasa Chief Magistrate's ELR Cause Case No. E724 of 2023 against the Applicant.



- c. that the alleged cause of action in the said suit arose in Nairobi County as the Respondent alleges in his suit documents that his employment with the Applicant was terminated at the Applicant's site at Mavoko Affordable Housing Project which is within Nairobi wherein the Applicant carries on its business.
  - d. that pursuant to Section 15 of the Civil Procedure Act 2010, suits should be instituted where the defendant resides or carries on business, or where the cause of action wholly or partly arises.
  - e. that the Applicant carries on business in Nairobi County and the cause of action alleged in the said Cause No. E724 of 2023 wholly arose in Nairobi County.
  - f. that the Applicant will be prejudiced since its representatives will have to travel to Mombasa for the Court proceedings in the said cause No. E724 of 2023, thereby incurring expenses in respect of the same.
  - g. that it is in the interest of justice that the application be allowed and the suit be transferred to the Chief Magistrate's Court at Nairobi for hearing and determination.
  - h. that no prejudice will be suffered by the Respondent if the application is allowed.
3. The application is opposed by the Respondent vide his replying affidavit sworn on 27/2/2024 whereby it is deponed:-
- a. that the Respondent was employed by the Applicant as a Plant Operator on 6/11/2012 and was assigned to work in the Applicant's sites within the Republic of Kenya, and that the Respondent is aware that the Applicant has office branches in Nairobi and Mombasa, and a Yard in Machakos.
  - b. that at the start of his employment, the Respondent was based at Mombasa and was assigned to work at Kenya Maritime Mbaraki, and thereafter at Kwale International Sugar Company, Kitengela in kajiado, Bombolulu in Mombasa, and that his last assignment was at Mavoko Affordable Housing Project which is situated at Mavoko Constituency in Machakos County, and not Nairobi.
  - c. that the Applicant is misleading the Court by alleging that the cause of action arose in Nairobi County whereas it arose in Machakos County.
  - d. that Section 15 of the Civil Procedure Act provides that every suit shall be instituted in a Court within the local limits of whose jurisdiction the defendant at the time of commencement of the suit actually and voluntarily resides or carries on business, or personally works for gain.
  - e. that the Applicant carries out business in Mombasa where it has an office, and that the Chief Magistrate's Court Mombasa has jurisdiction to hear and to determine ELR Case No. E724 of 2023 (Adam Hamisi Basbo -vs- Apco Builders Limited).
4. I have noted from the documents annexed to the Respondent's replying affidavit that the Applicant is headquartered in Industrial Area, Nairobi, and has a branch office in Tudor (Mombasa) and a Yard at Syokimau in Machakos County. I have also noted from the affidavit sworn on behalf of the Applicant and from the Respondent's replying affidavit that the cause of action in the subject suit arose at Mavoko in Machakos County. In view of all the foregoing, the Respondent ought to have filed the subject suit either at Mavoko Principal Magistrate's Court where the cause of action arose or in the Chief Magistrate's Court at Nairobi where the Respondent principally carries on business.



5. The *Employment and Labour Relations Court (Procedure) Rules* 2016 are silent on where to sue. This Court has, over the years, reverted to the *Civil Procedure Act* Rules made thereunder on matters where its aforesaid rules of procedure are silent on any issue. This position is captured in several decisions of this Court. The Court stated as follows in the case of *Francis Kimutai Bii -vs- Kaisungi [K] Limited* [2016] eKLR:-

“The application of the *Civil Procedure Act* in the practice of this Court is a grey area. It is not expressly provided for in any statute applicable in the practice of the Court or even other law. There have been arguments for and against the application of the *civil Procedure Act* in our practices. So, what is the actual position on this in the practices of this Court. “What has been the practice in the past.” Previous practice of the employment & Labour Relations Court has borrowed from the High Court of Kenya by incorporating the *Civil Procedure Act* and Rules in its practice where necessary. This I believe is obviously to take care of any lacuna created by the lapses of the Industrial Court (Procedure) Rules, 2010 and even statute. I agree with the submissions by the Respondent that the Industrial Court Act, 2011 and the Rules of this Court do not address the issue of stay of execution or even leave to appeal. I however, do not agree that in the absence of this provision, this Court would be left hanging on the subject. Nature abhors a vacuum and therefore the establishment of precedent and a practice where these issues can be addressed as and when they arise and fall due like in the present case.”

6. It is clear from the provisions of Section 15 of the *Civil Procedure Act* that in selecting where to institute a suit, the Respondent’s location should be a major consideration. The Respondent has not demonstrated that the Applicant’s principal place of business is not Nairobi, where its headquarters are situated.

7. In view of all the foregoing, and having considered rival submissions filed on behalf of parties herein, the Notice of Motion dated 22/1/2024 is hereby allowed in the following terms:-

- a. Mombasa Chief Magistrate’s Court Employment case No. E724 of 2023 (*Adam Hamisi Basbo -vs- EpcO Builders Limited*) is hereby transferred to the Chief Magistrate’s Court at Nairobi for hearing and determination.
- b. Each party will bear its own costs of the application.

8. Orders accordingly.

**DATED, SIGNED AND DELIVERED AT MOMBASA THIS 4<sup>TH</sup> JULY 2024**

**AGNES KITIKU NZEI**

**JUDGE**

ORDER

This Ruling has been delivered via Microsoft Teams Online Platform. A signed copy will be availed to each party upon payment of the applicable Court fees.

**AGNES KITIKU NZEI**

**JUDGE**

Appearance:

.....Applicant



.....Respondent

