



**Okumu v Coulson (Employment and Labour Relations Cause
187 of 2022) [2025] KEMC 62 (KLR) (4 February 2025) (Ruling)**

Neutral citation: [2025] KEMC 62 (KLR)

**REPUBLIC OF KENYA
IN THE NAKURU LAW COURTS
EMPLOYMENT AND LABOUR RELATIONS CAUSE 187 OF 2022
PA NDEGE, SPM
FEBRUARY 4, 2025**

BETWEEN

FREDRICK OKUMU CLAIMANT

AND

MARY SHAW COULSON RESPONDENT

RULING

1. This is an application brought under order 51 Rule 1, section 3A and 63(e) of the *Civil Procedure Act*, where the applicant Mary Shaw Coulson, who is also the respondent in the cause herein, is seeking for the following orders; that: -
 - I. The Honorable Court be pleased to strike out the suit herein for: -
 - a. Want of territorial jurisdiction
 - b. Principal of estopped barring that Respondent towards filing this suit.
 - II. The costs of this application be provided for.
2. The application is supported by the affidavit of the Respondent sworn at Nakuru on 20th February 2023 and the 7 grounds, on the face of it; mainly that: -
 - i. the Applicant's work is solely to help the less fortunate in the society
 - ii. by dint of the Respondent's nature of work, she does not make any profit.
 - iii. upon the Respondent being terminated from her place of employment she willingly signed and received her final dues.
 - iv. the respondent did not object towards receiving her final dues.
 - v. the Respondent is as such estopped from suing the applicant.



- vi. the Applicant works in Gilgil town and her nearest court to be sued from is Naivasha and not Nakuru.
 - vii. in light of a foregoing, the suit herein lacks legs to stand on.
3. Both parties herein filed their written submission and arguments as directed by the court on 16th April 2024. In her learned counsel written submissions dated 27th January 2025, the applicant appears to have abandoned the second ground in prayer 1(b) i.e. the striking out based on the principle of estoppel and concentrated on the issue of territorial jurisdiction as per prayer No.1 (a) Learned counsel submitted on the same that the cause of action arose in Gilgil and as such the nearest court of law is Naivasha Chief Magistrate's Court and not Nakuru Chief Magistrate. That section 15 of the [Civil Procedure Act](#) is couched in mandatory terms that every suit shall be instituted in a court within the local limits whose jurisdiction: -
 - a. The Defendant actually, and voluntarily resides or carries on business or personally works for gain.
 - b. The cause of action wholly or in part arises.
 4. That in this case, the claimant appears to have seen it fit to choose a place where he resides and not the Respondent.
 5. For the Claimant/Respondent it was submitted that the court has the subject matter jurisdiction to competently entertain this suit by virtue of the provision of section 9(b) of the [Magistrate's Court Act](#), Chapter 10, Laws of Kenya read together with section 29 of the [Employment and Labour Relations Court Act](#). That jurisdiction is more confined to persons within the reach of court process than physical distance, as was held by Nyakundi, J in [Korea Nyamai v Neema Parcels Limited](#) (2021) eKLR. That nothing in the [Magistrates Court's Act](#), Chapter 10, Laws of Kenya seems to suggest that the territorial jurisdiction of this court is Limited. That the Respondent has not adduced any iota of evidence to support her allegation that the environs of Gilgil are excluded from the territorial jurisdiction of this Honorable Court. That if any such territorial jurisdiction demarcations for magistrate's courts exist, they are purely administrative and cannot be a ground to ouster the jurisdiction of this court. That in canvassing the question of jurisdiction, the court ought to give due regard to subject matter and pecuniary jurisdiction as was expounded in the case of [Korea Nyamai v Neema Parcels Limited](#) Supra. That physical convenience, in appropriate cases such as this, cannot impeach existing pecuniary and subject matter court's jurisdiction. That the Respondent has not adduced cogent reasons on why she cannot attend court from her area of domicile even with the advent of virtual courts. In conclusion, learned counsel submitted that they are not opposed to the Respondent/Applicant utilizing the provisions of section 18 of the [Civil Procedure Act](#), Chapter 21, Laws of Kenya, to have this suit transferred by the High Court to her preferred forum.
 6. The main issue for determination herein is whether this suit is incompetent for having been filed out of the territorial jurisdiction.
 7. Learned counsel for the claimant relied on a very relevant authority from the Employment and Labour Relations Court at Malindi being [AUC Management Limited v Emmanuel Mwamunya Jilani](#), (2022) eKLR, where the learned judge held as follows: -

I have previously expressed the view that it is not appropriate for parties to an employment and labour relations dispute that is pending before an Employment and Labour Relation Court (ELRC) to invoke the *Civil procedure Rules* to seek orders before the court except as is permitted under the *ELRC rules* where the *ELRC rules* are silent on a particular scenario, the



parties ought to apply under section 3(1) of the *Employment and Labour Relations Court Act* (ELRC Act) as read with section 12 (3) (viii), of the Act and Rule 17 of the *ELRC rules* (see *Vincent Mwatsuma Nguma & 5 others v Kilifi Mariakani Water & Sewage Co., Ltd (KIMAWASCO Co.)* (2021) eKLR.

8. I therefore find it inappropriate for the applicant and the parties herein to invoke the provision of the *Civil Procedure Act* or rules; and also to cite authorities based on the *Civil procedure Act* or rules in this Employment and labour dispute.
9. Be that as it may, the jurisdiction of the magistrates' court to handle employment and labour relations disputes arises from the power donated to the chief justice under section 29 of *ELRC Act* to gazette magistrates to handle these matters. Pursuant to that power, the Chief Justice issued Gazette Notice No.6024 of 2018 mandating magistrates of the rank of Senior Resident Magistrate (SRM) and above to hear, with some exceptions, disputes arising from employment contracts when the employees' gross monthly salary does not exceed Ksh.80,000/=. The gazette notice provided that the magistrates will handle matters that fall within their areas of jurisdiction.
10. While it is arguable that under the Magistrates' court Act, a magistrate's jurisdiction is countrywide, the question of geographical location of the trial court in comparison with the residence of the parties and the area the cause of action is said to have arisen is, and as held by Justice Manani in *AUC Management Limited -v Emanuel Mwamunye Jilani; supra*, of critical importance in considering where to file a case as submitted by the Applicant. This consideration goes into ensuring that the choice of the court facilitates the overall objective of the law to dispense justice in a manner that is just, affordable, proportional and expeditious.
11. The grievances of the claimant against the Applicant herein are said to have arisen in Gilgil town where the Applicant runs her business which employed the Claimant herein. This fact is not disputed by the claimant's advocates. The presence of a chief magistrate's court within Naivasha is much closer or nearer to the Applicants place of work and where the cause of action herein arose than Nakuru which is several Kilometers away. Naivasha Chief magistrate court is of the same rank to this court.
12. I have considered the rival position by the parties herein. I do not doubt that one of the cardinal principles that guide the handling of judicial disputes is the need to ensure the fair, just and expeditious disposal of cases. In this regard, the argument that Nakuru Chief Magistrate's Court is more convenient to the claimant is misplaced. The same is not convenient to the Applicant and hence the application herein. Justice is two way and the party that has been dragged to court is entitled to be handled just as the Claimant, in a manner that encourages his or her confidence in the concept of fairness. It should not come out in her mind that there is an element of collusion, or forum shopping herein. It is unjust to haul a defendant to court in a geographical location that is well outside his way when there is a court next door where she resides or undertakes business. There must be compelling reasons that justify the claimant's decision to avoid the court in close proximity of the defendant for the decision to move to a court that is stationed further to be justified.
13. Since it is the claimant who has sought justice in court, he should be prepared to meet the cost of pursuing the cause. After all, that his effort will normally be rewarded by an order for costs should he succeed in the cases. It appears out-rightly improper for the court to turn a blind eye to the fact that the choice of the forum where the claimant elects to file his case will unfairly burden the defence with high expenses in defending the matter when there is an option to the parties that would perhaps have lessened this burden.



14. I find the decision to file this case in Nakuru CM's court and not in Naivasha CM's court which is close to where the defendant ordinarily operates and where there is a court of competent jurisdiction to handle the case not defensible. This decision is likely to unfairly burden the defendant with added cost in defending this claim.
15. So what is the remedy? I do feel that the remedy is not to strike out this claim in the first instance as prayed for by the Applicant. The claimant has conceded that he is amenable to having the High Court transfer the matter to Naivasha court at the Applicant's cost.
16. Let me however clarify that it is not that the High Court that might be seized of the dispute but the ELRC pursuant to rule 6(2) of the *ELRC rules*, 2024. Since it is the claimant who unilaterally filed this cause in Nakuru CM's court, rather than Naivasha, I do direct that he moves to the ELRC via an application to have the suit transferred to Naivasha at his own costs or as may be directed or ordered by the ELRC. Such a move shall be made within 30 days from the date hereof, failure to which this cause shall stand dismissed or struck out for non-compliance with the court's direction. Meanwhile the cost of the application be awarded to the Applicant.

DATED, SIGNED AND DELIVERED IN NAKURU IN OPEN COURT THIS 4TH DAY OF FEBRUARY 2025.

In the present of:-

Luganga present for claimant

Simiyu present for respondent

Claimant - absent

Respondent - absent

Court - mention on 22nd April 2025.

HON. A. NDEGE SPM

4TH FEBRUARY 2025.

