

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

**CAUSE NO. E796 OF 2023**

**KENYA UNION OF DOMESTIC, HOTELS, EDUCATIONAL  
INSTITUTIONS AND HOSPITAL WORKERS (KUDHEIHA)  
.....CLAIMANT**

**VERSUS**

**BOARD OF MANAGEMENT,  
NG'ETHU SECONDARY SCHOOL.....  
RESPONDENT**

**RULING**

**Background**

1. The Claimant is a trade union which is registered under the relevant provisions of law in Kenya. It represents a certain cadre of employees who work in the domestic, hospitality, education and medical sectors in the Republic.
2. The Claimant has instituted the instant proceedings against the Respondent on behalf of one Grace Wanjru Wangari (the Grievant) whom it claims is one of its members. It contends that the Respondent hired the services of the Grievant as a secretary at a monthly salary of Ksh. 3000.00 but subsequently terminated her contract unlawfully. As such, it claims for various reliefs on behalf of the Grievant as more particularly set out in the Memorandum of Claim dated 30<sup>th</sup> September 2023.

3. The Respondent entered appearance in the cause and filed a preliminary objection asserting that the court lacks jurisdiction to entertain the suit. The particulars of the objection can be summarized as here-below:
  - a) That the court is not entitled to entertain the suit in view of section 29(3) and (4) (b) of *the Employment and Labour Relations Court Act, 2011* and Gazette Notice No 6024 of 22<sup>nd</sup> June 2018 which require matters which arise from employment contracts in respect of which the employee's salary does not exceed Ksh. 80,000.00 per month to be handled by the Magistrate's Court.
  - b) That since the salary of the Grievant was below the threshold of Ksh. 80,000.00, this court is bereft of the requisite jurisdiction to entertain the suit.
  - c) That the suit is therefore an abuse of the court process and ought to be struck out.
4. The Claimant has resisted the preliminary objection. It contends that the court is seized of the requisite jurisdiction to hear the case.
5. The court directed that the objection be canvassed through written submissions. Both parties have since filed their submissions.

### **Analysis**

6. The jurisdiction of the court to entertain employment and labour disputes is founded on article 162(2) of *the Constitution*. By this provision, Kenyans elected to establish a specialized court to handle employment and labour

relations disputes. Accordingly, they directed Parliament to enact a law to establish the court.

7. Pursuant to the aforesaid constitutional edict, Parliament enacted *the Employment and Labour Relations Court Act* Chapter 234B Laws of Kenya through which the Employment and Labour Relations Court was established (see section 4 thereof). By virtue of section 12 of the Act, the court has exclusive original and appellate jurisdiction over all employment and labour relations matters. It also exercises review jurisdiction (see section 16 of the Act). These provisions underscore the reality that the court enjoys jurisdiction over all forms of employment disputes.
8. Section 29 of the *Employment and Labour Relations Court Act* requires the court to ensure reasonable and equitable access to judicial services in all Counties in Kenya. To enable this, the provision empowers the Chief Justice of the Republic to designate a Judge in a County as a Judge for the purposes of the Act. Further, the Chief Justice may, by notice in the Gazette, appoint certain magistrates to preside over cases involving employment and labour relations in respect of any area of the country.
9. It is in this context that the Chief Justice issued Gazette Notice No. 6024 of 22<sup>nd</sup> June 2018. Through the instrument, the Chief Justice authorized magistrates of the rank of Senior Resident Magistrate and above to handle employment and labour relations disputes in respect of which the affected employees' monthly salaries do not exceed Ksh. 80,000.00.

10. The question that has often arisen is whether the Gazette Notice had the effect of extinguishing the jurisdiction of the Employment and Labour Relations Court to entertain disputes that fall below the threshold of Ksh. 80,000.00. In a series of decisions by the court, it has been held that the Gazette Notice did not take away the jurisdiction of the court to entertain disputes where an employee's salary falls below the Ksh. 80,000.00 threshold (see for instance ***Onyango v Ken Knit Kenya Limited [2024] KEELRC 1569 (KLR)*** & ***Muchunu v NRS Sacco Society Limited [2023] KEELRC 1488 (KLR)***). However, the court will not entertain these matters if there is a Magistrate's Court which can handle them in accordance with the dictates of the Gazette Notice.
11. The position taken by the court is to infuse uniformity in handling matters which fall below the set threshold. As such, it has been its (the court's) position that a litigant who elects to approach it despite knowing that there is a Magistrate's Court which can hear his/her case will be engaged in unwarranted choice of jurisdiction. Consequently, such matter will often be referred back to the appropriate Magistrate's Court for hearing and determination.
12. Gazette Notice No. 6024 of 22<sup>nd</sup> June 2018 indicates that matters which fall below the threshold of Ksh. 80,000.00 should be handled by the Magistrate's Court of the rank of Senior Resident Magistrate and above. However, it expressly excludes trade disputes that arise under *the Labour*

*Relations Act* from being adjudicated by the Magistrate's Court.

13. Section 2 of *the Labour Relations Act* defines the term "trade dispute" as follows:-

*"...\"trade dispute\" means a dispute or difference, or an apprehended dispute or difference, between employers and employees, between employers and trade unions, or between an employers' organization and employees or trade unions, concerning any employment matter, and includes disputes regarding the dismissal, suspension or redundancy of employees, allocation of work or the recognition of a trade union."*

14. From this definition, it is apparent that disputes between employers and employees and or their respective unions which arise under *the Labour Relations Act* and which concern any employment matter including dismissal, suspension or redundancy of employees constitute a trade dispute irrespective of their monetary value. All such disputes are expressly excluded from the jurisdiction of the Magistrate's Court.
15. The instant claim by the Claimant on behalf of the Grievant relates to the legality of the Respondent's decision to terminate her employment. As such, it is a trade dispute within the meaning of section 2 of *the Labour Relations Act*.
16. As seen earlier, Gazette Notice No. 6024 of 22<sup>nd</sup> June 2018 expressly excludes such dispute from being processed before the Magistrate's Court. Only the Employment and

Labour Relations Court may entertain it. As such, the Employment and Labour Relations Court has jurisdiction over the claim (***Kudheiha Workers Union v Pinewood Beach Resort & Spa [2023] KEELRC 1204 (KLR)***).

**Determination**

17. Consequently, the objection raised by the Respondent regarding the court’s jurisdiction to entertain the case lacks merit.
18. Accordingly, it is dismissed.
19. Costs of the objection shall be in the cause.

**Dated, signed and delivered on the 30<sup>th</sup> day of October, 2025**

**B. O. M. MANANI**

**JUDGE**

In the presence of:

..... for the Claimant

.....for the Respondent

**ORDER**

**In light of the directions issued on 12<sup>th</sup> July 2022 by her Ladyship, the Chief Justice with respect to online court proceedings, this decision has been delivered to the parties online with their consent, the parties having**

**waived compliance with Rule 28 (3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.**

**B. O. M MANANI**