



REPUBLIC OF KENYA



KENYA LAW
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Maridadi Flowers Limited v Makunya (Employment and Labour Relations Appeal E028 of 2023) [2025] KEELRC 2859 (KLR) (23 October 2025) (Judgment)

Neutral citation: [2025] KEELRC 2859 (KLR)

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU
EMPLOYMENT AND LABOUR RELATIONS APPEAL E028 OF 2023
AN MWAURE, J
OCTOBER 23, 2025

BETWEEN

MARIDADI FLOWERS LIMITED APPELLANT

AND

ERICK YEGO MAKUNYA RESPONDENT

(Being an Appeal from the Ruling and order of the Honourable Karanja, Senior Principal Magistrate, delivered 28th January 2022 in Naivasha CMCC No. 498 of 2018)

JUDGMENT

1. The Appellant, being dissatisfied with the Ruling and order of the Honourable Karanja, Senior Principal Magistrate, filed this appeal vide a Memorandum of Appeal dated 15th November 2022 on the grounds that: -
 1. The learned Magistrate erred in law and fact in conferring upon himself the jurisdiction to hear and determine the Claim even though the claim was filed when the court lacked jurisdiction to entertain this claim.
 2. The Learned Magistrate erred in law and fact in failing to appreciate and consider the Appellant's judicial authorities, emphasising the importance of jurisdiction prior to hearing a suit.
2. The Appellant prays that:
 - a. The instant appeal be allowed
 - b. The Ruling of Honourable Karanja SPM dated and delivered on 28th January 2022, be reviewed and/or set aside
 - c. The Respondent to bear the costs of this Appeal



3. The court directed that the appeal be disposed of by way of written submissions.

Appellant's submissions

4. Being the first appeal, the Appellant relied on the case of *Selle & another v Associated Motor Boat Co. Ltd & Others* [1968] 1 E. A 123, the Court of Appeal held that:

“...this court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect. In particular, this court is not bound necessarily to follow the trial’s judge findings of fact if it appears either that he has clearly failed on some point to take into account of particular circumstances or probabilities materially to estimate the evidence.”

5. The Appellant further submitted that Gazette Notice No. 6024, published on 22nd June 2018, conferred jurisdiction upon Magistrates of the rank of Senior Resident Magistrate and above to preside over employment contract disputes where the gross monthly salary does not exceed Kshs. 80,000/=, as well as matters arising under the *Work Injury Benefits Act*. However, the Respondent filed the present suit on 12th June 2018, prior to the publication of the Gazette Notice. Although the notice was dated 10th June 2018, it only became effective upon its publication on 22nd June 2018. Consequently, at the time the suit was filed, the learned magistrate did not possess the requisite jurisdiction to hear and determine the labour dispute in question.
6. The Appellant submitted that the Magistrate’s Court lacked jurisdiction to entertain the Respondent’s claim at the time it was filed on 12th June 2018. In *Jackline Oichoe v Jilag Limited* [2022] KEELRC 851 (KLR), where the court held that Gazette Notice No. 6024 of 22 June 2018 did not have retrospective application. Although section 28 of the *Interpretation and General Provisions Act* allows subsidiary legislation to operate retrospectively, the Gazette Notice in question did not purport to do so.
7. Still in *Jackline Oichoe v Jilag Limited* (Supra), the court emphasized that the powers under Section 29(3) of the *Employment and Labour Relations Court Act* had not yet been exercised by the Chief Justice prior to the Gazette’s publication, and therefore, the Magistrate’s Court could not have lawfully assumed jurisdiction before that date. Furthermore, Section 23(1) of the *Statutory Instruments Act* No. 23 of 2013 provides that a statutory instrument becomes effective on the date specified therein, or if no date is specified, on the date of its publication in the Gazette. Since Gazette Notice No. 6024 did not specify a commencement date, it became effective only upon its publication on 22nd June 2018.
8. Accordingly, the Appellant submitted that any proceedings initiated before that date, such as the Respondent’s suit, were conducted without jurisdiction and are therefore null and void ab initio. The learned Magistrate erred in law and fact by assuming jurisdiction prematurely, and this Honourable Court is urged to find that the proceedings before him were a legal nullity.
9. The Appellant urged this Honourable Court to allow the appeal as prayed.

Respondent’s submissions

10. The Respondent opposes the appeal and submits that it is challenging the appeal on both procedural and substantive grounds. Procedurally, the Respondent argued that the appeal was filed 306 days after the ruling and 153 days after leave was granted, far beyond the 30-day limit prescribed by section 79G of the *Civil Procedure Act*. The Respondent assert that the trial court lacked jurisdiction to grant leave



to appeal out of time, as this power is reserved for the appellate court. Consequently, the leave granted was invalid, rendering the appeal fatally defective.

11. The Respondent relied on the case of *Swaleh Rashid Mwakabwana & Another v Selina Mwakireti* [2023] KEHC 22215 (KLR), where the High Court struck out an appeal filed with leave granted by a subordinate court, declaring such leave null and void.
12. Substantively, the respondent defends the trial court's jurisdiction to hear the original employment claim. The Respondent relied on section 9(b) of the Magistrate's Court Act No. 26 of 2015, which came into force on 2nd January 2016, and Gazette Notice No. 6024 dated 10th June 2018, which appointed Senior Resident Magistrates and above to hear employment disputes. The Respondent argues that the substantive law conferring jurisdiction was already in effect prior to the gazettelement, which was merely administrative. The Respondent relied on *Philip Muiruri Ndaruga v Gatemu Housing Co Ltd* [2019] KEHC 8074 (KLR), where the court held that the absence of gazettelement did not negate jurisdiction granted by substantive law. The Respondent also relied on the case of *Jackline Oichoe v Jilag Limited*(supra), noting that it did not address section 9(b) of the Magistrate's Court Act.
13. In conclusion, the Respondent submitted that the appeal is both procedurally and substantively flawed and urges this Honourable court to strike out the appeal and dismiss it with costs.

Analysis and determination

14. This Honourable Court's duty as a first appellate court is to thoroughly re-examine, reassess, and reanalyse the evidence on record, and then decide whether the findings made by the trial judge should be upheld or overturned providing clear justification for whichever conclusion the court reach as provided in *Selle and Another v Associated Motor Boat Company Limited and Others* [1968] EA 123
15. The issue for determination is whether the appeal before this Honourable Court is merited.
16. The learned magistrate, in his ruling dated 28th January 2022, stated that the court lacked jurisdiction to handle the case before it struck out the suit. The said learned magistrate allowed the Appellant to file the appeal out of time.
17. There is no doubt that the suit was filed on 12th June 2018, and the Chief Justice vide Gazette Notice No. 6024, published on 22nd June 2018, conferred the rank of senior Resident Magistrate and above to handle matters over employment contract disputes where the gross monthly salary does not exceed Kshs.80,000/=.
18. It is trite law that a Gazette Notice only becomes legally effective upon its formal publication, not on the date it is signed or issued. In this case, the Gazette Notice was published on 22nd June 2018, ten days after the suit was filed. Therefore, at the time of filing, this Honourable Court did not possess the requisite jurisdiction to entertain the matter. In *Jackline Oichoe v Jilag Limited*(supra), the court held as follows:

“On the issue of retrospective application of the Gazette Notice, although Section 28 of the *Interpretation and General Provisions Act* provide that subsidiary legislation may be made to operate retrospectively, to any date, not earlier than the commencement of the Act of Parliament under which it is made, Gazette Notice No. 6024 of 22nd June 2018 did not purport to act retrospectively as submitted by the Respondent's Counsel. The contention that Section 29(3) of the *Employment and Labour Relations Court Act* existed before the Gazette and, by implication, that the law was already in place is unsustainable because



powers conferred on the Chief Justice had not been exercised and the Claimant could not have filed the claim in a Magistrates Court before that date.

It is the finding of the Court that Gazette Notice No. 6024 of 22nd June 2018 had no retrospective application. It would appear to follow that since the Memorandum of Claim here was filed on 18th January 2017 more than one (1) year before the Gazette Notice in question was published, this Court was the proper forum to hear and determine the claim.”

19. In *Municipal Council of Mombasa v Republic & Umoja Consultants Ltd.* [2002] KECA 8 (KLR), the Court of Appeal clarified that a Gazette Notice is not itself a decision but a means of conveying information. Legal consequences only arise once the notice is published and applied.

20. The court is seized of the fact that the Ruling herein was delivered on 28th January 2022 by a Senior Principal Magistrate.

The Memorandum of Appeal was filed on 6th December 2023 and leave to file appeal out of time was granted by the Senior Principal Magistrate by his order of 7th July 2022.

21. Section 79(a) of the *Civil Procedure Act* provides that the court can grant leave with sufficient reasons to file appeal out of time. Otherwise the period in the said provision for appeal is 30 days.

Memorandum of Appeal was filed on 6th December 2023. This delay in filing the appeal even if leave was granted is too long and there is no explanation or reasonable demonstration of why that very long delay. Indeed such long delay goes against the provisions of article 159(b) of the 2010 Kenya Constitution which states –

“In exercising judicial authority the courts and tribunals shall be guided by the following principles –

- a. ;;
- b. Justice shall not be delayed.

22. An appeal filed in December 2023 from a Ruling delivered on 28th January 2022 is inexcusable and the court cannot find in this particular case a reasonable explanation for such a long delay. The appeal is filed way out of time.

23. Another note is that this was a case that was filed on 30th May 2018 and cause of action had arisen on 13th March 2018. The claimant had filed his claim on time but the preliminary objection was filed around June 2018 and Ruling was delivered on 28th January 2022.

In the process of this going back and forth the case has taken over 7 years in the court corridors. Truly, this is unjust to the claimant to have his case thrown out after so many years on an unclear legal technicalities.

24. The court holds that striking out this suit after 7 years in court merely because the Gazette Notice had not been published to list the level of the Magistrates who would hear employment cases would be more unjust than what the appellant seeks to cure.

25. Section 29(3) of the Employment and *Labour Relations Act* states “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.

It is this court’s position that this provision does not mean that the magistrates did not have jurisdiction to deal with certain employment and labour relations cases.



The Chief Justice was (and it was not mandatory) to appoint certain Magistrates to preside over those cases. If the issue of jurisdiction was raised and determined before the three years limitation had expired the case could have been allocated before the rightful magistrate.

As it is the Gazette Notice No. 6024 of 22nd June 2018 is now in place.

26. As already stated in the case of *Municipal Council Of Mombasa v Republic & Umoja Consultants(Supra)* of Gazette Notice is not itself a decision but a means of conveying information.
27. The court holds by the forgoing reasons the appeal against the Ruling of Senior Principal Magistrate lacks merits and so is dismissed.
28. The court orders the case be presented to the Deputy Registrar within 30 days to allocate before a Magistrate with requisite jurisdiction so that the case be heard and determined without any further delay.
29. Costs of this application to be in the cause.

Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAKURU THIS 23RD DAY OF OCTOBER, 2025.

ANNA NGIBUINI MWAURE

JUDGE

ORDER

In view of the declaration of measures restricting Court operations due to the COvID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open Court. In permitting this course, this Court has been guided by Article 159(2)(d) of *the Constitution* which requires the Court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of *the Constitution* and the provisions of Section 1B of the Civil Procedure Act (Chapter 21 of the Laws of Kenya) which impose on this Court the duty of the Court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

A signed copy will be availed to each party upon payment of Court fees.

ANNA NGIBUINI MWAURE

JUDGE

