



**Ngaari v Maina (Miscellaneous Application E071 of 2025)
[2025] KEELRC 2977 (KLR) (30 October 2025) (Ruling)**

Neutral citation: [2025] KEELRC 2977 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
MISCELLANEOUS APPLICATION E071 OF 2025
BOM MANANI, J
OCTOBER 30, 2025**

BETWEEN

MARION WAIRIMU NGAARI APPLICANT

AND

ALICE WANJIRU MAINA RESPONDENT

RULING

Introduction

1. The Applicant moved the Magistrate’s Court through MCELRC No. E1708 of 2022 seeking various reliefs against the Respondent arising from an alleged employment relationship between the two. On receipt of Summons to Enter Appearance in the cause, the Respondent filed a Notice of Preliminary Objection challenging the trial court’s geographical jurisdiction to hear and determine the dispute.
2. The court record shows that the trial court rendered its ruling on the preliminary objection on 8th August 2024 in which it declared that it had no jurisdiction to entertain the case. The court went further to direct the Applicant to move the Employment and Labour Relations Court (ELRC) within four months of the ruling to transfer the cause to any court within Kajado North Sub-County.
3. There is no evidence to suggest that the Applicant challenged the above order either through an appeal or an application for review. As such, the court order declaring that the trial magistrate lacked jurisdiction to hear the matter remains in place.
4. It is also noteworthy that the time for challenging the order through appeal has since lapsed. Similarly, the order may not be challenged now through an application for review due to the length of time that has lapsed from the date the ruling was issued.
5. It is apparent from the court record that the Applicant did not move the ELRC to transfer the suit within the timeframe which was granted by the trial court. The application dated 10th March 2025 for



transfer of the suit was presented to the ELRC on 11th March 2025, more than seven months after the trial court's order of 8th August 2024.

6. In the application, the Applicant reiterates the fact that the motion was prompted by the trial court's order of 8th August 2024. It is her case that because the trial court gave her a window to apply for transfer of the suit to a court with the requisite jurisdiction to handle it, the application is competent and should be allowed. She further contends that it is in the interest of justice to transfer the cause as directed by the trial magistrate.
7. The Respondent is opposed to the application. She contends that the Applicant did not move the ELRC for transfer of the suit within the timeframe that was provided by the trial court. As such, she contends that the instant application is incompetent.
8. The Respondent further contends that she has moved the trial court to dismiss the claim for failure by the Applicant to move the ELRC for transfer of the suit as had been ordered. She contends that it is necessary for the application before the trial court to be heard before the instant application is heard.
9. The Respondent contends that once the trial court came to the conclusion that it lacked jurisdiction to entertain the case, it ought to have downed its tools entirely. As such, it is her case that it is improper for the said court to continue giving directions in the cause.

Analysis

10. The record shows that the trial court delivered its ruling on 8th August 2024 declining jurisdiction to entertain the claim by the Applicant. Once the court issued this order, it became functus officio in respect of the matter. As such and as the Respondent correctly points out, it would be improper for the said court to continue entertaining the suit. A similar view was expressed by the Supreme Court of Kenya in *Shollei v Judicial Service Commission & another* (Application 10 (E016) of 2022) [2023] KESC 8 (KLR) (Civ) (17 February 2023) (Ruling).
11. Importantly, the legal position is that once a court arrives at the conclusion that it has no jurisdiction over a matter, it is obligated to down its tools in respect of the matter entirely. It cannot continue entertaining the cause for any other purpose except perhaps for ascertainment of costs incurred by the parties.
12. The requirement for a court to down its tools over a matter the moment it confirms that it has no jurisdiction over it (the matter) has been underscored in a number of decisions. In the locus classicus case of *Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd* [1989] KECA 48 (KLR), the court had this to say on the subject:-

A question of jurisdiction ought to be raised at the earliest opportunity and the court seized of the matter was then obliged to decide the issue right away on the material before it. Jurisdiction was everything. Without it, a court had no power to make one more step. Where a court had no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law downed tools in respect of the matter before it the moment it held the opinion that it was without jurisdiction.”

13. Having regard to the foregoing, the trial court ought to have downed its tools immediately it arrived at the conclusion that it did not have jurisdiction over the dispute. It should not have taken any further steps in the cause including listing the case for mention for further directions.



14. A perusal of the court order dated 8th August 2024 shows that it was self-executing. The matter was to stand automatically dismissed if the Applicant did not move the ERLC for transfer of the suit within four months from 8th August 2024.
15. The trial court having arrived at the conclusion that it lacked jurisdiction to entertain the suit, was it proper for it to issue directions to the Applicant to apply to the ELRC to transfer the matter to a court with jurisdiction? Conversely, can the ELRC transfer a suit which was filed in a court without jurisdiction to a court with jurisdiction?
16. In the case of Insight Management Consultants Ltd v Kenya Plantations & Agricultural Workers Union and Cargill Kenya Limited (Mombasa Court of Appeal Civil Appeal No E001 of 2020) (unreported), the Claimant moved the court over a dispute that was beyond that court's jurisdiction. The Respondent objected to the court's jurisdiction to entertain the suit and the objection was upheld.
17. Despite the trial magistrate having found that he had no jurisdiction to hear the case, he directed the Claimant to move the ELRC within 30 days of the ruling to transfer the matter to the appropriate court. In compliance with the directions by the trial court, the Claimant applied to the ELRC for transfer of the suit. The ELRC allowed the application and transferred the matter to itself for hearing and determination.
18. Dissatisfied with the decision, the Respondent filed an appeal to the Court of Appeal. In its decision rendered on 20th June 2025, the Court of Appeal observed as follows:-

.....our reading of Article 162(2) of the Constitution is that it does not empower the ELRC to transfer a case from the Magistrate's Court that had no jurisdiction to hear and determine the case in the first place. Put differently, the ELRC cannot exercise its supervisory jurisdiction and employ its administrative powers to transfer to itself and breathe life into a case filed in a subordinate court that has no jurisdiction to hear it. To do so would run against the grain of the maxim *ex nihilo nihil fit*.”
19. As was observed earlier in this ruling, the ruling of the trial court declaring that it had no jurisdiction over the Applicant's case was not challenged on appeal or through review. As such, the decision remains on record with the consequence that the trial court has no jurisdiction to hear the case by the Applicant. That being the case and having regard to the position expressed by the Court of Appeal in *Insight Management Consultants Ltd v Kenya Plantations & Agricultural Workers Union and Cargill Kenya Limited* (supra), this court is not entitled to entertain the instant application for transfer of the impugned suit.
20. I have considered the submissions by the Applicant founded on the High Court decision in *Simon Kiarie v Samwel Muigai Thuku* [2005] eKLR. In the case, the learned Judge observed that a Magistrate's Court has country wide geographical jurisdiction. As such, he held that an objection to the court's geographical jurisdiction was misdirected.
21. In that case, the High Court transferred two consolidated suits from the Kiambu Magistrate's Court to the Limuru Magistrate's Court for trial. Before the transfer, the Kiambu Magistrate's Court had entertained and allowed an application for extension of time to file the two cases out of time.
22. After hearing the cases, the Limuru Magistrate's Court held that the Kiambu Magistrate's Court had no geographical jurisdiction over the cases. As such, it (the Kiambu Magistrate's Court) should not have entertained the application for extension of time on account of want of jurisdiction.



23. On appeal, the High Court contended that a Magistrate's Court has countrywide geographical jurisdiction. As such, it found that the Kiambu Magistrate's court had jurisdiction to entertain the impugned applications.
24. The distinction between the instant case and the case of *Simon Kiarie v Samwel Muigai Thuku* (supra) is that in the case of *Simon Kiarie v Samwel Muigai Thuku* (supra), the issue of the Kiambu Magistrate's Court's jurisdiction to entertain the impugned applications was taken up by way of an appeal from the decision of the Magistrate's court. As such, it was open for the High Court to consider it (the issue of jurisdiction) in the context of a ground of appeal from the Magistrate's Court decision.
25. In contrast in the instant case, the Applicant has not approached this court by way of an appeal to challenge the Magistrate's court's pronouncement that it did not have jurisdiction to hear her case. As such, that decision, however irregular, remains in force. Consequently and absent such appeal, this court cannot reopen and evaluate the correctness of the aforesaid Magistrate's Court decision. In effect, the court cannot rely on the decision in *Simon Kiarie v Samwel Muigai Thuku* (supra), to find that contrary to the Magistrate's Court holding, it (the Magistrate's Court) in fact and law had jurisdiction to entertain the Applicant's case.

Determination

26. The upshot is that the court arrives at the conclusion that the application dated 10th March 2025 for transfer of suit is without merit.
27. As such, it is dismissed.
28. Each party to bear own costs.

DATED, SIGNED AND DELIVERED ON THE 30TH DAY OF OCTOBER, 2025

B. O. M. MANANI

JUDGE

In the presence of:

.....for the Applicant

.....for the Respondent

Order

In light of the directions issued on 12th 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

