



**Omukoto v Shah (Employment and Labour Relations Appeal  
E011 of 2024) [2025] KEELRC 2887 (KLR) (24 October 2025) (Judgment)**

Neutral citation: [2025] KEELRC 2887 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU  
EMPLOYMENT AND LABOUR RELATIONS APPEAL E011 OF 2024  
AN MWAURE, J  
OCTOBER 24, 2025**

**BETWEEN**

**DANIEL JOEL OMUKOTO ..... APPELLANT**

**AND**

**VIJAY LAXMI SHAH ..... RESPONDENT**

*(Being an Appeal from the Judgment and order of the Honourable B. Ochieng, Chief Magistrate, delivered 28th February 2024 in Nakuru CMERLC E111 of 2022)*

**JUDGMENT**

1. The Appellant, being dissatisfied with the judgment and order of the Honourable B. Ochieng, Senior Principal Magistrate, filed this appeal vide a Memorandum of Appeal dated 12<sup>th</sup> March 2024 on the grounds that: -
  1. The Honourable Magistrate reached his findings without sufficient evidence and a well-reasoned approach to the Law.
  2. The Honourable Magistrate erred in by failing to consider the circumstance which superior courts have held to be justifiable grounds for departing from the doctrine of exclusive foreign jurisdiction.
  3. The Honourable Magistrate erred in law by failing to consider that the employment contract was formed in Kenya
  4. The Honourable Magistrate erred by not considering that it would be convenient and less expensive for the Appellant if the claim were to be heard and determined in Kenya.
  5. The Honourable Magistrate erred in law by neglecting the fact that all the material evidence and witnesses are in Kenya



6. The Honourable Magistrate also erred in law by failing to consider that ferrying the witnesses and evidence is not possible, and even if it were possible, it would be so expensive to the extent that the award claim would be less than the costs incurred.
  7. In all the circumstances of the case, the findings of the Honourable Magistrate are escapist and insatiable in law or on the basis of the evidence adduced.
2. The Appellant prays that:
- a. The instant appeal be allowed
  - b. The Ruling by Honourable B. Ochieng CM, upholding the Preliminary Objection of the Respondent dated 19<sup>th</sup> August 2022, be set aside
  - c. The prayers sought by the Appellant in the Claim before the Chief Magistrate Employment and Labour Relations Court at Nakuru be allowed as prayed.
  - d. The Appellant be awarded the costs of this Appeal and the Claim in the Chief Magistrate Employment and Labour Relations Court.
3. The court directed that the appeal be disposed of by way of written submissions.

### **Appellant's submissions**

4. The Appellant submitted that Section 5 of the *Civil Procedure Act* grants Kenyan courts jurisdiction over civil matters unless expressly or impliedly barred, and this jurisdiction cannot be ousted by parties through contractual agreement. While Clause 13 of the contract in question designates England and Wales as the exclusive jurisdiction, Kenyan courts retain discretion to assume jurisdiction when justice demands it. This principle was upheld in several cases, including *Jianfeng & another V Jianping & another* [2024] KEHC 15717, *Universal Pharmacy (K) Limited V Pacific International Lines (PTE) Limited & another* [2015] KEHC 3518 (KLR), and *United India Insurance Co Ltd v East African Underwriters (Kenya) Ltd* [1985] KECA 39 (KLR), where courts held that exclusive foreign jurisdiction clauses do not automatically bar Kenyan courts from hearing a case. Lady Justice Stella Ruto in *Sang V Ceva Logistics Limited & Another* [2022] KEELRC 3777 (KLR) emphasized that courts cannot rewrite contracts but may override such clauses based on factors like the location of evidence, convenience, parties' connections to Kenya, and potential prejudice to the plaintiff. The Respondent submitted that, given that the contract was executed and performed in Kenya, and both parties reside there, the Kenyan court is justified in assuming jurisdiction.
5. The Appellant submitted that the Kenyan courts should assume jurisdiction over the dispute despite the exclusive foreign jurisdiction clause in the contract, as all parties reside and operate in Kenya, the contract was executed and performed locally, and the cause of action, unlawful termination and unpaid dues, arose in Kenya. Requiring litigation in England and Wales would impose undue financial and logistical burdens, violating Article 48 of *the Constitution*, which guarantees access to justice.
6. The Appellant contends that the Respondent seeks a procedural advantage without demonstrating genuine prejudice. Furthermore, by filing an unconditional memorandum of appearance on 19<sup>th</sup> August 2022, the Respondent submitted to the jurisdiction of the Kenyan courts, as established in *Petra Development Services Ltd V Evergreen Marine (Singapore) Pte Ltd & Another* [2014] eKLR and reaffirmed in *Kanti & Co Ltd v South British Insurance Co Ltd* [1981] KECA 4 (KLR) and *Barakat Exploration Inc V Taipan Resources Inc* [2014] KEHC 5179 (KLR).



7. The Appellant urged this Honourable Court to allow the appeal as prayed, the trial court's ruling be set aside, and the suit reinstated for hearing on its merits.

### **Respondent's submissions**

8. The Respondent submitted that the contract was lawful, fair, and mutually agreed upon, including the jurisdiction clause favouring the courts of England and Wales, given that the contract was executed and performed in the UK. The learned magistrate was therefore did not err in upholding the parties' intention. The Respondent relied on the case of Pius Kimaiyo Langat V Co-operative Bank of Kenya [2017] eKLR, where the Court of Appeal emphasized that courts should not rewrite contracts unless coercion, fraud, or undue influence is proven. Additionally, in Gacheru V Wathigo [2024] KEELC 3266 (KLR), the court held that it will not interfere with a contract between consenting parties unless it is illegal, unconscionable, or fraudulent, none of which were claimed in the present case.
9. The Respondent submitted to the principle that exclusive jurisdiction clauses must be respected unless compelling reasons justify departure. The Respondent relied on Areva T & D India Limited V Priority Electrical Engineers & Another [2012] KECA 258 (KLR), where the Court of Appeal cited the case of United India Insurance Co Ltd V East African Underwriters (supra), where the court emphasized honouring parties' contractual choices unless strong reasons are shown. Similarly, in Grohe Dawn Watertech Fitting Division Pty Ltd V Ideal Ceramics [2018] KEHC 3214 (KLR) the court cited the case of Fonville V Kelly Ill & Others [2002] 1 EA 71, it was held that a contract governed by foreign law ousts Kenyan jurisdiction.
10. In Grohe Dawn Watertech Fitting Division Pty Ltd V Ideal Ceramics [2018] KEHC 3214 (KLR) the court cited the Court of Appeal in Raytheon Aircraft Credit Corporation & another V Air Al-Faraj Limited [2005] KECA 312 (KLR) that reiterated that the burden lies on the party seeking to avoid the clause to prove strong reasons. In United India Insurance Co Ltd V East African Underwriters (supra), the position echoed in Carl Ronning V Societe Navel Chargeurs Delmas Vieljeux and The Fehmarn [1957] 1 Lloyd's Law Reports 551. The Respondent submitted that the contract was to be performed in the UK, and the Claimant failed to provide substantive evidence to justify litigating in Kenya, such as costs or logistical burdens. As affirmed in Pyrotechnics Company Ltd V Maersk (K) Ltd (2021) eKLR, speculative claims about litigation expenses without proof do not meet the threshold to override jurisdiction clauses. Thus, the learned magistrate's decision to uphold the clause was sound in law and fact.
11. The Respondent urged this Honourable to dismiss the appeal with costs.

### **Analysis and determination**

12. 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 we reach as held in Selle and Another V Associated Motor Boat Company Limited and Others [1968] EA 123.
13. The issue for determination is whether the appeal before this Honourable Court is merited.
14. This Honourable Court has looked at the contract between the Appellant and Respondent, which is titled overseas domestic worker contract, and clause 13 of the said contract reads as follows:

“Governing Law & Jurisdiction



1. This agreement and any dispute or claim arising out of or in connection with it or its subject matter formation (including non-contractual disputes or claims) shall be governed and construed in accordance with the law of England and Wales.
  2. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).”
15. In *National Bank of Kenya Ltd V Pipeplastic Samkolit (K) Ltd & Another* [2001] KECA 362 (KLR) the Court of Appeal held as follows:
- “A court of law cannot re-write a contract between parties. The parties are bound by the terms of their contract unless coercion, fraud or undue influence are pleaded and proved.”
16. In *United India Insurance Co Ltd -V- East African Underwriters (Kenya) Ltd* (supra), the Court of Appeal noted that while jurisdiction clauses should be respected, courts may assume jurisdiction if strong reasons are shown, such as the contract being performed in Kenya.
17. In this instant appeal, the Respondent was relocating to the United Kingdom and executed the contract with the Appellant in Kenya. There is no doubt that a court cannot rewrite the contract unless there are exceptions to the said contract. The Respondent argued that the exclusive jurisdiction governing the contract was the law of England and Wales, while the Appellant argues that there are exceptions when it comes to exclusive jurisdiction on contract.
18. On the other hand, in the contract it was provided on Clause 3(2) “The employee’s current employment contract in Kenya is not and will not be affected by the Employment Contract and will remain in force before and after his employment in the United Kingdom.”
19. This Clause raised another strong point to justify exceptions to the clause on the Foreign jurisdiction as laid out in Clause 13 of the contract signed between the respective parties.
20. The Court therefore holds that the Magistrate erred in failing to consider exceptional reasons listed above and rejecting the case from being litigated in the Kenyan courts. The court therefore holds the Preliminary Objection dated 19<sup>th</sup> August 2022 should be set aside and the suit to proceed before the Chief Magistrate’s Court in Kenya.
21. The court is of the view that the Appellant had demonstrated strong reasons to justify departing from the contractual jurisdiction clause. These included the fact that both parties reside in Kenya, the location of key evidence, the convenience of litigating locally, their strong ties to Kenya, and the potential prejudice to the Appellant if the matter were heard elsewhere. Accordingly, the court is of the view that the Appellant had met the threshold for exception and proved its case on this issue.
22. On the other hand, Section 89 of the *Employment Act* provides as follows:
- “Notwithstanding the provisions of section 4(1) of the *Limitation of Actions Act* (Cap. 22), no civil action or proceedings based or arising out of this Act or a contract of service in general shall lie or be instituted unless it is commenced within three years next after the act, neglect or default complained or in the case of continuing injury or damage within twelve months next after the cessation thereof.”



23. There is no document that clearly show when the Claimant was terminated or was separated from his employment. The only evidence we have is the 2<sup>nd</sup> Foreign contract document is commencing from 11<sup>th</sup> May 2019 to 4<sup>th</sup> October 2019. It is quite clear he worked until 10<sup>th</sup> October 2019 when he finished his assignment in United Kingdom.

The Respondent submits the Claimant deserted employment sometime in 2019 – See paragraph 17 of the Respondent’s Response but did not give the specific date.

24. The Court notes a payment was made to the Claimant dated 1<sup>st</sup> July 2019 and 7<sup>th</sup> October 2019.

25. The Claimant filed his claim on 13<sup>th</sup> July 2022. We can only take it that Claimant had a contract upto October 2022. In the absence of any other document to prove the date of termination/Separation we can take it to be on or about 4<sup>th</sup> October 2019. In that case the case is not time barred and was filed within time.

26. The court therefore retaliates as already stated in paragraph 20 of this judgment that the court is inclined to allow this appeal and will allow the claim to proceed to hearing.

27. The court orders the costs of the appeal to be in the cause.

Orders accordingly.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAKURU THIS 24<sup>TH</sup> 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 15<sup>th</sup> March 2020 and subsequent directions of 21<sup>st</sup> 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.

