

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS
COURT AT NAIROBI
CAUSE NO. E242 OF 2025
ALPHA OTIENO OKOTH
CLAIMANT**

v

**M-GAS LIMITED
RESPONDENT**

**EMPLOYMENT AND LABOUR RELATIONS COURT
RULING**

1. Alpha Otieno Okoth (the Claimant) sued M-Gas Ltd (the Respondent) on 26 March 2025, alleging unfair termination of employment and violation of his Constitutional rights.
2. On 30 June 2025, the Respondent filed a Motion dated 27 June 2025, seeking orders:
 - (i) That the Honourable Court be **NAIROBI** please and transfer this suit to the Employment Division of the Chief Magistrate's court at Milimani, Nairobi.
 - (ii) That the costs of the application herein be in the cause.

3. The grounds in support of the Motion were that the Claimant was earning a monthly salary of Kshs 25,000/- and that by dint of Gazette Notice No. 6024 of 18 June 2018, jurisdiction over such claims had been delegated to the Magistrates' Court.
4. The Claimant filed a replying affidavit in opposition to the Motion on 30 June 2025, deponing that the action included allegations of violation of Constitutional rights and therefore jurisdiction lay with this Court.
5. The Respondent filed its submissions on 8 September 2025.
6. In the submissions, the Respondent urged that the Senior Resident Magistrates' Court had jurisdiction and that the alleged Constitutional violations were not independent of the anchor action for unfair termination of employment.

7. The Respondent also contended that the Claimant had not shown that statutory remedies for the alleged violations were not adequate.
8. According to the Respondent and relying on the Court of Appeal decision in *Sumayya Athmani Hassan v Paul Masina Simidi* (2019) eKLR, the action violated the doctrine of constitutional avoidance.
9. The Claimant filed his submissions on 9 September 2025.
10. The Claimant took the position that the application was frivolous because Rule 10 of the Employment and Labour Relations Court (Procedure) Rules, 2024 contemplated actions seeking the enforcement of Constitutional rights being filed before this Court, and that by virtue of section 8 of the Magistrates Courts Act, Magistrates did not

have jurisdiction over claims alleging violation of human rights.

11. The Court has given due consideration to the Motion, affidavits and submissions.

12. Section 8 of the Magistrates Court Act restricts the jurisdiction of the Magistrates Court in actions alleging violation of fundamental rights.

13. The Claimant has pleaded that the Respondent violated some of his fundamental rights (freedom from discrimination, human dignity, security of the person, privacy and fair labour practices) and has gone ahead to seek appropriate relief beyond the customary remedies for unfair termination of employment and breach of contract.

14. In the circumstances, and not to prejudice a fair hearing of the Issues in dispute, the Court finds that the Cause should not be sent

to the Magistrates' Court for hearing and determination.

15. However, the Claimant must be put on notice by the Court that, after a hearing on the merits, if the alleged violations of Constitutional rights are found to have been made to avoid invoking the jurisdiction of the Magistrates Court, he may be denied costs even if he succeeds on the action for unfair termination of employment.

Orders

16. The orders sought in the Motion dated 27 June 2025 are declined with costs in the cause.

NAIROBI

Delivered virtually, dated and signed in Nairobi on this 27th day of November 2025.

**Radido Stephen, MCI Arb
Judge**

Appearances

For Claimant

S.B. Otieno & Co.
Advocates

For Respondent

Kipkorir &
Wanyama
Advocates LLP

Court Assistant

Wangu

EMPLOYMENT AND LABOUR RELATIONS COURT



NAIROBI