

**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT**  
**NAIROBI**  
**CAUSE NO. E257 OF 2025**

**ELIOT LIKHAYA ASHIKHANGA.....CLAIMANT/RESPONDENT**

**VERSUS**

**M-GAS LIMITED.....RESPONDENT/APPLICANT**

**RULING**

1. What is before the Court for determination is the Respondent/Applicant's Notice of Motion dated 4<sup>th</sup> July 2025, seeking an order to transfer this suit to the Chief Magistrate's Court for hearing and determination.
  
2. The Motion is premised on the grounds set out in the Motion and the Supporting Affidavit sworn on 4<sup>th</sup> July 2025 by **Michael Sifuna Wanyama**, Counsel on record for the Respondent/Applicant. The Respondent contends that the Claimant earned a gross monthly salary of Kshs 25,000/=, and as such, the magistrates' courts possess the requisite pecuniary jurisdiction to hear and determine this employment dispute, as the salary falls below the Kshs 80,000 threshold under Gazette Notice No. 6024 of 2018.

3. The Claimant opposes the Respondent's application on the basis that he seeks compensation for loss and damages arising from alleged violations of his rights under Articles 27, 28, 29(f), 31, 41 and 43 of the Constitution, 2010. He avers, on the advice of his advocates which he believes to be true, that the Magistrates' Court lacks jurisdiction under Section 8 of the Magistrates' Court Act to hear and determine claims for loss and damages stemming from constitutional rights violations.

4. The Claimant further avers that this Court, and not the Magistrates' Court as proposed by the Respondent, has jurisdiction to handle claims for compensation arising from the alleged violation of his constitutionally guaranteed and protected rights.

5. The Notice of Motion was canvassed by way of written submissions, which the Court has duly considered.

6. Upon reviewing the Notice of Motion, the Claimant's Replying Affidavit, and the parties' respective submissions, the sole issue for determination is whether this suit should be transferred to the Chief Magistrate's Court for hearing and determination.

7. Pursuant to Gazette Notice No. 6024 dated 22<sup>nd</sup> June 2018, the Hon. Chief Justice designated Magistrates of the rank of Senior Resident Magistrate and above as Special Magistrates empowered to hear and determine employment disputes within their respective areas of jurisdiction, where, among other conditions, the employee's gross monthly salary does not exceed Kshs 80,000/=.
8. It is not in dispute that at the time of termination, the Claimant's salary fell below the Kshs 80,000/= threshold set under Gazette Notice No. 6024 of 2018. The critical question, however, is whether this pecuniary consideration alone confers jurisdiction upon the Magistrates' Court to hear and determine the present claim.
9. A review of the Statement of Claim reveals that, in addition to the monetary reliefs sought, the Claimant seeks declaratory orders pursuant to Articles 27, 28, 29, 31, 41 and 43 of the Constitution. The Claimant further prays for compensation by way of general damages under Article 23(3)(e) of the Constitution for the alleged breach and violation of these constitutional rights.
10. Section 8, which is pertinent to the determination of this issue, provides as follows:

***“[8] (1) Subject to Article 165(3)(b) of the Constitution and the pecuniary limitations set out in section 7(1), a magistrate's court shall have jurisdiction to hear and determine applications for redress of a denial, violation or infringement of, or threat to, a right or fundamental freedom in the Bill of Rights.***

***(2) The applications contemplated in subsection (1) shall only relate to the rights guaranteed in Article 25(a) and (b) of the Constitution.***

***(3) Nothing in this Act may be construed as conferring jurisdiction on a magistrate's court to hear and determine claims for compensation for loss or damage suffered in consequence of a violation, infringement, denial of a right or fundamental freedom in the Bill of Rights.***”

11. It is evident from Section 8(3) cited above that the Magistrates' Courts lack jurisdiction to award compensation for loss or damage arising from violations of a right or fundamental freedom in the Bill of Rights.

12. Accordingly, since the Claimant seeks compensation for the alleged breach and violation of his constitutional rights, it goes without saying that the Magistrates' Court lacks jurisdiction to hear and determine this claim, notwithstanding the pecuniary limits.

13. For the foregoing reason, the Notice of Motion dated 4<sup>th</sup> July 2025 is hereby dismissed with costs to the Claimant.

**DATED, SIGNED and DELIVERED at NAIROBI this 11<sup>th</sup> day of December 2025.**

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**STELLA RUTTO**

**JUDGE**

**In the presence of:**

No appearance for the Claimant/Respondent

No appearance for the Respondent/Applicant

Mohammed Court Assistant

**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 had 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.

**STELLA RUTTO**

**JUDGE**