

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF
KENYA AT NAIROBI

CAUSE NO E571 OF 2023

PUBLIC TRANSPORT OPERATIONS UNION.....
CLAIMANT

VERSUS

SOLEX MOTORS
LIMITED.....RESPONDENT

RULING

Background

1. The Claimant is a registered Trade Union in the Republic of Kenya. It has filed the instant suit against the Respondent on behalf of one Victor Adanga (the Grievant) alleging that the Respondent unlawfully terminated his contract of service.
2. The Claimant asserts that it filed the case on behalf of the Grievant because he is its member. It contends that the Grievant took up membership with it in April 2020.
3. The Respondent has opposed the claim. It has filed a Statement of Defense dated 26th January 2025.
4. The Respondent also filed a Notice of Preliminary Objection dated 25th February 2025 through which it contends as follows:-
 - a) That the court does not have pecuniary jurisdiction to entertain the suit in view of Gazette Notice No. 6024 of 2018.
 - b) That the suit is bad in law since it was instituted by the Claimant on behalf of the Grievant without the Claimant

having a Recognition Agreement with it to entitle the Claimant to represent the Grievant.

5. The court gave directions for the objection to be canvassed through written submissions. In compliance with the directions the parties filed their respective submissions.

Analysis

6. On pecuniary jurisdiction, the Respondent contends that since the monthly salary for the Grievant was below Ksh. 80,000.00, the dispute does not meet the threshold that is set by Gazette Notice No. 6024 of 2018. As such, the matter ought to have been filed before the Magistrate's Court.
7. The jurisdiction of the Employment and Labour Relations Court (ELRC) ought to be conceptualized from the viewpoint of article 162 of *the Constitution* as read with section 12 of *the Employment and Labour Relations Act* (ELRC Act). Article 162 of *the Constitution* authorized Parliament to establish specialized courts to deal with, inter alia, employment and labour relations disputes. Following this constitutional edict, Parliament enacted the ELRC Act through which the ELRC was established.
8. Section 12 of the ELRC Act grants the court both original and appellate jurisdiction over all employment and labour relations disputes. The provision does not prescribe a pecuniary limit for the disputes which the court is entitled to adjudicate.
9. Section 29 of the Act addresses the issue of access to justice. Under the provision, the Chief Justice is empowered to appoint Magistrates of the rank of Senior Resident

- Magistrate and above to adjudicate on employment and labour relations matters in order to safeguard access to justice.
10. Pursuant to this provision, the Chief Justice issued Gazette Notice No. 6024 of 2018 vide which he appointed Senior Resident Magistrates to handle employment and labour relations disputes in cases where the employee's monthly salary does not exceed Ksh. 80,000.00. However, this did not oust the jurisdiction of the ELRC over such disputes. This is because by virtue of article 162 of *the Constitution* as read with section 12 of the ELRC Act, the ELRC retains both original and appellate jurisdiction over all employment and labour relations disputes including those which are designated to be handled by the Magistrate's court by virtue of Gazette Notice No. 6024 of 2018.
 11. Gazette Notice No. 6024 of 2018 ought to be understood in the context of the intention of section 29 of the ELRC Act: to enhance access to justice. As such, it cannot be construed as having taken away some of the original jurisdiction that was donated to the ELRC in respect of employment and labour relations disputes.
 12. Consequently, although the ELRC will not preside over disputes where the employee's monthly salary is below Ksh. 80,000.00 if there is a Magistrate's Court to handle them, this is not because the court has no jurisdiction to entertain such claims. Rather it is because of need to ensure uniformity of application of the aforesaid Gazette Notice.

13. The fact that the ELRC has jurisdiction over matters where the employee's salary is below the threshold in the Gazette Notice has been affirmed in several decisions by the court (differently constituted). For instance, in **Declan v Damacrest Group of Schools & 2 others [2025] KEELRC 397 (KLR)**, the court observed on the subject as follows:-

“Jurisdiction is conferred by either the Constitution, Statute or both. This court derives its jurisdiction from Article 162(1) (2) (a) [of the Constitution] and Section 12 of the Employment and Labour Relations Court Act. I am totally in agreement with the Claimant that the gazette notice referred to herein, and subsequently Section 7 of the Magistrates Act, donated to the Magistracy concurrent jurisdiction with this court to hear and determine employment disputes, where the gross monthly salary of an employee or grievant does not exceed Kshs 80,000/=.

This delegation in my considered view, does not mean that this court lacks jurisdiction over such matters. The jurisdiction donated to the magistracy is concurrent to that of this court in those specific disputes.”

14. In **Nduwa v Bash Hauliers Limited (Miscellaneous Application E126 of 2024) [2025] KEELRC 321 (KLR) (6 February 2025) (Ruling)**, the learned Judge commented on the subject as follows:-

“On the application of Gazette Notice No.6024 of 2018, ... Magistrates of the rank of Senior Resident

Magistrates and above were appointed and designated to hear and determine the employment disputes within their respective areas of jurisdiction. The notice is specific and clear. The purpose and intent was to ensure access to justice.

The original jurisdiction to hear employment and labour relations disputes is with the court under article 162(2) (a) of the Constitution and the Employment and Labour Relations Court Act, as emphasized in the case of Muriuki & another (Suing as the legal representatives of Patrick Kibiru Muriithi) v Isinya Roses Limited [2023] KEELRC 788 (KLR). The power given to the Chief Justice to designate special magistrates to hear employment disputes under the Employment Act does not override Article 162(2) (a) of the Constitution or the Employment and Labour Relations Court Act.”

15. In **Onyango v Ken Knit Kenya Limited [2024] KEELRC 1569 (KLR)**, the learned Judge observed on the subject as follows:-

“It is clear from the wording of section 12(1) as read with the wording of Gazette Notice No. 6024 (CXX No.74) of 22nd June 2018 that the jurisdiction of this court was not divested by the Gazette Notice but rather, the jurisdiction was donated to the subordinate courts. This means that this court still retains its original jurisdiction under section 12 of the Act.”

16. These decisions leave no doubt in the court’s mind that whilst the Magistrate’s Court is empowered to hear

employment and labour relations cases where an employee's monthly salary is below Ksh. 80,000.00, the ELRC retains the original jurisdiction to entertain the disputes. As such, the Respondent's objection to the court's jurisdiction on this account fails.

17. Despite the fact that the court has jurisdiction to entertain the instant case, it would still have transferred it to the Magistrate's Court in order to ensure uniformity of application of Gazette Notice No. 6024 of 2018. However, owing to the fact that the cause was presented by a Trade Union on behalf of the Grievant, it (the court) will not order transfer of the dispute to the Magistrate's Court.

18. The court takes this position owing to the import of the aforesaid Gazette Notice which provides, in part, as follows:-

"IN EXERCISE of the powers conferred by section 29 (3) and (4) (b) of the Employment and Labour Relations Court Act, 2011, and in consultation with the Principal Judge of the Court, the Chief Justice appoints all Magistrates of the rank of Senior Resident Magistrates and above as Special Magistrates designated to hear and determine the following employment and labour relations cases within their respective areas of jurisdiction:-

Disputes arising from contracts of employment (excluding trade disputes under the Labour Relations Act, 2007) where employees gross monthly pay does not exceed KSh. 80,000.00 as commenced and

continued in accordance with the Employment and Labour Relations Court (Procedure) Rules, 2016.”

19. Although the Gazette Notice grants the Magistrate’s Court jurisdiction in respect of employment disputes where an employee’s monthly salary is below Ksh. 80,000.00, this excludes trade disputes under *the Labour Relations Act*. As such, irrespective of their monetary value, all trade disputes under the aforesaid Act can only be entertained by the ELRC.
20. Section 2 of *the Labour Relations Act* defines the phrase “trade dispute” in the following terms:-

“...”trade dispute” means a dispute or difference, or an apprehended dispute or difference, between employers and employees, between employers and trade unions, or between an employers’ organization and employees or trade unions, concerning any employment matter, and includes disputes regarding the dismissal, suspension or redundancy of employees, allocation of work or the recognition of a trade union.”
21. This definition is wide. It embraces any dispute, including those between an employer and an employee which stem from, inter alia, the employee’s dismissal and suspension from employment, as long as they are founded on the provisions of *the Labour Relations Act*.
22. The court has previously expressed itself on the matter in the case of ***Kenya Union of Domestic, Hotels, Educational Institutions And Hospital Workers (KUDHEIHA) v Board of Management, Ng’ethu***

Secondary School [2025] KEELRC 3018 (KLR) where it observed as follows:-

“..... disputes between employers and employees and or their respective unions which arise under the Labour Relations Act and which concern any employment matter including dismissal, suspension or redundancy of employees constitute a trade dispute irrespective of their monetary value. All such disputes are expressly excluded from the jurisdiction of the Magistrate’s Court.”

23. In **Kenya Union of Domestic Hotels Educational Institutions and Hospital Workers (KUDHEIHA) v Kombanira & another [2025] KEELRC 1849 (KLR)**, the learned trial Judge observed that Gazette Notice No. 6024 of 2018 excludes trade disputes in which a trade union is representing an employee from the jurisdiction of the Magistrate’s Court. She affirmed the position that such disputes can only be handled by the ELRC.
24. In **Kenya Engineering Workers Union v Bhachu Industries Limited [2025] KEELRC 2610 (KLR)**, the learned Judge expressed a similar view as the one above. She observed that a dispute instituted by a trade union on behalf of its members against an employer is a trade dispute within the meaning of section 2 of *the Labour Relations Act* and can only be entertained by the ELRC.
25. In **Kenya Engineering Workers Union v Efil Enterprises Limited [2021] KEELRC 1087 (KLR)** where the dispute related to a contested redundancy declaration of the

Claimant's members, the court rejected the contention that the matter ought to have been filed before the Magistrate's Court on account of Gazette Notice No. 6024 of 2018. The court held that because the matter was instituted by a Trade Union on behalf of its members to challenge the impugned redundancy, it constituted a trade dispute within the meaning of section 2 of *the Labour Relations Act* which the Magistrate's Court had no jurisdiction to entertain.

26. I have noted the contra view expressed in ***Kenya Plantation & Agricultural Workers Union v Mahee Flowers Limited [2024] KEELRC 307 (KLR)***. However and as is apparent from the decisions discussed above, this is a minority view.
27. Importantly and respectfully, I hold a contra view to the one expressed in ***Kenya Plantation & Agricultural Workers Union v Mahee Flowers Limited*** (supra). I am also alive to the fact that the aforesaid decision having been rendered by a court of concurrent jurisdiction is not binding on me.
28. Having regard to the foregoing, it is apparent that the instant dispute can only be handled by the ELRC which, in any event as observed earlier, has original jurisdiction over all employment and labour relations matters. As such, the objection by the Respondent on the aforesaid ground fails.
29. The second objection is that because the Claimant does not have a Recognition Agreement with the Respondent, it could not file the instant suit on behalf of the Grievant. Therefore, it is contended that the suit is incompetent.

30. Like the first objection, this objection is also unmerited. A Trade Union need not have a Recognition Agreement with an employer for it to represent employees who are its (the Trade Union's) members within the employer's rank and file.
31. A Recognition Agreement is only required for purposes of collective bargaining. This is apparent from section 54(1) of *the Labour Relations Act* which provides as follows:-

“An employer, including an employer in the public sector, shall recognize a trade union for purposes of collective bargaining if that trade union represents the simple majority of unionisable employees.” Emphasis added by underlining.

32. The above position has been affirmed by the Court of Appeal in the case of ***Modern Soap Factory v Kenya Shoe and Leather Workers Union [2020] KECA 4 (KLR)***, where the learned Judges of the court observed as follows:-

“A recognition agreement is defined under Section 2 of the Labour Relations Act as an agreement in writing made between a trade union and an employer, group of employers or employers' organization regulating the recognition of the trade union as the representative of the interests of unionisable employees employed by the employer or by members of an employers' organization. It is a bilateral agreement between a trade union and an employer on the basis of which the trade union engages with the employer regarding the terms and conditions of employment of its members. It is not the

basis upon which the trade union represents its members in court.” Emphasis added by underlining.

Determination

33. The upshot is that the preliminary objection is unmerited.
34. As such, it is dismissed.
35. Costs of the objection shall be in the cause.

Dated, signed and delivered on the 15th day of December, 2025

B. O. M. MANANI
JUDGE

In the presence of:

..... for the Claimant

.....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