



Nyambu v Fanaka (Cause E005 of 2025) [2026] KEELRC 82 (KLR) (22 January 2026) (Ruling)

Neutral citation: [2026] KEELRC 82 (KLR)

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT VOI
CAUSE E005 OF 2025
M MBARŪ, J
JANUARY 22, 2026

BETWEEN

BELINDA MKANJALLA NYAMBU CLAIMANT

AND

ELIMU FANAKA RESPONDENT

RULING

1. The ruling relates to the respondent, Elimu Fanaka's, Notice of Preliminary Objections dated 25 November 2025. The objections are that the court lacks pecuniary jurisdiction to hear the claim, and the claimant's last gross wage was Ksh. 56,000, which is below the statutory threshold for matters triable before the court. Pursuant to Gazette Notice No. 6024 of 22 June 2018, jurisdiction to hear employment and labour disputes where an employee earns less than Ksh. 80,000 should be heard by the Magistrates' courts. The suit thus offends the mandatory statutory framework governing the court's jurisdiction.
2. In reply, the claimant filed Grounds of Opposition and asserts that the objections by the respondent are a misapplication of the law. The court is established under Article 162(2) of *the Constitution* to hear employment disputes. Section 29(3) of the *Employment and Labour Relations Court Act* (ELRC Act) allows the Chief Justice to appoint magistrates to preside over employment disputes. Section 29(4) of the ELRC Act grants jurisdiction to magistrates to hear matters relating to offences denied in th Act, including labour offences as defined under any law.
3. Hence, under Article 162(3) of *the Constitution*, Parliament should enact legislation defining the employment offences to be heard by magistrates. Section 8 of the Magistrates Court Act removes jurisdiction from the magistrates to hear claims relating to the violation of rights. Such matters are a purview of the court under Article 165(3) of *the Constitution*.



4. Gazette Notice No. 6024 can only be construed as conferring jurisdiction on the magistrates' court to hear labour offences, not matters seeking to enforce rights under Article 41 of *the Constitution*. Such disputes can only be addressed by the court.
5. On the objections, parties filed written submissions, which are analysed.
6. The single issue for determination is whether the court has jurisdiction to hear the instant claim.
7. The claim filed on 7 November 2025 seeks various declaratory orders on the basis that there was a violation of the right to fair labour practices under Article 41 of *the Constitution*, there were discriminatory practices against her by the respondent, and leading to unfair and unlawful termination of employment. The claimant is seeking damages and compensation for the violations.
8. The claimant also pleaded that she was employed by the respondent on 5 October 2022 as a senior programme associate on a one-year contract and, later, on 26 June 2024, was promoted as programme manager, earning KSh. 56,000 per month. Her employment was terminated by summary dismissal on 23 July 2025 while on sick leave, and she claimed that she was subjected to discriminatory treatment and unfair labour practices. The particulars of discriminatory treatment are set out.
9. Article 162(2) of *the Constitution* grants the court jurisdiction to hear and determine employment and labour relations disputes. This mandate is original and not restricted in monetary terms.
10. Pursuant to Article 48 of *the Constitution* on access to justice, Section 3 of the ELRC Act that spells out objections of the court for disputes to be heard expeditiously, the Chief Justice, under Section 29 of the Act, is allowed to appoint magistrates to hear employment disputes.
11. In this regard, by Gazette Notice No. 6024 of 22 June 2018, the Chief Justice granted magistrates jurisdiction to hear claims where the employee was earning less than Ksh. 80,000 per month.
12. The foundation of a claim before the Employment and Labour Relations Courts, and, for this purpose, the magistrates' court, is conferred with a mandate to hear employment disputes under Gazette Notice No. 6024 of 22 June 2018; the core relations must be employment. This jurisdiction does not in any manner remove the original jurisdiction from the court to hear employment and labour relations disputes. Gazette Notice No. 6024 of 2018 was intended solely to improve access to justice by allowing the magistrates' court to hear small claims.
13. In the instant suit, the claimant asserts that her rights under Article 41 of *the Constitution* have been violated by the respondent. Under section 8 of the Magistrates Court Act, read together with Article 165 of *the Constitution*, the jurisdiction to hear claims relating to the violation of the Bill of Rights, under which Article 41 of *the Constitution* falls, is under the exclusive jurisdiction of the court. Hence, the claimant has properly moved the court, and the respondent's objections are without merit.
14. Accordingly, objections dated 25 November 2025 are without merit and are hereby dismissed. Costs to the claimant. The respondent shall file a reply to the claim within 14 days, pleadings shall close within 21 days, and a hearing date shall be allocated in court.

DELIVERED IN OPEN COURT AT MOMBASA, THIS 22ND DAY OF JANUARY 2026.

M. MBARŪ

JUDGE

In the presence of:

Court Assistant:



..... and

