



**Ndwiga v Promasidor Kenya Limited (Miscellaneous Application
E210 of 2024) [2025] KEELRC 237 (KLR) (31 January 2025) (Ruling)**

Neutral citation: [2025] KEELRC 237 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
MISCELLANEOUS APPLICATION E210 OF 2024**

**SC RUTTO, J
JANUARY 31, 2025**

BETWEEN

PETER NJUE NDWIGA APPLICANT

AND

PROMASIDOR KENYA LIMITED RESPONDENT

RULING

1. Vide a Notice of Motion dated 31st July 2024, the Applicant seeks to have the suit being Mavoko Chief Magistrates ELRC Case No. E143 of 2023 Peter vs Njue Ndwiga Promasidor Kenya Limited transferred to Nairobi Employment and Labour Relations Court and be heard on a priority basis.
2. The Application is premised on the grounds set out therein and the Supporting Affidavit sworn on 31st July 2024, by Roy Mwenesi, Counsel on record for the Applicant. Mr. Mwenesi avers that when the matter was scheduled for hearing before Mavoko Chief Magistrate Court on 18th July, 2024, the Applicant was directed by the Honorable Judicial Officer to file an application in the Employment and Labour Relations Court to have the matter transferred to a court with pecuniary jurisdiction.
3. Counsel avers that both parties erroneously acceded to jurisdiction of the Magistrates Court. That whereas the Applicant was paid a Salary of between Kshs. 3,200/= to Kshs. 53,333/= between the year 2000 to 2015; the same was 80,000/= and above for the rest of his employment. That the cause of action relates to both periods of employment.
4. Mr. Mwenesi further states that it is only prudent that this court issues an Order transferring Mavoko Chief Magistrate ELRC Case No. E143 of 2023 to Nairobi Employment and Labour Relations Courts for hearing and final determination.
5. It is Mr. Mwenesi's deposition that granting the orders will not prejudice the Respondent in any way.



6. The Respondent opposed the Application by filing Grounds of Opposition dated 6th September 2024 through its Counsel on record. The Respondent contends that:
 1. This Honourable Court lacks jurisdiction to transfer an incompetent suit from the lower Court under the provisions of Section 18 of the *Civil Procedure Act*.
 2. There is no competent suit in existence that is capable of being transferred to this Honourable Court, as the suit filed in the subordinate Court, to wit; Mavoko CMELRCC No. E143 of 2023, is nullity ab initio.
 3. Contrary to the Applicant's averment, parties cannot, even by their consent, confer jurisdiction on a Court where no such jurisdiction exists.
 4. That the instant Application is therefore incapable of being granted.
 5. The Application is frivolous, vexatious, scandalous and otherwise an abuse of the Court process.

Submissions

7. The Application was canvassed by way of written submissions. It has been submitted on the part of the Applicant that there is nothing lost or anything that would be lost by the Respondent in granting the Orders sought while he would have been locked out from a hearing on merits. In support of the Applicant's position, the Court was invited to consider the determination in the case of Juma v Peter Wachira t/a Club Xcape Nakuru & another [2023] KEELRC 3312 (KLR).
8. On the other hand, the Respondent has submitted that there is no competent suit in existence that is capable of being transferred to this Court. According to the Respondent, the primordial nature of jurisdiction is that a court must have jurisdiction to hear and determine a suit before it from the beginning.
9. It was the Respondent's further submission that the Magistrate's Court at Mavoko Law Courts lacks pecuniary jurisdiction which renders the Applicant's suit at Mavoko irredeemably incompetent. To buttress its submissions, the Respondent cited the case of Owners of Motor Vessel Lilian "S" vs Caltex Kenya Limited (1998) KLR 1 and John Odoyo & 6 others vs De La Rue Currency and Security Print Limited (2022) eKLR.
10. The Respondent further posited that filing a suit in a court without the requisite jurisdiction is a grave error that cannot merely be excused as an ordinary mistake of counsel. On this score, reliance was placed on the case of Gaikia Kimani Kiarie v Peter Kimani Kiramba (2020) eKLR.
11. It was further submitted by the Respondent that parties cannot confer jurisdiction upon a court where no such jurisdiction exists. In the same vein, the Respondent posited that a suit devoid of jurisdiction is dead on arrival and cannot be remedied. To this end, the Respondent sought to rely on the case of Equity Bank Limited v Bruce Mutie t/a Diani Tour Travel (2016) eKLR.

Analysis and Determination

12. I have considered the Application, the Respondent's Grounds of Opposition as well as the rival submissions and isolated the following issues for determination:
 - a. Whether this Court has jurisdiction to transfer the suit Mavoko Chief Magistrates ELRC Case No. E143 of 2023; Peter Njue Ndwiga vs Promasidor Kenya Limited, from the Chief



Magistrate's Court at Mavoko Law Courts to the Employment and Labour Relations Court at Nairobi for hearing and determination; and

- b. Depending on the finding in (a) whether this Court should exercise its discretion in favour of the Applicant and transfer Mavoko Chief Magistrates ELRC Case No. E143 of 2023; Peter Njue Ndwiga vs Promasidor Kenya Limited, from the Chief Magistrate's Court at Mavoko Law Courts to the Employment and Labour Relations Court at Nairobi for hearing and determination.

Jurisdiction to transfer the suit from the Chief Magistrates Court at Mavoko to the Employment and Labour Relations Court

13. On the question of jurisdiction, the Respondent has posited that this Court does not have the power to grant the orders prayed for by the Applicant as there is no competent suit that is capable of being transferred to this Court.
14. In the Respondent's view, the Court lacks jurisdiction to transfer the matter from a court of no jurisdiction to a court of competent jurisdiction.
15. Gazette Notice No. 6024 of 22nd June 2018, clearly sets the pecuniary jurisdiction of the Courts, in employment disputes. In this regard, Magistrates of the rank of Senior Resident Magistrates and above have jurisdiction to hear and determine employment disputes within their respective areas of jurisdiction arising from contracts of employment where employees' gross monthly pay does not exceed Kshs. 80,000.00.
16. In this case, it is not in dispute that at the time of termination, the Applicant's gross monthly salary was above the sum of Kshs 80,000/=.
17. Accordingly, it goes without saying that the Chief Magistrates Court at Mavoko Law Courts lacks pecuniary jurisdiction to hear and determine the Applicant's claim as filed in Mavoko Chief Magistrates ELRC Case No. E143 of 2023; Peter Njue Ndwiga vs Promasidor Kenya Limited.
18. With that being said, the question is whether this court has jurisdiction to transfer the suit filed in a Court without jurisdiction to this Court.
19. On this issue, the Court is guided and bound by the decision of the Court of Appeal in the case of Joseph Muthee Kamau & Another v David Mwangi Gichure & Another (2013) eKLR where it was held as follows:

“When a suit has been filed in a court without jurisdiction, it is a nullity. Many cases have established that; the most famous being Kagenyi v. Musirambo (1968) EA 43. The same would apply to pecuniary jurisdiction in a claim for special damages where the liquidated sum claimed exceeds the court's pecuniary jurisdiction. We hold that jurisdiction cannot be conferred at the time of delivery of judgment. Jurisdiction does not operate retroactively. Jurisdiction must exist at the time of filing suit or latest at the commencement of hearing.”

20. And further, in the case of Equity Bank Limited v Bruce Mutie Mutuku t/a Diani Tour Travel (2016) eKLR, the Court of Appeal determined that it would be illegal for the High Court in exercise of its powers under Section 18 of the *Civil Procedure Act* to transfer a suit filed in a court lacking jurisdiction to a court with jurisdiction and therefore sanctify an incompetent suit. The Court proceeded to hold that in such circumstances, no competent suit exists that is capable of being transferred and to allow a court to transfer an incompetent suit for want of jurisdiction to a competent court would be to muddle up the waters and allow confusion to reign.



21. In view of the foregoing binding authorities, it is evident that since the Applicant filed his Claim in a court devoid of jurisdiction, this court lacks jurisdiction to transfer the suit filed by the Applicant in Mavoko Chief Magistrates Court to this Court. As it is, the Claim is not transferable to another court.
22. As was held in the case of Phoenix of E.A. Assurance Company Limited v S. M. Thiga t/a Newspaper Service [2019] KECA 767 (KLR), “if a suit is filed without jurisdiction, the only remedy is to withdraw it and file a compliant one in the court seized of jurisdiction. A suit filed devoid of jurisdiction is dead on arrival and cannot be remedied”
23. I will arrive at a similar finding in this case and hold that the only remedy due to the Applicant is to withdraw the suit and file a compliant one in the court seized of jurisdiction.
24. For the foregoing reasons, the Application dated 31st July 2024 is disallowed with an order that each party shall bear its own costs.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 31ST DAY OF JANUARY 2025.

STELLA RUTTO

JUDGE

In the presence of:

Mr. Mwenesi for the Applicant

Mr. Ngatia instructed by Mr. Karanja for the Respondent

Millicent 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 15th March 2020 and subsequent directions of 21st 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.

