



**Kenga Equatorial Hotels t/a Mombasa Continental Resort v Chege (Appeal E087 of 2024) [2025] KEELRC 162 (KLR) (30 January 2025) (Judgment)**

Neutral citation: [2025] KEELRC 162 (KLR)

**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA**  
**APPEAL E087 OF 2024**  
**M MBARÚ, J**  
**JANUARY 30, 2025**

**BETWEEN**

**KENGA EQUATORIAL HOTELS T/A MOMBASA CONTINENTAL  
RESORT ..... APPELLANT**

**AND**

**FREDRICK MWANGI CHEGE ..... RESPONDENT**

*(Being appeal from the ruling of Hon. R. N. Akee in  
Mombasa CMELRC E454 of 2022 delivered on 18 April 2024)*

**JUDGMENT**

1. The judgment arises from the ruling delivered on 18 April 2024 in Mombasa CMELRC E454 of 2022. The trial court delivered the ruling following a Notice of Preliminary Objections that challenged the court's jurisdiction. The appellant is seeking that the ruling be set aside and the jurisdiction objections be allowed with costs.
2. The respondent filed his Memorandum of Claim before the trial court on 1 August 2022, claiming that the appellant unfairly terminated his employment. He claimed terminal dues and costs.
3. In reply, the appellant filed a response and denied the claims. Notice of Preliminary Objections dated 14 November 2023 on the basis that;

The court lacks requisite pecuniary jurisdiction to hear and determine the suit under the provisions of Article 162(2) of the *Constitution*, Sections 7 and 9(b) of the Magistrates Court Act, Section 29(4) (b) of the *Employment and Labour Relations Court Act* and Gazette Notice No.6024 dated June 2018.

Reasons wherefore, we pray for dismissal of this suit with costs.



4. The trial court delivered the ruling on 18 April 2024 and held that the appellant's objections did not arise from the pleadings. In response, the appellant admitted to the trial court's jurisdiction. Under Article 159 of the Constitution, parties had the opportunity to be heard and allow the trial court to make fair findings. The objections were dismissed.
5. Aggrieved by the ruling, the appellant filed this appeal on the basis that the trial court failed to address the objections related to the court's jurisdiction and the jurisdiction donated under Legal Notice No.6024 of 2018. The court disregarded the established principles regarding jurisdiction under the Employment and Labour Relations Court Act and, hence, rendered an erroneous ruling.
6. Other grounds of appeal are that the learned magistrate erred in law and fact in misinterpreting paragraph 17 of the Response and the legal precedents on the trial court's jurisdiction to hear and determine employment claims. The court failed to assess the implications of Gazette Notice No.6024 of 2018 and reached an incorrect ruling.
7. Both parties attended and agreed to file written submissions with findings.
10. Before the trial court, there were preliminary objections largely based on jurisdiction to hear and determine the claim before it. Indeed, the learned magistrate appreciated that preliminary objections on questions of law could be urged and argued at any stage of the proceedings. These should consist of pure points of law and not questions of fact as held in *Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd* [1969] EA.
11. The objections raised by the appellant related to the jurisdiction of the trial court and the application of the following provisions;
  - a. Article 162(2) of the Constitution;
  - b. Section 7 and 9(b) of the Magistrates Court Act;
  - c. Section 29(4)(b) of the Employment and Labour Relations Court Act; and
  - d. Gazette Notice No.6024 of June 2018.
12. The respondent herein pleaded in the Memorandum of Claim filed on 1 August 2022 that he was employed by the appellant as the Finance Manager on 1 October 2022 earning a salary of Ksh.307, 000 per month. He was issued with a written contract. He was issued with a notice of summary dismissal on 19 May 2022. The basis of his claims was the salary paid at Ksh.307, 000 per month.
13. The objections by the appellant are founded on the jurisdiction of the trial court to hear the claim.
14. The original jurisdiction to hear employment claims is vested with the court under the provisions of Article 162(2) (a) of the Constitution. This position is affirmed by the superior courts in *Republic v Chengo & 2 others* [2017] KESC 15 (KLR); *Daniel N Mugendi v Kenyatta University, Benson I Wairegi, Eliud Mathiu & Olive M Mugenda* [2013] KECA 41 (KLR), and *Law Society of Kenya v Attorney General & another* [2019] KESC 16 (KLR). The court has original jurisdiction to hear and determine employment disputes.
15. Under Article 48 of the Constitution, every person has the right to access justice. Such right is expounded under the provisions of Section 29(4) of the Employment and Labour Relations Court Act which allow the Chief Justice to ensure reasonable, equitable and progressive access to the judicial services in all counties and hence designate special magistrates with jurisdiction to hear employment disputes.



16. Under the mandate of Section 29 of the *Employment and Labour Relations Court Act*, the Chief Justice published Gazette Notice No.6024 of 10 June 2018 and conferred a special magistrate of the rank of Senior Resident Magistrate to hear employment disputes where the employee gross monthly pay does not exceed Ksh.80, 000.
17. On the pleadings, the Memorandum of Claim is premised on facts that the respondent was earning a salary of Ksh.307,000 per month. Based on the original jurisdiction of the court, the provisions of Section 29 of the *Employment and Labour Relations Court Act* read together with Gazette Notice No.6024 and Sections 7 and 9 of the Magistrates Court Act, the trial court lacked jurisdiction to hear and determine the claim.
18. These are legal questions that should have terminated the proceedings before the trial court instantly.
19. As correctly stated in the case of *Adega & 2 others v Kibos Distillers Limited & 5 others* [2020] KESC 36 (KLR), A Court cannot arrogate itself an original jurisdiction exceeding that which is conferred upon it by law. Jurisdiction must flow from the *Constitution* or the law as held in *Federation of Kenya Employers v National Health Insurance Fund Management Board & 4 others; Association of Kenya Insurers & another (Interested Parties)* [2022] KEELRC 4068 (KLR) that;  

Jurisdiction must flow from the *Constitution* or the law and cannot be extended by interpretation or craft as held in *Samuel Kamau Macharia v Kenya Commercial Bank & 2 others* [2012] eKLR.
20. On the facts presented before the trial court, the objections based on the *Constitution* under Article 162(2) (a), Section 29(4) of the *Employment and Labour Relations Court Act*, Sections 7 and 9 of the Magistrates Court Act read together with Gazette Notice No.6024 of 10 June 2018, the trial court lacked the requisite jurisdiction to hear and determine the claim before it. Lack of jurisdiction court not be abrogated or arrogated by application of article 159 of the *Constitution*.
21. Filing of the claim before the trial court rendered the matter mute. Filing a claim before the wrong court cannot be cured through any judicial craft. The suit should have been dismissed based on the preliminary objections.
22. Accordingly, the appeal is with merit and objections dated 14 November 2023 are well-founded and are hereby allowed. The ruling delivered on 18 April 2024 is set aside.
23. The claim filed in Mombasa CMELRC E454 of 2022 was before a court without jurisdiction and is hereby dismissed. Costs to the appellant.

**DELIVERED IN OPEN COURT AT MOMBASA ON THIS 30 DAY OF JANUARY 2025.**

**M. MBARŪ**

**JUDGE**

