



**Wasame v Perimeter Protection Limited (Cause E097 of 2024)
[2025] KEELRC 486 (KLR) (21 February 2025) (Ruling)**

Neutral citation: [2025] KEELRC 486 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E097 OF 2024
AK NZEI, J
FEBRUARY 21, 2025**

BETWEEN

JACOB KWOMA WASAME CLAIMANT

AND

PERIMETER PROTECTION LIMITED RESPONDENT

RULING

1. The application before me is the Respondent's Notice of Motion dated 29th October, 2024, expressed to be brought under Sections 12 and 29 of the [Employment and Labour Relations Court Act](#). The Respondent/Applicant seeks the following Orders:-
 - a. That this Court be pleased to transfer the cause herein to Milimani Senior Resident Magistrate's Court.
 - b. That the Respondent's documents listed on the list of documents dated 10th July, 2024 be admitted as having been properly filed.
 - c. That costs be in the cause.
2. The application is based on the supporting affidavit of Macharia Waiganjo Advocate sworn on 29th October, 2024. It is deponed in the said affidavit:-
 - a. that the Claimant has pleaded that he was earning a monthly salary of Kshs.17,868/=, and has exhibited [his] pay slips in support of that contention.
 - b. that vide Gazette Notice No. 6024 of 22nd June, 2018, Senior Resident Magistrates and Magistrates of higher ranks were appointed to hear employment disputes where gross monthly pay does not exceed Kshs.80,000/=.



- c. that the Respondent/Applicant's Counsel inadvertently failed to file the Respondent's list of documents dated 10th July, 2024.
3. The application is opposed by the Claimant/Respondent vide a replying affidavit of Eric Manene Advocate sworn on 13th November, 2024. It is deponed in the said affidavit:-
- a. that this Court has concurrent jurisdiction with the Special Magistrates Courts in claims where the gross salary does not exceed kshs.80,000/=.
- b. that the suit herein raises issues of violation of constitutional rights under Articles 27, 30, 41 and 42; and that such constitutional issues are in the ambit of this court; and require interpretation and resolution by this court.
4. I have perused the Claimant/Respondent's Statement of Claim dated 6th February, 2024, and I have noted that the reliefs sought are as follows:-
- a. A declaration that the Claimant's termination was on the basis of his health, and therefore discriminatory, unfair, unlawful and in violation of *the Constitution*, the *Employment Act* and the contract of employment.
- b. A declaration that by being subjected to long working hours without pay for the overtime hours worked, the Claimant was subjected to violation of his right to fair labour practices as provided under Article 41(1) of *the Constitution*.
- c. A declaration that by terminating the Claimant's employment without a valid reason and without sufficient and proper legal notice, and without following the laid down procedure as per the *Employment Act* of 2007, if at all there had been any misconduct by the Claimant, the Respondent infringed the Claimant's right to fair labour practices as provided under Article 41(1) of *the Constitution*. That the fair labour practices include the rights espoused under Sections 5, 26, 29, 40, 41, 43, 44, 45, 46 and 49 of the *Employment Act*.
- d. A declaration that requiring the Claimant to be at work while sick and terminating his employment when he was sick and unable to attend his duties was a violation of the right to health care services as per Article 42(1) (a) of *the Constitution*.
- e. A declaration that the Respondent is liable to compute the Claimant's terminal dues as follows:-
- i. Salary deduction in 2019 while on sick leave..... Kshs.4,000/=
- ii. One month salary in lieu of notice Kshs.17,482/=
- iii. Service pay for 7 years Kshs.70,000/=
- iv. Unpaid overtime allowance for 7 years..... Kshs.1,101,366/=
- v. Compensation for unfair termination (17,482 x 12)Kshs.209,784/=
- f. Exemplary damages for the violation of the Claimant's rights.
- g. Interest on (e) above from the date of filing [suit] and interest on (f) from the date due until payment in full.
- h. Costs of the suit.



5. Whereas this Court has unlimited jurisdiction, both original and appellate, over matters employment and labour relations, except in particular instances where such jurisdiction is ousted by a statute over particular issues specified in the ousting statute; some specified Magistrates' Courts have limited delegated jurisdiction over some specified employment disputes.
6. The aforesaid limited Jurisdiction was delegated to specified Magistrates' Courts vide Kenya Gazette Notice No. 6024 22nd June, 2018, vide which Magistrates of the rank of Senior Resident Magistrates and above were appointed by the Chief Justice pursuant to Sections 29(3) and (4) (b) of the *Employment and Labour Relations Court Act*, 2011 to hear and determine:-
 - a. Disputes arising from contracts of employment (excluding trade disputes under the *Labour Relations Act*, 2007) where the employee's gross monthly salary does not exceed Kshs.80,000/ = as commenced and continued in accordance with the Employment and Labour Relations Court (Procedure) Rules 2016.
 - b. Matters relating to the following specific areas:-
 - i. Offences under the *Work Injury Benefits Act*.
 - ii. Offences under the *Employment Act*, 2007.
 - iii. Offences under *Occupational Safety and Health Act* 2007.
 - iv. Offences under the *Labour Relations Act*.
 - v. Offences under the *Labour Institutions Act*.
7. It is clear from the provisions of the afore-cited delegating legal instrument that the specific limited jurisdiction delegated to the specified Magistrates' Courts does not extend to declaration of constitutional rights in employment relationships and determination of claims arising from such violation.
8. In the present suit, the Claimant is seeking declaration of alleged violation of his constitutional rights by the Respondent (his employer) and determination of claims arising from such alleged violation. Clearly, part of the Claimant's dispute herein does not fall within the purview of the Magistrates' Courts Jurisdiction. To that extent, Prayer No. 1 in the Respondent's application herein must fail.
9. Regarding Prayer No. 2 in the Respondent's application, and in the interest of justice, I will allow the Respondent to file and serve a list and bundle of his evidential documents outside the time prescribed by this Court's Rules of Procedure.
10. Having considered written submissions filed on behalf of both parties, I partly allow the Respondent's application dated 29th October, 2024 in the following terms:-
 - a. The prayer for transfer of the suit herein to the Senior Resident Magistrate's Court Milimani for hearing and determination is declined. This Court shall hear, and shall determine the suit.
 - b. The Respondent/Applicant is hereby granted leave to file and serve a list and bundle of documents within 14 days of this Ruling.
 - c. Thereafter, both parties shall file and serve their respective trial bundles, duly bound and paginated.
 - d. Costs of the application shall be in the suit.
11. Orders accordingly.



DATED, SIGNED AND DELIVERED AT NAIROBI THIS 21ST DAY OF FEBRUARY 2025

AGNES KITIKU NZEI

JUDGE

ORDER

This Ruling has been delivered via Microsoft Teams Online Platform. A signed copy will be availed to each party upon payment of the applicable Court fees.

Appearance:

Mr. Munene Njuguna for the Claimant/Respondent

Miss Wanyonyi for the Respondent/Applicant

