



REPUBLIC OF KENYA



**Declan v Damacrest Group of Schools & 2 others (Cause E500 of 2024)  
[2025] KEELRC 397 (KLR) (14 February 2025) (Ruling)**

Neutral citation: [2025] KEELRC 397 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E500 OF 2024  
CN BAARI, J  
FEBRUARY 14, 2025**

**BETWEEN**

**NYAMWEYA MOSES DECLAN ..... CLAIMANT**

**AND**

**DAMACREST GROUP OF SCHOOLS ..... 1<sup>ST</sup> RESPONDENT**

**FLORENCE MUGURE ..... 2<sup>ND</sup> RESPONDENT**

**ELIUD NDUNGU WAMAKIMA ..... 3<sup>RD</sup> RESPONDENT**

**RULING**

1. For determination is the Respondents' Notice of Preliminary Objection dated 2<sup>nd</sup> September, 2024, seeking the striking out of the Claimant's claim on the premise that the court lacks jurisdiction to hear and determine the same, on the ground that the Claimant's salary at termination was Kshs. 20,000/-.
2. It is the Respondents' argument that for the court to hear this matter would be contrary to Gazette Notice No. 6024 (Vol. CXXNo.74) which expressly mandates this court to only hear matters where the Claimant earns a gross salary of over Kshs. 80,000/-.
3. The Claimant opposed the objection vide grounds of opposition dated 9<sup>th</sup> September, 2024. It is his position that the Gazette Notice No. 6024, did not oust the jurisdiction of the Employment and Labour Relations Court granted to it by *the Constitution* of Kenya 2010 per Article 162 as well as the *Labour Relations Act*, the Employment & Labour Relations Court Act 2011 and the *Employment Act* 2007.
4. It is the Claimant's further assertion that the Chief Justice exercised the power under Section 29 (3) of the ELRC Act in 2016 by gazette Notice No.6024 of 10<sup>th</sup> June, 2016 to ease the pressure of work on the twelve pioneer Judges of this Court, and that the pecuniary jurisdiction alone cannot extinguish



the original jurisdiction of this court as contemplated by the Constitution and hence this court has jurisdiction to hear and determine this suit.

5. Court directed parties to file submissions on the Objection and submissions were filed for both parties, and which have been duly considered.

### **Analysis and Determination**

6. I have considered the Objection, the grounds of opposition and the parties' submissions. The issue for determination is whether this Court has jurisdiction to hear and determine the Claimant's claim.
7. Nyarangi JA in Owners of Motor Vessel "Lilian S" –vs- Caltex Oil (Kenya) Limited 1989] opined thus:-

“Jurisdiction is everything. Without it a Court has no power to make one more step. Where a Court has no jurisdiction there would be no basis for a continuation of proceedings pending other evidence. A Court of law downs its tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.”
8. As was correctly submitted by the Respondents, the Hon. Chief Justice pursuant to Gazette Notice No. 6024 (Vol. CXX No. 74) dated 22<sup>nd</sup> June 2018, in the quest to reduce backlog at the Employment and Labour Relations Court, conferred jurisdiction on specific cadres of magistrates to hear and determine disputes arising from contracts of employment where the employee's gross salary is below Kshs. 80,000/=.
9. This delegation of jurisdiction has since been provided for under the Magistrates' Act, which provision limits the Magistrates pecuniary jurisdiction in employment matters to Kshs.80,000/=.
10. Jurisdiction is conferred by either the Constitution, Statute or both. This court derives its jurisdiction from Article 162(1)(2)(a) and Section 12 of the Employment and Labour Relations Court Act.
11. 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/=.
12. 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.
13. It is not denied that the Claimant's salary at termination was Kshs. 20,000. I however return that this is a matter for transfer and not for striking out on the premise that there exists a competent suit before this court capable of being tried and disposed of. It is also true that the suit herein was not entirely filed before the wrong forum(See Meeli Ole Naisewa –vs- Benson Gachuki Kinyanjui [2016] eKLR).
14. I thus conclude by ordering that the suit herein be and is hereby transferred for hearing and determination before the Magistrates court.
15. Parties shall bear their own costs.
16. It is so ordered.

**SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS 14<sup>TH</sup> DAY OF FEBRUARY, 2025.**

**C. N. BAARI**



## **JUDGE**

Appearance:

Mr. Agwata Present for the Claimant

Ms. Gaita present for the Respondents

Ms. Esther-CA

