



**Maugo v Khetia Garments (Miscellaneous Application E012 of 2024)  
[2025] KEELRC 330 (KLR) (7 February 2025) (Ruling)**

Neutral citation: [2025] KEELRC 330 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT ELDORET  
MISCELLANEOUS APPLICATION E012 OF 2024  
MA ONYANGO, J  
FEBRUARY 7, 2025**

**BETWEEN**

**GEORGE LUWOLU MAUGO ..... APPLICANT**

**AND**

**KHETIA GARMENTS ..... RESPONDENT**

**RULING**

1. By a Chamber Summons Application dated 15<sup>th</sup> May 2024 brought under section 18 of the [Civil Procedure Act](#) and all enabling provisions of the law, the Applicant prays for orders that:
  - a. That Eldoret Chief Magistrate’s Civil Suit No. E517 of 2023 be transferred to this court for hearing and final disposal;
  - b. That the costs of this application be costs in the cause.
2. The application is supported by the grounds set out on the face of the Application and the Supporting Affidavit of George Luwolu Maugo 15<sup>th</sup> May, 2024 which are the following:
  - a. The Applicant filed Eldoret Chief Magistrate’s Civil Suit No. E517/2023 seeking inter alia enforcement of the Director’s award dated 11<sup>th</sup> August, 2021.
  - b. The Respondent did not appeal the above award as required by law.
  - c. The Applicant has realized that it is this court that is vested with the jurisdiction to enforce the award as opposed to the lower court hence rendering the transfer necessary.
  - d. The best interest of justice will be served by allowing the Applicant to be heard in merit.
  - e. No prejudice will be suffered by the Respondent who will have an opportunity to be ventilate its defence



3. The affidavit reiterates the grounds on the face of the application.
4. The application is opposed. The Respondent filed a replying affidavit of SIBIKA LORAINÉ ESQ. advocate for the Respondent sworn on 21<sup>st</sup> June, 2024 in which she deposes that the application is a non-starter, incurably defective and an abuse of court process and ought to be dismissed with costs. That the application is premised on a misconception of the law, is an afterthought and is intended to defeat the Respondent's application objecting to the subordinate court's jurisdiction which application has already been heard, parties filed submissions and is awaiting ruling.
5. It is deposed that the suit being defective, cannot be transferred and the orders sought are not available on account of compliance with the law. That this court lacks jurisdiction to hear the application as there is no provision in law granting this court the power to enforce the Director's award under section 52(2) of *Work Injury Benefits Act*.
6. The affiant further deposes that the suit not being an appeal, this court has no jurisdiction to grant the orders sought. That the Applicant can only come to this court by way of appeal against the award of the Director and the Applicant failed to appeal within the prescribed timelines.
7. In a further affidavit sworn on a date that is not legible but filed on 29<sup>th</sup> October, 2024 the Applicant George Luwolu Maugo states that the trial court made orders that the parties await the decision of this court on this application before further directions in the suit in the subordinate court can be made.
8. The application was disposed of by way of written submissions. Both parties filed and exchanged submissions.

#### **Applicants Submissions**

9. The applicant identified a single issue for determination herein being whether this court has jurisdiction to transfer cases before the subordinate court to any court, including this court for hearing and final determination.
10. The Applicant submits that section 18 of the *Civil Procedure Act* empowers this court to transfer a suit from and to a subordinate court citing the decision in David Kabungu v Zikarenga & 4 Others, Kampala HCCS No. 36 of 1995.
11. It is submitted further that the circumstances under which a suit would be transferred were also discussed in the David Kabungu case (supra)
12. The Applicant submits that the same issue was again discussed in the case of Hangzhou Agrochemicals Industries Ltd v Panda Flowers Ltd [2012] eKLR.

#### **Respondent's Submissions**

13. For the Respondent it is submitted that this court lacks jurisdiction to entertain this suit relying on the decision in The Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd.
14. The Respondent further relied on the decision in Samuel Kamau Macharia & Another v Kenya Commercial Bank Limited & 2 Others [2012] eKLR where the court stated that jurisdiction arises from *the Constitution* and other written law and the court cannot arrogate to itself jurisdiction exceeding that which is provided by law.
15. The Respondent submits that since the suit sought to be transferred was filed in a court without jurisdiction it is incompetent and cannot be transferred. The Respondent relies on the decision in Syphros Amakobe Akhonya (suing as the administrator to the Estate of Brian Mutambi Amakobe



(Deceased) v Uhuru Heights Limited [2023] where the court stated that the only jurisdiction vested in this court is appellate and there is no room to expand the jurisdiction.

16. The Respondent further relied on the decision in *Equity Bank Limited v Bruce Mutie Mutuku t/a Diani Tours and Travel* [2016] eKLR and *Phoenix of E.A. Assurance Company Limited v S. M. Thiga t/a A Newspaper Service* [2019] eKLR where the courts held that an incompetent case cannot be transferred even under the oxygen principle.

### **Analysis and Determination**

17. Having considered the pleadings and submissions on record, it is my view that there are two issues arising for determination herein: The 1<sup>st</sup> is whether this court has jurisdiction to hear suits other than appeals arising from the Director under the *Work Injury Benefits Act* and the second issue is whether this court has jurisdiction to grant the orders sought herein, being the transfer of Eldoret Chief Magistrate's Civil Suit No. E517 of 2023 from the said court to this court for hearing and determination.

18. This court's jurisdiction is provided for in both *the Constitution* and the *Employment and Labour Relations Court Act*. Article 162 provides as follows:

162. System of courts

- (1) The superior courts are the Supreme Court, the Court of Appeal, the High Court and the courts referred to in clause (2).
- (2) Parliament shall establish courts with the status of the High Court to hear and determine disputes relating to—
  - (a) employment and labour relations; and
  - (b) the environment and the use and occupation of, and title to, land.
- (3) Parliament shall determine the jurisdiction and functions of the courts contemplated in clause (2).
- (4) The subordinate courts are the courts established under Article 169, or by Parliament in accordance with that Article. [Emphasis added]

19. Section 12 of the *Employment and Labour Relations Court Act* provides at section 12 for the jurisdiction of this court as follows:

12. Jurisdiction of the Court

- (1) The Court shall have exclusive original and appellate jurisdiction to hear and determine all disputes referred to it in accordance with Article 162(2) of *the Constitution* and the provisions of this Act or any other written law which extends jurisdiction to the Court relating to employment and labour relations including—
  - (a) disputes relating to or arising out of employment between an employer and an employee;
  - (b) disputes between an employer and a trade union;
  - (c) disputes between an employers' organisation and a trade union's organisation;
  - (d) disputes between trade unions;



- (e) disputes between employer organisations;
  - (f) disputes between an employers' organisation and a trade union;
  - (g) disputes between a trade union and a member thereof;
  - (h) disputes between an employer's organisation or a federation and a member thereof;
  - (i) disputes concerning the registration and election of trade union officials; and
  - (j) disputes relating to the registration and enforcement of collective agreements.
20. This court thus has two separate jurisdictions under the [Work Injury Benefits Act](#). The first jurisdiction is under Article 162(2)(a) being general jurisdiction over disputes arising from employment and labour relations under which category this dispute falls; and second, the appellate jurisdiction specifically donated by section 52(2) of [Work Injury Benefits Act](#).
  21. Section 12(5) of the [Employment and Labour Relations Court Act](#) further provides for this court's appellate jurisdiction in the second category where section 52(2) of the [Work Injury Benefits Act](#) falls.
  22. It is my view that the suit as filed in the Magistrates' Court is properly before that Court as it falls within the jurisdiction of the court under section 9(b) of the [Magistrates' Courts Act](#) as read with Gazette Notice No. 6024 of 10<sup>th</sup> June 2018.
  23. Section 9(b) of the [Magistrates' Courts Act](#) provides:
    - (b) in the exercise of the jurisdiction conferred upon it under section 29 of the [Employment and Labour Relations Court Act](#) (Cap. 8E) and subject to the pecuniary limits under section 7(1), hear and determine claims relating to employment and labour relations.
  24. The suit as filed in Eldoret Chief Magistrate's Civil Suit No. E517 of 2023 is in my view an ordinary civil suit seeking to enforce a right that accrues to the Plaintiff pursuant to the award of the Director of Work Injury Benefits under the [Work Injury Benefits Act](#). It can therefore be heard under section 7(1) of the [Magistrates' Courts Act](#) or under section 9(b) of the Act if it is taken to be an employment matter. The fact that the right accrues from an award of the Director under the [Work Injury Benefits Act](#) does not make it special to warrant special jurisdiction.
  25. The reason the Magistrates Court has jurisdiction in the suit filed by the Applicant herein is because it has been filed as an ordinary civil claim and not either an employment claim or a claim under the [Work Injury Benefits Act](#) to clothe it with special status requiring special jurisdiction. It is my view that once the award of the Director is made and the employer fails to appeal against the same in the manner provided in section 52 or to contest it in any other manner, the award becomes a right of the employee that can be enforced as a civil debt. This is what the Applicant has done in Eldoret Chief Magistrate's Civil Suit No. E517 of 2023.
  26. My finding on the 1<sup>st</sup> issue is therefore that this court has jurisdiction to hear claims for adoption of awards of the Director if brought as an ordinary employment claim as in the instant case. I would add that this jurisdiction is shared with Magistrates under section 9(b) of the [Magistrates' Courts Act](#) if filed either as an employment claim or as an ordinary civil claim, as in the instant suit, subject to the same falling within the pecuniary jurisdiction of the court.
  27. On the second issue for determination whether this court can should transfer Eldoret Chief Magistrate's Civil Suit No. E517 of 2023 to this court for hearing and determination, I would answer



in the negative but not for the reasons advanced by the Respondent. My reason for doing so is that this is an ordinary civil claim which the court has jurisdiction to hear and determine both under section 7(1) and section 9(b) of the *Magistrates' Courts Act*.

28. Consequently, I decline to make the orders sought in the application and direct that the suit be heard in the court where it was filed.
29. The costs of this application shall be in the cause in Eldoret Chief Magistrate's Civil Suit No. E517 of 2023.
30. Orders accordingly.

**DATED, SIGNED AND VIRTUALLY AT ELDORET ON THIS 7<sup>TH</sup> DAY OF FEBRUARY 2025**

**MAUREEN ONYANGO**

**JUDGE**

