



REPUBLIC OF KENYA



**Muchemi v Shujaazinc Limited (Cause E092 of 2024)
[2025] KEELRC 1064 (KLR) (4 April 2025) (Ruling)**

Neutral citation: [2025] KEELRC 1064 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU
CAUSE E092 OF 2024
AN MWAURE, J
APRIL 4, 2025**

BETWEEN
MONA NYAMBURA RACHEL MUCHEMI CLAIMANT
AND
SHUJAAZINC LIMITED RESPONDENT

RULING

Introduction

1. The Respondent/Applicant filed a Notice of Motion dated 10th February 2025 seeking the following orders that:
 1. The Honourable be pleased to transfer this suit, Nakuru ELRC Cause No. E092 of 2024, Mona Nyambura Rachel Muchemi to the Employment and Labour Relations Court in Nairobi for hearing and final determination.
 2. The costs of the application be provided for.
2. The application is expressed to be brought under Rule 6(1) & 6(2) of the Employment and Labour Relations Court (Procedure) Rules 2024.

Respondent/Applicant's case

3. The application is supported by the affidavit sworn by Rebecca Kanyi, the Respondent/Applicant's Head of People (Human Resource and Administration) dated on even date as the application.
4. The Respondent/Applicant avers that it entered into an employment contract with the Claimant/Respondent on 7th November 2022 employing the Claimant/Respondent as its Head of Partnerships and Programme.



5. The Respondent/Applicant avers that the Claimant/Respondent's workplace was specified in her employment contract to be at Karen Office Park, Karen Nairobi.
6. The Respondent/Applicant avers that the Claimant/Respondent's employment was terminated on 17th October 2024.
7. The Respondent/Applicant avers that the Claimant/Respondent instituted this claim for unlawful termination and compensation for alleged additional roles performed.
8. The Respondent/Applicant avers that Rule 6 of the Employment and Labour Relation Court (Procedure) Rules 2024 provides that when instituting a claim before this Honourable Court where the claimant at the time of instituting the claim, filed the claim where the Claimant, Petitioner, Appellant or Applicant voluntarily resides and the cause of action wholly or in part arises.
9. The Respondent/Applicant avers that the cause of action arose from Nairobi and the Claimant/Respondent confirmed in her verifying affidavit that she resides in Nairobi.
10. The Respondent/Applicant avers that its advocates on record advised that the Honourable Court lacks territorial jurisdiction over the matter and therefore has the authority to transfer the claim to the Employment and Labour Relations Court in Nairobi. This court is deemed the most appropriate and convenient location, given its jurisdiction over the events and parties involved, which are connected to Nairobi.
11. The Respondent/Applicant avers that transferring the claim will not prejudice the Claimant/Respondent and ensures that justice is administered in the correct forum.
12. The Respondent/Applicant urged this Honourable Court to transfer the claim to the Employment and Labour Relations Court in Nairobi for hearing and final determination.

Claimant/Respondent's replying affidavit

13. In opposition to the application, the Claimant/Respondent filed a replying affidavit dated 26th February 2025.
14. The Claimant/Respondent avers that the claim she filed before this Honourable Court relates to the Respondent/Applicant's breaches of the contractual, legal, and constitutional employment rights against her.
15. The Claimant/Respondent avers that the Respondent/Applicant is delaying justice by not providing required witness statements or documents, violating Rule 35(1) of the Employment and Labour Relations Court (Procedure) Rules, 2024, and potentially prolonging the case intentionally.
16. The Claimant/Respondent avers that the Respondent/Applicant's advocates were to file witness statements and documents by 11th February 2025, but have not done so, raising concerns about intentional delays.
17. The Claimant/Respondent avers that the Respondent/Applicant's application lacks merit, as the contract allowed for flexible work locations, with employees required in the office only once a month, enabling work from various locations, nationally, and internationally.
18. The Claimant/Respondent also avers that the Respondent/Applicant allowed all employees, including top management, to work remotely from various locations worldwide, for example, senior staff were working from London, Nyeri, Germany, and the USA without issue and she also worked remotely from London, Dar es Salaam, and different parts of Kenya.



19. The Claimant/Respondent avers that the Respondent/Applicant's work involved supporting youth across Kenya, with a notable presence in Nakuru, emphasizing a nationwide reach in donor pitches, not just Nairobi-based operations.
20. The Claimant/Respondent avers that the Respondent/Applicant's attempt to limit the location of the claim is unreasonable since the work was performed remotely from various locations.
21. The Claimant/Respondent avers that jurisdiction requirements under Rule 6(1) of the Employment and Labour Relations Court (Procedure) Rules 2024 have been met and Rule 6(2) of the Employment and Labour Relations Court (Procedure) Rules 2024 is the pivotal consideration which this Honourable Court is determining on whether to transfer the matter to Nairobi or not.
22. The Claimant/Respondent avers that since court proceedings are primarily virtual, the Respondent/Applicant and its advocates would face no inconvenience participating remotely. Even for an in-person hearing, the Respondent/Applicant would not be inconvenienced as it has no witnesses to present, according to court records.
23. The Claimant/Respondent urged this Honourable Court to dismiss the Respondent/Applicant's application dated 10th February 2025 with costs.

Analysis and determination

24. The court has thoroughly gone through the application together with the supporting affidavit and annexures as well as the replying affidavit, the issue for determination is whether the application is merited.
25. Rule 6(1) and 6(2) of the Employment and Labour Relations Court (Procedure) Rules 2024 provides as follows:

“6.

 - (1) Proceedings before the Court shall be instituted at the Court's registry or sub-registry with respect to the county where— (a) the claimant, petitioner or applicant, at the time of commencement of the proceedings, actually and voluntarily resides or carries on business or personally works for gain; or
 - (b) the cause of action, wholly or in part, arises

(2) The Court may, on its own motion or upon application, for recorded reasons, transfer any proceeding to the most convenient court station for hearing and determination.”
26. This Honourable Court was established under Article 162(2) of *the Constitution* and the same court is governed under the *Employment and Labour Relations Court Act* Chapter 8E Laws of Kenya. Section 12 of the *Employment and Labour Relations Court Act* clearly states that it can hear all disputes on employment disputes. The interpretation of section 12 of the *Employment and Labour Relations Court Act* is that this Honourable Court (ELRC) can hear any disputes on employment and labour relations disputes from everywhere within the Republic of Kenya.
27. This Honourable Court (ELRC) is more focused on the existence of the employment relationship between the parties for purposes of jurisdiction *Ayara V Kenya Power & Lighting Company Limited* [2024] KEELRC 13235 (KLR) the court stated that the Claimant stated her residence as Nairobi on 26th August, 2024, and did not provide evidence that she had moved to Ahero, Kisumu County, by 27th August 2024. Therefore, the suit should have been filed in Nairobi, as per Rule 6(1)(a) of



the Employment and Labour Relations Court (Procedure) Rules, 2024. The proceedings had already begun before the Claimant's Replying Affidavit on 28th October, 2024. The court heard the suit in Nairobi.

28. In this instant case, there is no dispute that the claim before this Honourable Court arose from the employment existence between the Claimant/Respondent and Respondent/Applicant. The cause of action arose from Nairobi and both parties are based in Nairobi. The Respondent's offices are in Karen in Nairobi. The appointment letter dated 7th November 2022 states the position will be based in Nairobi. Even the Claimant's address as per the letter of appointment is Nairobi. With the introduction of virtual courts, parties can be heard remotely which should be accessible and convenient for the parties involved. Since both parties are based in Nairobi and the ELRC court in Nairobi also conducts their cases virtually, it will be prudent that this matter be heard in Nairobi.
29. Flowing from the foregoing, this court finds that the Respondent/Applicant's application dated 10th February 2025 is merited and this file is transferred to Nairobi. The same is to be mentioned on 23/4/2025 before the Deputy Registrar Nairobi in order to allocate the same before a Judge and give a hearing date.
30. The costs of the application will be in the cause.

Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAKURU THIS 4TH DAY OF APRIL, 2025.

ANNA NGIBUINI MWAURE

JUDGE

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 has 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 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.

A signed copy will be availed to each party upon payment of Court fees.

