



**Hungi v Attorney General (Miscellaneous Application  
E160 of 2024) [2025] KEELRC 1259 (KLR) (2 May 2025) (Ruling)**

Neutral citation: [2025] KEELRC 1259 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
MISCELLANEOUS APPLICATION E160 OF 2024**

**AK NZEI, J**

**MAY 2, 2025**

**BETWEEN**

**FLORENCE WANGARI HUNGI ..... APPLICANT**

**AND**

**THE HON ATTORNEY GENERAL ..... RESPONDENT**

**RULING**

1. The application before me is the Applicant's Amended Notice of Motion dated 3<sup>rd</sup> January, 2025. The Applicant seeks the following Orders:-
  - a. That this Court do quash and set aside the Order made by Hon. Mrs. Lucy Ambasi (CM) on 1192024 dismissing CMCC E160 of 2024 as the said order was made by the trial Magistrate without giving the Applicant an opportunity to be heard, and the suit was dismissed despite the fact that [the] Notice of Preliminary Objection filed on 25<sup>th</sup> February, 2024 was not listed for hearing on that day, 11<sup>th</sup> September, 2024, contrary to the interest of Justice.
  - b. That after quashing the said order made on 11<sup>th</sup> September, 2024 and setting it aside, this Court do order that Nairobi Chief Magistrate's Court Civil Case No. E160 of 2024 (Florence Wangari Hungi – vs – The Hon. Attorney General) be transferred to the Employment and Labour Relations Court at Milimani for hearing and final determination.
  - c. That costs of the application be in the cause.
2. The application sets out on its face the grounds on which it is anchored, and is supported by an affidavit of Evans Thiga Gaturu sworn on 3<sup>rd</sup> January, 2025. It is deponed in the said affidavit:-
  - a. that after summons to Enter Appearance were served, the Respondent entered appearance and filed a Notice of Preliminary Objection, seeking dismissal of the suit for having been filed in



the Chief Magistrate's Court instead of the Employment and Labour Relations Court which was seized with Jurisdiction to hear and to determine the matter.

- b. that the Applicant filed an application for transfer of the suit and when the application came to this Court on 18<sup>th</sup> November, 2024, the Hon. Judge (Dr. Jacob Gakeri, J) did not make a transfer order, (but) indicated that according to the Employment and Labour Relations Court (Procedure) Rules 2016, the Chief Magistrate before whom the suit had been filed had Jurisdiction to transfer the same to the ELRC.
  - c. that on 30<sup>th</sup> July, 2024, the Applicant filed an application for transfer in the Chief Magistrate's Court, but when the same came up for hearing on 11<sup>th</sup> September, 2024 as earlier fixed; the Hon. Magistrate went outside the application for transfer of the suit from her Court to the ELRC and instead heard and made a decision on a pending Preliminary Objection that had been filed earlier, and dismissed the suit.
  - d. that the Applicant's suit was illegally, unlawfully and unjustly dismissed with costs without the parties being heard, thus occasioning injustice to the Applicant.
  - e. that it is in the interest of justice that this Court exercises its discretion and quashes the Chief Magistrate's dismissal order dated 11<sup>th</sup> September, 2024 and replaces it with an order of this Court transferring the suit from the Chief Magistrate's Court (Milimani) to this Court.
3. Documents annexed to the said supporting affidavit include a copy of the Chief Magistrate's (Hon. Lucy Ambasi's) Ruling delivered on 11<sup>th</sup> September, 2024 in Milimani MCCC E360 of 2024 (Florence Wangari Hungi – vs – The Attorney General) whereby the Honourable Magistrate stated as follows:-
- “ 12. In the instant case, we have a suit filed in a court without jurisdiction which is a nullity in law and this court cannot purport to transfer such a nullity anywhere. Only a proper suit can be transferred under Section 18.
  13. It is also unclear why a civil suit would be transferred to the ELRC Milimani, this being a suit for malicious prosecution.
  14. The Preliminary Objection is upheld, and the part of the claim in the suit is hereby struck out with costs to the Respondent, and the Notice of Motion dated 30<sup>th</sup> July, 2024 be and is hereby dismissed with costs to the Defendant.”
4. The Applicant has not told this Court that she appealed against the aforesaid Ruling, either wholly or in part. Further, the Applicant has not told this Court what she has done with the remainder of the lower court suit after part of it is shown to have been struck off.
5. The application is opposed by the Respondent vide a statement of grounds of opposition dated 6<sup>th</sup> March, 2025, which I have considered.
6. The single issue for determination in this matter is whether orders sought by the Applicant are capable of being granted by this Court.
7. It is a basic legal position that this Court can only quash and/or set aside orders of a subordinate Court in exercise of its appellate jurisdiction, or where applicable, in exercise of its power of Judicial review. Indeed, Section 12 of the *Employment and Labour Relations Court Act* gives the Court such Jurisdiction and power. Rules 11, 12, 13, 14, 15, 16 and 17 of the Employment and Labour Relations Court (Procedure) Rules 2024 provide the procedure for filing of an appeal to this Court and timelines within which appeals to this Court should be filed. Rule 18 gives this Court power and Jurisdiction



to extend time for filing appeals to the court if, for good reason, a party fails to file a desired appeal within the set time lines.

8. The Applicant has not sought leave to appeal out of time.
9. In view of the foregoing, and having considered written submissions filed by the parties herein, I find no merit in the Applicant's Amended Notice of Motion dated 3<sup>rd</sup> January, 2025, and the same is hereby dismissed with no order as to costs.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 2<sup>ND</sup> DAY OF MAY 2025**

**AGNES KITIKU NZEI**

**JUDGE**

