



**Moi Teaching and Referral Hospital v Mauti (Appeal E032 of 2024)
[2025] KEELRC 1812 (KLR) (20 June 2025) (Judgment)**

Neutral citation: [2025] KEELRC 1812 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT ELDORET
APPEAL E032 OF 2024
MA ONYANGO, J
JUNE 20, 2025**

BETWEEN

MOI TEACHING AND REFERAL HOSPITAL APPELLANT

AND

JELIAH BITENGO MAUTI RESPONDENT

(Being an appeal against the Ruling of Honourable Nancy Barasa, Principal Magistrate delivered on 6th September, 2024 in Eldoret CMELRC No. E117 of 2023)

JUDGMENT

1. This Appeal arises from a ruling delivered by the trial court in Eldoret CMELRC No. E117 of 2023 delivered on the 6th September, 2024.
2. A brief background is that vide a Memorandum of Claim dated 20th December, 2023, the Respondent sued the Appellant seeking compensation for alleged unlawful termination of her employment. The Appellant filed a Memorandum of Appearance dated 25th January, 2024. Thereafter the Appellant filed a Notice of Preliminary Objection dated 9th February, 2024 in which it raised two grounds of preliminary objection to wit:
 - a. Gazette Notice No. 6024 (Vol CXX No. 74) dated 10th June 2018 provides that this Honourable Court's jurisdiction on employment and labour law matters relates to disputes arising from contracts of employment (excluding trade disputes under the *Labour Relations Act*, 2007) where employees' gross monthly pay does not exceed Ksh. 80,000.00 as commenced and continued in accordance with the Employment and Labour Relations Court (Procedure) Rules, 2016.
 - b. The Memorandum of Claim as presently filed by the Claimant offends Gazette Notice No. 6024 and should be struck off with costs to the Respondent.



3. The court gave directions for the preliminary objection to be disposed of by way of written submissions which both parties filed. By a ruling delivered on the 6th September, 2024, the court dismissed the preliminary objection. It is this ruling that is the subject of the instant appeal.
4. The Appellant being dissatisfied with the ruling of the trial court lodged the instant appeal vide the Memorandum of Appeal dated 26th September, 2024 on the following grounds of appeal:
 - a. The learned magistrate erred in both law and fact by failing to appreciate that the trial court lacked the jurisdiction to entertain the matter;
 - b. The learned magistrate erred in both law and fact by failing to appreciate the provisions of the Gazette Notice No. 6024 of June 22, 2018;
 - c. The learned magistrate erred in both law and fact by failing to interrogate the court's pecuniary limit as set out by law in rendering the impugned ruling on November 3, 2021;
 - d. The learned magistrate erred in law and in fact in failing to appreciate that a preliminary objection raises a pure point of law which is argued on the assumption that all the facts pleaded by the offer side are correct.
 - e. The learned magistrate erred in law and in fact in failing to appreciate that the claimant had pleaded under paragraph 3 of the Memorandum of Claim that she earned a gross salary of Kshs 93,060.00
 - f. The learned magistrate erred in law and fact in disregarding clearly worded pleadings indicating that the claimant's gross salary was Kshs 93,060.00 during the course of her employment.
 - g. The trial court erred in law and fact when it descended into the arena and engaged itself on a fact-finding mission to determine the claimant gross salary outside the clearly worded pleadings contrary to the principles laid out in *Mukisa Biscuit Manufacturing Co, Ltd v West End Distributors Ltd* [1969] EA 696 at 700
 - h. The trial court erroneously determined the preliminary objection in flagrant violation of the well-established court precedence and legal principles pertaining to preliminary objections.
 - i. The learned magistrate erred in law and fact by failing to consider the appellant's submissions in rendering his ruling;
 - j. The learned magistrate erred in law by failing to substantively examine the merits of the Notice of Preliminary Objection as raised by the appellant which points out from the onset that his court lacked the power to entertain the matter;
 - k. The learned magistrate erred in both law and fact by failing to discern the crux of the preliminary objection and as a result was blinded to the fact that the court was not cloaked with jurisdiction and went on to delude with issues that were not before it.
5. The appellant prays for the following reliefs:
 - a. The Magistrate's Court lacks the jurisdiction to hear and determine the suit.
 - b. The ruling of the Principal Magistrate Court dated 6th September 2024 is hereby set aside.
6. The appeal was disposed of by way of written submissions. The Appellant's submissions are dated 22nd January, 2025. The Respondent's submissions are dated 4th February, 2025.



The Appellant's submissions

7. In his submissions, the Appellant framed the issues for determination to be: -
 - i. Whether the magistrate's court lack jurisdiction pursuant to Gazette Notice No. 6024 of 2018 which limited its pecuniary jurisdiction to Kshs. 80,000/=
 - ii. Whether this Honourable Court has jurisdiction to transfer a case filed in a court without jurisdiction to one of competent jurisdiction.
8. On the first issue, the Appellant submitted that under paragraph 3 of her Statement of Claim the Claimant pleaded that her salary was Kshs. 93,060 from 2nd June, 2020 until 13th January, 2023. That the said amount is above the jurisdiction of the Magistrates' Court as donated by Gazette Notice 6024 of 2018.
9. The Appellant submitted that in the celebrated case of Mukhisa Biscuit Manufacturing Company Limited v West End Distributors (1969) EA 696, it was stated that:

“A preliminary objection consists of a point of law which has been pleaded or which arises by clear implication out of pleadings and which if argued as a preliminary point may dispose of the suit. Furthermore, a preliminary objection raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion.”
10. The Appellant further submitted that jurisdiction is the soul and lifeblood of judicial activity. That a judgment rendered by a court that does not have jurisdiction is void ab initio relying on the decision in *The Owners of the Motor Vessel Lilian 'S' v Caltex Kenya Ltd* (1989) KLR 1: where the court stated:

“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 tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.”
11. The Appellant further relied on the case of *Mutiso v Oshwal Educationa Relief Board* (Employment and Labour Relations Appeal El 18 0/2022) (2024/ KEELRC 570 (KLR) where the court held that since the Appellant's gross monthly salary on exit was Kshs.81,800/-, in terms of the aforesaid gazette notice, this placed the claim beyond the monetary jurisdiction of the Magistrate's court.
12. On the 2nd issue the Appellant submitted that power is bestowed upon the High Court to transfer suits of a civil nature in section 18 of the *Civil procedure Act*. That section 18(1)(b) provides that the High Court may at any stage withdraw any suit or other proceeding pending in any court subordinate to it and thereafter:
 - i. try and dispose of the same
 - ii. transfer the same for trial or disposal to any court subordinate to it and competent to try or dispose of the same; or
 - iii. retransfer the same for trial or disposal to the court from which it was withdrawn.
13. It is submitted that the Employment and Labour Relations Court which has the status of the High Court by dint of Article 162(2)(a) of the *Constitution* of Kenya 2010 is therefore clothed with the



jurisdiction envisaged under Section 18 of the *Civil Procedure Act*. that a court can however, not transfer a case that was filed in the first instance in a court without jurisdiction to handle the matter.

14. The Appellant relies on the decision in the case of *Albert Chaurembo Mumba and 7 Others v Maurice Munpao & 148 Others /2019/ EKL*R where it held that:

“However, as it was well elucidated in the case of *Kagenyi v Musiramo & Another (1968)* EALR 43, an order for transfer of a suit from one court to another cannot be made unless the suit has been brought, in the first instance, to a court which has jurisdiction to try it. It's therefore irrelevant as parties cannot consent to confer jurisdiction to a Court tribunal where it is not provided by law.

15. It is further submitted that jurisdiction is provided for in legislation and therefore the 'rules of natural justice' or the overriding objective under Section 3 of the ELRC Act cannot be invoked to confer jurisdiction as was held in the Court of Appeal in the case of *Equity Bank Limited v Bruce Mutie Mutuku t/a Diani Tour Travel [2016] eKLR* where the court held as follows:

“In numerous decided cases, courts, including this Court have held that it would be illegal for the High Court in exercise of its powers under Section 18 of the *Civil Procedure Act* to transfer a suit filed in a court lacking jurisdiction to a court with jurisdiction and therefore sanctify an incompetent suit. This is because no competent suit exists that is capable of being transferred. Jurisdiction is a weighty fundamental matter and to allow a court to transfer an incompetent suit for want of jurisdiction to a competent Court would be to muddle up the waters and allow confusion to reign. It is settled that parties cannot, even by their consent confer jurisdiction on a court where no such jurisdiction exists. It is so fundamental that where the Court lacks jurisdiction parties cannot even seek refuge under the 02 principle or the overriding objective under the *Civil Procedure Act*, the *Appellate Jurisdiction Act* or even Article 159 of the *Constitution* to remedy the same....”

16. Further the Court of Appeal in the case of *Phoenix of E.A. Assurance Company Limited v S. M. Thiga t/a Newspaper Service 12019/ eKLR* stated that:

“We are not persuaded that that proposition by the respondent is correct in law. Jurisdiction is primordial in every suit. It has to be there when the suit is filed in the first place. If a suit is filed without jurisdiction, the only remedy is to withdraw it and file a complaint one in the court seized of jurisdiction. A suit filed devoid of jurisdiction is dead on arrival and cannot be remedied. Without jurisdiction, the Court cannot confer Jurisdiction to itself...it is clear from the foregoing that the claim by the respondent was filed before a court devoid of jurisdiction. The suit was nullity ab initio and was not transferable to another court; jurisdiction cannot be conferred by consent and ultimately, all orders emanating from that suit are null and void. Civil Appeal No. 6 of 2018 Phoenix East Africa Assurance co. LTD VY, S. M Thiga t/a Newspaper Services is therefore a nullity as it was based on a nullity. We have said enough to demonstrate that this appeal has merit. We allow it with costs to the appellant.”

17. The Appellant concludes that it is therefore clear that since this suit was instituted before a court that had no jurisdiction, such a suit, it is trite, cannot be transferred pursuant to the provisions of Section 18 of the *Civil Procedure Act*, where it ought to have been instituted in the first instance, as the same was a nullity in law. The court can only transfer a cause whose existence is recognized by law.



Respondent's submissions

18. For the Respondent it was submitted that the objections raised in the Appellant's preliminary objection were not pure points of law as defined in the case of *Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors* (1969) EA 969. That the salary of the Respondent was subject to proof during hearing.
19. That the Respondent's salary was supported by documents produced before the court in the Claimant's Supplementary List of Documents dated 26th July, 2024 being copies of her pay slips.
20. It is further submitted that the gross salary indicated on the Memorandum of Claim as Kshs. 93,000 was an error which will be regularized through amendment. It was submitted that the trial court's finding on the Appellant's preliminary objection cannot be faulted.

Analysis and Determination

21. This being a first appeal I am required to consider the evidence adduced, evaluate it and draw my own conclusions, bearing in mind that I did not hear and see the witnesses who testified. See *Selle & Another Vs Associated Motor Boat Company Ltd & Others* [1968] EA 123.
22. Having considered the grounds of appeal, the submissions on record and the trial court's ruling that is the subject of the appeal, the only issue that presents itself for determination in the instant appeal is whether the learned trial Magistrate erred in dismissing the Appellants preliminary objection.
23. The reason given by the trial court while dismissing the preliminary objection is that although the Respondent pleaded that her gross salary was Kshs. 93, 000, she attributed the same to an error on the part of her advocate. That the Respondent's pay slips which were exhibited indicated that her salary was within the pecuniary jurisdiction of the Magistrates Court.
24. The court further noted that the Appellant had challenged the manner in which the Respondent had introduced the documents without leave of the court but pointed out that pleadings had not been closed as Rule 13(4) of the Employment and Labour Relations Court Rules, 2016 provided for closing of pleadings 14 days after service of response.
25. Rule 13(4) of the said rules provides:
 - (4) The pleadings in a suit shall close fourteen days after the service of a reply under paragraph (3) or, where a reply is not filed, fourteen days after service of a response to pleadings under paragraph (1).
26. The trial court further held that Rule 14(6) provides for amendment of pleadings without leave before service of the same or before close of pleadings.
27. The court further held that even if the documents were filed after close of pleadings without leave, the court had established that the gross salary of the Respondent was within the pecuniary jurisdiction of the court. It was for these reasons that the court dismissed the preliminary objection.
28. In this case I find that the preliminary objection was most unnecessary. This is because employment records are kept by an employer and where an employee inflates the salary in pleadings in court all that an employer has to do is produce the employment record to clarify the position. Requiring the court to determine an unnecessary preliminary objection and filing an appeal against the ruling dismissing the same is in my opinion frivolous and vexatious and a most unnecessary waste of the court's limited resources.



29. The submissions on transfer of suit from one court to another are irrelevant as the issue did not arise in the lower court or in the appeal which only related to whether or not the trial court had pecuniary jurisdiction to hear and determine the suit filed by the Respondent herein.
30. I find that the decision of the trial court on the preliminary objection and the reasoning therein by the trial court was sound. I further find the decision of the trial court on the filing of documents by the Respondent and the right of a party to proceedings to amend pleadings was based on a correct interpretation of the law.
31. For the foregoing reasons I find no merit in the appeal and dismiss it with costs.
32. The suit is referred back to the trial court for hearing and disposal.

DATED, SIGNED AND DELIVERED VIRTUALLY ON THIS 20TH DAY OF JUNE 2025

MAUREEN ONYANGO

JUDGE

