



Mwaura v Naivas Self Service Store Limited t/a Naivas Limited & another (Employment and Labour Relations Cause E563 of 2024) [2025] KEELRC 2292 (KLR) (31 July 2025) (Ruling)

Neutral citation: [2025] KEELRC 2292 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS CAUSE E563 OF 2024**

BOM MANANI, J

JULY 31, 2025

BETWEEN

ANN NJOKI MWAURA CLAIMANT

AND

NAIVAS SELF SERVICE STORE LIMITED T/A NAIVAS LIMITED 1ST RESPONDENT

ATTORNEY GENERAL 2ND RESPONDENT

RULING

1. The Claimant has instituted these proceedings alleging unfair termination of her contract of service by the 1st Respondent. She contends that she was an employee of the 1st Respondent until 2nd December 2023 when it (the 1st Respondent) summarily terminated her services.
2. The Claimant contends that the 1st Respondent had no valid reason to terminate her service. She contends that the decision to terminate her services was motivated by the fact that she was expectant. As such, she alleges that the 1st Respondent discriminated against her on account of pregnancy.
3. The Claimant avers that before the 1st Respondent summarily dismissed her from employment, it instigated a malicious scheme which saw her arrested and confined at Soweto Police Station. She contends that despite the arrest, she was not charged with any offense in a court of law. And hence her decision to implead the 2nd Respondent in the suit.
4. The claim is contested by both Respondents who have filed their respective defenses. In addition, the 2nd Respondent has filed a preliminary objection to the proceedings on account of misjoinder.
5. At paragraph seven (7) of the Memorandum of Claim, the Claimant states that her monthly salary was initially Ksh. 28,050.00 before the 1st Respondent unilaterally reduced it to Ksh. 11,580.00. She



contends that according to her contract of service, she was entitled to an annual salary increment of 6%. As such, at the time her contract was terminated, she should have been earning Ksh. 59,050.00.

6. When the parties appeared before me, I directed that the preliminary objection by the 2nd Respondent be canvassed through written submissions. In compliance with this direction, both the 2nd Respondent and the Claimant have filed their submissions on the objection. Accordingly, on 24th April 2025, I reserved the matter for ruling on 31st July 2025.

Analysis

7. As I begun analyzing the pleadings in the suit in order to prepare the ruling on the objection, I noted that the Claimant had averred in the Memorandum of Claim that her anticipated exit salary ought to have been Ksh. 59,050.00. However, she was allegedly earning much less due to the 1st Respondent's decision to reduce her pay.
8. As a matter of fact, the Claimant has placed on the court record a copy of her contract of service showing that her entry salary was Ksh. 9,000.00. She has further filed several pay slips showing a gradual increment in the salary to Ksh. 28,050.00, an amount she contends the 1st Respondent later unilaterally revised downwards to Ksh. 11,580.00.
9. It is therefore apparent (and the Claimant impliedly confirms this fact through her pleadings) that the Claimant's monthly salary whilst in the service of the 1st Respondent never exceeded Ksh. 80,000.00. In her own words, the salary ought to have been Ksh. 59,050.00 at the point her contract was terminated.
10. Section 29 (3) of the *Employment and Labour Relations Court Act* Cap 234B Laws of Kenya provides as follows:-

“ The Chief Justice may, by notice in the Gazette, appoint certain magistrates to preside over cases involving employment and labour relations in respect of any area of the country.”
11. Pursuant to the aforesaid provision of law, the Honourable the Chief Justice issued directions through Gazette Notice No. 6024 of 22nd June 2018 appointing magistrates of the rank of Senior Resident Magistrate to handle employment and labour relations disputes in which the gross salary of an employee does not exceed Ksh. 80,000.00. In effect and by this notice, all employment disputes arising from contracts of service in which an employee's monthly salary is below Ksh. 80,000.00 are to be handled by the Magistrate's Court.
12. What is the implication of the foregoing on this court's jurisdiction to entertain this suit? The jurisdiction of the Employment and Labour Relations Court (ELRC) is donated by section 12 of the *Employment and Labour Relations Court Act* as read with article 162 of the *Constitution*. By virtue of these provisions of law, the ELRC has unlimited original and appellate jurisdiction over all employment and labour relations cases. As such, it (the ELRC) retains jurisdiction over employment disputes where an employee's monthly salary does not exceed Ksh. 80,000.00.
13. That said, should the ELRC overlook the directions in the aforesaid Gazette Notice and adjudicate on employment disputes where the salary of an employee is not more than Ksh. 80,000.00 if there is a Magistrate's Court which is entitled, by virtue of the Gazette Notice, to entertain such disputes? The answer to the question is in the negative.
14. The aforesaid directions were not issued in vain. They are intended to decongest the ELRC by defraying some work to the Magistrate's Court in order to enhance access to justice. In my view, the ELRC and the parties who come before it must give meaning to the directions by ensuring that



matters in which an employee's salary does not exceed Ksh. 80,000.00 are presented to the Magistrate's Court for adjudication. Otherwise, the court will be setting ground for confusion and possible forum shopping.

15. In my view therefore, whilst this court is entitled to entertain the instant dispute on account of its original jurisdiction, the Claimant's decision to approach it whilst she was aware that her salary fell below the threshold set by the above Gazette Notice amounted to an unwarranted choice of the forum to hear her case. As such and in a sense, it amounts to abuse of the court process.
16. Although this court has jurisdiction to hear the case, it is necessary to ensure uniformity of application of the directions by the Honourable the Chief Justice by referring the cause to the Magistrate's Court for hearing and determination. As such, I refer the matter to the Chief Magistrate's Court, Milimani Commercial Court, Nairobi for hearing and determination (see *Onyango v Ken Knit Kenya Limited* [2024] KEELRC 1569 (KLR)).

Determination

17. The upshot is that the court declines the invite to hear the cause since it falls within the purview of the Magistrate's Court as per the directions issued by the Honourable the Chief Justice through Gazette Notice No. 6024 of 22nd June 2018.
18. As such, the suit is hereby transferred to the Chief Magistrate's Court, Milimani Commercial Courts (Employment and Labour Relations Court Division), Nairobi for hearing and determination.
19. The 2nd Respondent's preliminary objection to the suit shall be determined by the Magistrate's Court to which the file shall be allocated.
20. Since the matter has been remitted to the Magistrate's Court for adjudication, I make no orders as to costs.

DATED, SIGNED AND DELIVERED ON THE 31ST JULY, 2025

B. O. M. MANANI

JUDGE

In the presence of:

..... for the Claimant

.....for the Respondents

ORDER

In light of the directions issued on 12th July 2022 by her Ladyship, the Chief Justice with respect to online court proceedings, this decision has been delivered to the parties online with their consent, the parties having waived compliance with Rule 28 (3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

B. O. M MANANI

