



**Masibo v Amalemba & another (Cause E007 of 2024)
[2025] KEELRC 1983 (KLR) (3 July 2025) (Ruling)**

Neutral citation: [2025] KEELRC 1983 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KITALE
CAUSE E007 OF 2024
MA ONYANGO, J
JULY 3, 2025**

BETWEEN

JEMIMA CHEMUTAI MASIBO CLAIMANT

AND

PATRICK AMALEMBA 1ST RESPONDENT

BOM NOIGAM SECONDARY SCHOOL 2ND RESPONDENT

RULING

1. Before me for determination is a preliminary objection filed by the Respondent herein objecting to the jurisdiction of this court. In the notice of preliminary objection dated 24th March, 2025 the Respondent seeks to have the suit herein struck out with costs on grounds that this court does not have jurisdiction to entertain this suit pursuant to Gazette Notice No. 6024 of 22nd June, 2018 since the Claimant's monthly gross income was Kshs. 18,000.
2. The Respondent did not file submissions on the preliminary objection and did not attend court on 19th May, 2015 when the suit was fixed for directions.
3. The Claimant filed two sets of submissions. In the original submissions dated 15th May, 2025 the Claimant states that the jurisdiction of this court is conferred by the *Constitution* at Article 162(2) and section 12 of the *Employment and Labour Relations Court Act* and the *Employment and Labour Relations Court (Procedure) Rules, 2024*.
4. Relying on the Supreme Court of Kenya decision in *Samuel Kamau Macharia & another v Kenya Commercial Bank Limited & 2 others* [2012] the Claimant submits that this court has the jurisdiction to hear this claim.
5. The Claimant states that Gazette Notice No. 6024 of 2018 that extending jurisdiction in employment matters to the Magistrates Courts does not oust the jurisdiction of this court.



6. It is further submitted that the Claimant's suit has in addition to the claim for unfair termination raised a claim for sexual harassment which the Magistrates court does not have jurisdiction to hear and determine. That the preliminary objection is based on a misapprehension of the law.
7. In the Claimant's further submissions dated 19th May, 2025 it submits that the Respondent did not pay court fees on the preliminary objection. That the same is therefore incompetent and must be expunged from the record as was held in *Mombasa Cement Ltd v Speaker, National Assemble & another* [2018] eKLR.
8. The Claimant prays that the preliminary objection be dismissed and/or struck out on the grounds set out in the Claimant's submissions.

Determination

9. I have considered the preliminary objection and the submissions of the Claimant on record. The issues for determination are whether the preliminary objection is properly on record and if the same should be upheld and the suit herein struck out.
10. On the first issue the Claimant submits that the preliminary objection is not properly before the court and that it should be struck out as the Respondent did not pay court fees for the same.
11. Section 96 of the *Civil Procedure Act* provides for power to make up deficiency of court fees. It reads: -

“Where the whole or any part of any fee prescribed for any document by the law for the time being in force relating to court fees has not been paid, the court may, in its discretion, at any stage, allow the person by whom such fee is payable to pay the whole or part, as the case may be, of the fee; and upon such payment the document in respect of which such fee is payable shall have the same force and effect as if such fee had been paid in the first instance.”
12. In the case cited by the Appellant of *Mombasa Cement Limited v Speaker, National Assembly & another* [2018] eKLR, the court held as follow in regard to failure to pay court fees:-

“The filing of a civil case requires the payment of filing fees. It follows that failure to pay Court fees renders the suit incompetent because there is no competent suit filed before the Court. Whereas the Court has inherent powers to allow a party who has not paid fees time to remedy the situation, where a party as in this case is afforded the opportunity to remedy the situation or demonstrate that he paid, and fails to remedy the situation or offers out rightly conflicting explanations as happened in this case which culminated in the above affidavit. In such circumstances as has happened in this case, the Court is left with no option but to declare the suit in competent and strike it off as I am compelled to in this case.”
13. In the instant application the issue of court no payment of court fees upon filing of the preliminary objection has only been raised in the submissions. As is provided in section 96 of the *Civil Procedure Act* a party who has failed to pay requisite court fees must first be given an opportunity to remedy the situation and it is only where the party fails to do so that the court will proceed to strike out pleadings for which court fees have not been paid or fully paid. This was also the holding in *Mombasa Cement Ltd v Speaker, National Assemble & another*.
14. In the instant case I have noted that no court fees was paid in respect of the preliminary objection dated 24th March, 2025. I have however noted from the record that on 16th May, 2025 the Respondent filed



the same Notice of Preliminary Objection dated 24th March 2025 and paid the requisite court fees. The same is therefore properly on record, the shortfall in payment of court fees having been remedied.

15. On the second issue, a court’s jurisdiction flows from the Constitution or from legislation or both as was held by the Supreme Court in *Samuel Kamau Macharia & another v Kenya Commercial Bank Limited & 2 others* [2012] where the court stated:

A court’s jurisdiction flows from either the Constitution or legislation or both. Thus, a Court of law can only exercise jurisdiction as conferred by the Constitution or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law. We agree with counsel for the first and second respondents in his submission that the issue as to whether a Court of law has jurisdiction to entertain a matter before it, is not one of mere procedural technicality; it goes to the very heart of the matter, for without jurisdiction, the Court cannot entertain any proceedings.

16. Article 162 provides for the jurisdiction of the Employment and Labour Relations Court as follows:

- (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).

17. Section 12 the *Employment and Labour Relations Court Act* provides further that:

“ 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 ...”

18. Further, section 29 of the *Employment and Labour Relations Court Act* provides for sharing of jurisdiction in employment matters with the Magistrates’ courts as follows:

- (2) For purposes of subsection (1), the Chief Justice may designate a Judge in a county as a Judge for the purposes of this Act.
- (3) 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.
- (4) Subject to Article 169(2)(a) of the *Constitution*, the magistrates appointed under subsection (3) shall have jurisdiction and powers to handle—
 - (a) disputes relating to offences defined in any Act of Parliament dealing with employment and labour relations;
 - (b) any other dispute as may be designated in a Gazette notice by the Chief Justice on the advice of the Principal Judge.



19. It is pursuant to this section that Gazette Notice No. 6024 was enacted. As submitted by the Claimant, the Gazette Notice does not and cannot amend the provisions of the Constitution and the *Employment and Labour Relations Court Act*. The same donates part of the jurisdiction of this Court to the Magistracy but the primary jurisdiction remains with the Court which has unlimited jurisdiction in all employment and labour relations matters. The Respondents objection to the effect that this court does not have jurisdiction to hear the instant case by virtue of Gazette Notice No. 6024 is therefore a misinterpretation of the same.
20. For the forgoing reasons I find no merit in the preliminary objection and dismiss it with no order as to costs.

DATED, DELIVERED AND SIGNED AT THIS 3RD DAY OF JULY, 2025.

M. ONYANGO

JUDGE

