



Kenya Plantation & Agricultural Workers Union v Eastern Produce (K) Limited (Miscellaneous Application E003 of 2023) [2024] KEELRC 73 (KLR) (30 January 2024) (Ruling)

Neutral citation: [2024] KEELRC 73 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KERICHO
MISCELLANEOUS APPLICATION E003 OF 2023**

**HS WASILWA, J
JANUARY 30, 2024**

**BETWEEN
KENYA PLANTATION & AGRICULTURAL WORKERS UNION . APPLICANT
AND
EASTERN PRODUCE (K) LIMITED RESPONDENT**

RULING

1. Before this Court for determination is the Claimant/ Applicant's Notice of motion dated 18th April, brought pursuant to article 162(2)(a) and 165(5) of the *Constitution of Kenya*, 2010, section 1A, 1B, 3, 3A, 18 & 63(e) of the *Civil Procedure Act* and order 51 rule 1 of the *Civil Procedure Rules*, seeking for the following orders; -
 1. That the Honorable Court be pleased to order transfer of Kapsabet CMCC No.2 of 2022 from the subordinate Court to the Employment and Labour Relations Court in Kericho for hearing and determination.
 2. That the costs herein be in the cause.
2. The application herein is based on the fact that the Applicant filed Kericho ELRC No. 011 of 2022 against the Respondent. That at the time of filing the said case, Kericho ELRC had and still has jurisdiction under the legal notice 6024 of 2018 to hear and determine the matter.
3. That the Honourable justice Makau erred in the interpretation of legal notice 6024 of 2018 thereby transferring Kericho ELRC No. 011 of 2022 to the subordinate court sitting in Kapsabet under CMCC No.2 of 2022 for hearing and determination.
4. He stated that pursuant to legal notice 6024 of 2018 the Chief Justice appointed all magistrates of the rank of senior resident magistrates and above as special magistrates designated to hear and determine the following employment and labor relation cases within their respective areas of jurisdiction, that is



- disputes arising from contracts of employment (excluding trade disputes under the [Labour Relations Act, 2007...](#)) and this grants the Employment and Labour Relations Court in Kericho jurisdiction to hear and determine the matter.
5. It is his contention that the the [Labor Relations Act 2007](#) defines a trade dispute as a dispute or difference, or an apprehended dispute or difference, between employers and employees, between employers and trade unions, or between an employers' organization and employees or trade unions, concerning any employment matter and includes disputes regarding the dismissal, suspension or redundancy of employees' allocation of work or recognition of a trade Union.
 6. That trade Union on the other hand is defined to mean an association of employees whose principal purpose is to regulate relations between employees and employers, including any employers' organization.
 7. Therefore, that through an express or implied interpretation of Legal Notice No.6024 of 2018 all magistrates of the rank of senior resident magistrates and above are designated to hear and determine labor relations cases and disputes arising out of employment within their respective areas of jurisdiction excluding trade disputes under the [Labor Relations Act 2007](#) and since legal notice No.6024 of 2018 has not been amended and or repealed, the subordinate court lacks jurisdiction to hear and determine this matter.
 8. He stated that the Applicant stands to be prejudiced if the matter is heard and determined at the subordinate court in Kapsabet and it is necessary that orders and directions be issued that the matter be transferred to the employment court in Kericho for hearing and determination.
 9. The application herein is further supported by the affidavit of Hillary Moloney Awino, the Applicant's counsel, sworn on April 18, 2023, which reiterated the grounds of the Applicant and added that the applicant stands prejudiced should the matter be heard and determined in the subordinate court.
 10. The Application is opposed by the respondent who filed grounds of opposition on June 2, 2023 on the following grounds;
 1. That the application was filed in flagrant violation of the well-established legal doctrines and statutory provisions relevant to the subject application and the same is devoid of merit whatsoever or at all.
 2. That the application is fatally defective for want of form and law.
 3. That the application has been lodged in bad faith and is incompetent.
 4. That the application as presently constituted will occasion miscarriage of justice and great prejudice to the Respondent if it is allowed.
 5. That this application ought to be dismissed for the foregoing reasons with costs to the Respondent.
 11. In addition to the grounds opposition, the Respondent filed a replying affidavit, deposed upon by Millicent N Wesonga, the advocate ceased of the conduct of this matter on behalf of the Respondent.
 12. In her affidavit, the affiant stated that the Application lacks merit, is frivolous, an abuse of court's process and should be dismissed at the first instance.
 13. She stated that the instant suit was transferred to Kapsabet Law Courts for hearing and determination by the Honorable Justice Makau on May 25, 2022 upon the Honorable judge directing that this was a suit that fell within the jurisdiction of the subordinate court as per the provisions of the legal notice



- 6024 of 2018 and that the legal notice 6024 of 2018 clearly provides that all disputes arising from contracts of employment where employees' gross monthly pay does not exceed Kshs. 80, 000 are to be heard and determined by subordinate courts.
14. Accordingly, that the gross monthly pay of the grievant as at the time of his dismissal was Kshs. 15,965.00/= which amount falls within the cap of Kshs. 80,000/= to be heard and determined by subordinate courts.
 15. It is her case that legal notice 6024 of 2018 further provides that only trade disputes under the *Labor Relations Act*, 2007 are exempted from being heard and determined by the subordinate courts and that the current suit is clearly not a trade dispute as it's a suit that arose out of the negligent acts of the grievant herein which resulted to the loss of the Respondents' properties thus necessitating their lawful dismissal from employment.
 16. Moreover, that since the cause of action herein arose at Nandi Hills town which is within the jurisdiction of the Employment and Labor Relations Court at Eldoret so that if the suit herein was indeed a trade dispute, then it would have been heard and determined at the Employment and Labor Relations Court at Eldoret and therefore the Employment and Labor Relations Court at Kericho is not seized with the territorial jurisdiction to hear and determine the suit.
 17. The deponent stated that the Respondent stands to suffer great prejudice and irreparable loss if the instant application is allowed.
 18. She reiterated that the application is therefore unmerited, misconceived, ill-advised and an abuse of the court process and should be dismissed with costs.
 19. Directions were taken for the application herein to be canvassed by written submission, with the Applicant filing on the 14th September, 2023 and the Respondent filed on the 27th September, 2023

Applicant's Submissions

20. The Applicant submitted that it filed a notice of motion dated April 18, 2023 stating that this Honorable Court has jurisdiction to hear and determine the filed suit as the dispute falls under the trade dispute as defined under the *Labour Relations Act* in which the Respondent filed a preliminary objection objecting to the jurisdiction of this Honorable Court pursuant to the provisions of Gazette Notice No. 6024 of 2018.
21. The Applicant elaborated on the provision of Gazette Notice No. 6024 of 2018, that by the notice, the Chief Justice appointed magistrates in the rank of Senior Resident Magistrates to hear employment and labour related disputes arising from contracts of employment (excluding trade disputes under the *Labour Relations Act*, 2007) where employee's gross monthly salary does not exceed Kshs. 80,000 as commenced and continued in accordance with the *Employment and Labour Relations Court (Procedure) Rules, 2016*.
22. He then defined what trade dispute is as provided for under the *Labour Relations Act* 2007, that it is a dispute or difference, or an apprehended dispute or difference, between employers and employees, between employers and trade unions, or between an employers' organisation and employees or trade unions, concerning any employment matter, and includes disputes regarding the dismissal, suspension or redundancy of employees, allocation of work or the recognition of a trade union.
23. Having defined what a trade dispute is, the Applicant submitted that it is not in dispute that the grievant in the main claim was earning a gross monthly salary of Kshs 15,965/-. This means that if the grievant was not a member of the Claimant, his dispute would have fallen under the pecuniary



jurisdiction of a Magistrate's court by dint of the Gazette Notice which delegated jurisdiction to lower courts to hear and determine claims within its pecuniary limit. But by the fact that the claimant was a member of the Claimant union, it makes it a trade dispute excluding the Claimant from filing the case in the Magistrate's Court, as the same Gazette Notice, excludes trade disputes under the [Labour Relations Act](#), 2007 from being heard and determined by the Magistrate's Court.

24. Based on that explanation, the applicant submitted that it is clear that this claim falls under a trade dispute as defined in the [Labour Relations Act](#), 2007 and should therefore be heard and determined by this Honourable Court. To support this case, the Applicant cited the case [Benta Achieng Odinyo v University of Nairobi](#) [2021] eKLR, Appeal No. 30 of 2020, where the court stated in paragraph 43,

“My understanding of the foregoing gazette notice is that a Senior Resident Magistrate Court has been conferred with Jurisdiction to hear and determine all employment and labour relations disputes arising from contracts of employment but not disputes under the [Labour Relations Act](#) 2007.”

25. It was argued that sections 62 to 72 of the [Labour Relations Act](#) cover the dispute resolution mechanism by the Ministry of Labour which entails reporting of a trade dispute to the Minister, who appoints a conciliator to help in resolving the dispute. Section 73 of the [Labour Relations Act](#) provides that if a trade dispute is not resolved after conciliation, a party to the dispute may refer it to the Industrial Court in accordance with the Rules of the Industrial Court.

26. Similarly, that in this case, the issue between the parties herein was referred to a conciliator on 10th August, 19th September and October 7, 2021, a clear indication that matter herein is a trade dispute and thus should be heard in this Court.

Respondent's Submissions.

27. The Respondent submitted on three issues; whether the subordinate court at Kapsabet has the requisite jurisdiction to hear and determine the suit herein, whether Kapsabet CM-ELRC No. 2 of 2022 should be transferred to the Employment & Labour Relations Court at Kericho for hearing and determination and who should bear the costs of this application

28. On the first issue, it was submitted that all disputes arising from contracts of employment where employees monthly pay does not exceed Kshs. 80,000/= are to be heard and determined by subordinate courts and being that the gross monthly pay of the grievants herein as at the time of dismissal was Kshs. 15, 965.00/=, which amount is way below the threshold of Kshs. 80,000, the cause herein should be heard in the subordinate Court.

29. It was argued further that the suit herein is clearly not a trade dispute to be exempted from being heard at the subordinate court as the claim arose out of the negligent acts of the grievants herein which resulted to the loss of the Respondents properties thus necessitating their lawful dismissal from employment. Moreover, that the cause of action herein arose at Nandi Hills town which is within the jurisdiction of the subordinate court at Kapsabet. To support their arguments, the Respondent relied on the case of [AVC Management Limited vs Emmanuel Mwamunye Jilani](#) [2022] eKLR where the Court held that; -

“The jurisdiction of the Magistrate's Court to handle employment and labour relations disputes arises from the power donated to the Chief under section 29 of the [ELRC Act](#) to gazette magistrates to handle these matters. Pursuant to this power, the Chief Justice issued Gazette Notice No. 6024 of 2018 mandating magistrates of the rank of Senior Resident



Magistrate and above to hear, with some exceptions, disputes arising from employment contracts where the employee's gross monthly salary does not exceed Kshs 80,000/=. The gazette notice provides that the magistrates will handle matters that fall within their areas of jurisdiction.”

30. On the second issue, it was submitted that as per the provisions of the legal notice no, 6024 of 2018, the Magistrate's court at Kapsabet is seized of the requisite pecuniary jurisdiction to hear and determine the claim herein as the grievant's' gross monthly pay of Kshs. 15, 965.00/=, which is below the threshold of Kshs 80, 000/= as provided in the said legal notice. Further that the Employment and Labour Relations Court at Kericho is not seized of the territorial jurisdiction to hear and determine the claim herein as the suit arose at Nandi hills town which is within the jurisdiction of the subordinate court at Kapsabet and if the claim herein was indeed a trade dispute, then the court that is seized of the territorial jurisdiction to hear and determine it would be the Employment and Labour Relations Court at Eldoret and not the Employment and Labour Relations Court at Kericho. However, that since the claim herein is not a trade dispute, the same is properly at the subordinate court at Kapsabet and there are no grounds befitting its transfer to the Employment and Labour Relations Court at Kericho for hearing and determination.
31. In conclusion, the Respondent submitted that the application is not merited and ought to be dismissed with costs to the Respondent.
32. I have examined all the averments of the parties herein.
33. The applicant seek transfer of this claim from the subordinate court on account of the gazette notice No. 6024 of 2018 which grants magistrates of the rank of SRM and above jurisdiction to handle matters whether employees salary falls below 80,000/=.
34. Indeed the gazette notice as cited excludes the same jurisdiction from the same subordinate court where the issue falls under the Labour Relations Court.
35. This claim has been filed by a trade union which is a creature under the *Labour Relations Act*.
36. This fact alone ousts the magistrates from this claim.
37. It is therefore true that this claim ought to be handled by the ELRC which has jurisdiction to handle.
38. I find the application is therefore merited and I allow it and order transfer of this claim from the Chief Magistrate's Court Kapsabet Law Courts to the ELRC Eldoret for further directions and disposal.
39. Costs shall be in the cause.

RULING DELIVERED VIRTUALLY THIS 30TH DAY OF JANUARY, 2024.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:-

Kirui for Respondent – present

No appearance for Union – present

Court assistant – Fred

