Linotic Floor Company Limited v Kamau (Cause E579 of 2020) [2024] KEELRC 385 (KLR) (29 February 2024) (Ruling)

Neutral citation: [2024] KEELRC 385 (KLR)

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE E579 OF 2020

L NDOLO, J

FEBRUARY 29, 2024

BETWEEN

LINOTIC FLOOR COMPANY LIMITED ..... CLAIMANT

AND

GRACE MUMBI KAMAU ..... RESPONDENT

RULING

1. This ruling proceeds from the Respondent's Preliminary Objection raised by notice dated 4th May 2021. The Objection is premised on the following grounds:

    a. That the Court lacks jurisdiction to entertain this matter as the issues raised in the Memorandum of Claim are purely of a civil nature;

    b. That the Court lacks jurisdiction to entertain a cause that does not relate to breach of fundamental rights ancillary and incidental to those matters falling within the provisions of Article 41 of the *Constitution* of Kenya and Section 12(1) of the *Employment and Labour Relations Court Act*;

    c. That the Court lacks primary jurisdiction to hear and determine the said claim;

    d. That the Memorandum of Claim lacks merit and offends the provisions of the law and should be struck out in limine with costs to the Respondent.

2. Both parties relied on the decision in *Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd* (1969) EA where a Preliminary Objection was defined as one that:

> " ...consists of a pure 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..."

3. The substance of the Objection as clarified in the Respondent's submissions dated 31st January 2024 is that; first, the dispute is purely civil in nature and second, that the Respondent's monthly salary falls below the threshold established by Gazette Notice No 6024 of 2018 by which jurisdiction was donated to the Magistrates' Courts to hear and determine employment matters where the applicable monthly salary does not exceed Kshs. 80,000.

4. Regarding the first issue on the nature of the dispute, it is evident that the Claimant's claim against the Respondent arises from an employment contract dated 15th July 2019. Such a dispute is therefore an employment dispute. In this regard, the Claimant referred the Court to the decision in *Runka Services Cooperative Sacco Limited v Mbaya* (Commercial Civil Case E646 of 2021) [2022] KEHC 123 (KLR) (Commercial and Tax) (18 February 2022) (Ruling) where Majanja J stated the following:

> "The dispute in this matter arises from and relates to the relationship between employer and employee. The employer accuses the employee of stealing in the course of employment hence this is a dispute falling squarely within section 12(1)(a) of the *Employment and Labour Relations Court Act* and is a dispute, relating to or arising out of employment between an employer and an employee. I therefore find and hold that this is a dispute that falls for determination by the ELRC."

5. Regarding the second issue that the Respondent's salary falls below the threshold for this Court, I agree but add that because the jurisdiction to the Magistrates' Courts is donated by a Gazette Notice, this Court retains the residual jurisdiction over employment matters. The effect of this is that a claim filed in this Court is not fatally defective and is therefore capable of transfer to the Magistrate's Court.

6. The Respondent's Preliminary Objection is consequently overruled and the matter is transferred to the Chief Magistrate's Court at Milimani for hearing and determination.

7. Each party will bear their own costs.

8. Orders accordingly.

DELIVERED VIRTUALLY AT NAIROBI THIS 29TH DAY OF FEBRUARY 2024

LINNET NDOLO

JUDGE

Appearance:

Mr. Nyachoti for the Claimant

Mr. Kounah for the Respondent