



**Rotich v Chief Executive Officer Hipora Business Solutions (EA) Limited & another
(Cause E566 of 2023) [2024] KEELRC 419 (KLR) (29 February 2024) (Ruling)**

Neutral citation: [2024] KEELRC 419 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E566 OF 2023
L NDOLO, J
FEBRUARY 29, 2024**

BETWEEN

VICTOR ROTICH CLAIMANT

AND

**CHIEF EXECUTIVE OFFICER HIPORA BUSINESS SOLUTIONS (EA)
LIMITED 1ST RESPONDENT**

HIPORA BUSINESS SOLUTIONS (EA) LIMITED 2ND RESPONDENT

RULING

1. By notice dated 22nd September 2023, the Respondents challenge the jurisdiction of this Court to hear and determine the Claimant’s claim. The Respondent’s Preliminary Objection is supported by the following grounds:
 - a. That in light of Section 4 of the *Employment and Labour Relations Court Act* and Section 9(b) of the *Magistrate’s Court Act*, this Court lacks jurisdiction to hear and determine the claim;
 - b. That the suit is incompetent and ought to be struck out with costs.
2. The parties urged their respective positions by way of written submissions. Both parties cited 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 Respondent argues that because the Claimant’s monthly salary fell below the Kshs 80,000 threshold set by Gazette Notice No 6024 dated 10th June 2018, then his claim as filed in this Court is fatally defective and incompetent.



4. While it is true that the subject Gazette Notice donated jurisdiction to Magistrates of the rank of Senior Resident Magistrate and above, to hear and determine employment claims where the monthly salary of the employee does not exceed Kshs 80,000 the residual jurisdiction of this Court remains intact.
5. It follows therefore that this Court has the latitude to transfer a claim such as the present one to the right forum.
6. In the result, I direct that this claim be 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. Kipkirui for the Claimant

Mr. Kirimi for the Respondent

