



REPUBLIC OF KENYA



KENYA LAW
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**Kenya Engineering Workers Union v Rift Valley Engineering Works
Limited (Employment and Labour Relations Appeal E001 of 2023)
[2024] KEELRC 378 (KLR) (27 February 2024) (Judgment)**

Neutral citation: [2024] KEELRC 378 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU
EMPLOYMENT AND LABOUR RELATIONS APPEAL E001 OF 2023
HS WASILWA, J
FEBRUARY 27, 2024
(FORMERLY, NAIROBI ELRC APPEAL NO. 25 OF 2019)**

BETWEEN

KENYA ENGINEERING WORKERS UNION APPELLANT

AND

RIFT VALLEY ENGINEERING WORKS LIMITED RESPONDENT

JUDGMENT

1. This Appeal emanates from the ruling of the Honourable J.M Omido, delivered on 19th July, 2019 in ELRC Cause No. 61 of 2018. The Appeal is grounded on the following; -
 1. The Trial Court/ Principal magistrate erred in law and fact in awarding the Respondent costs yet it lacked jurisdiction therefore taxation for Bill of costs could not properly be done.
 2. The matter proceeded in the chief magistrate Court under the same cause Number as filed in the Honourable Employment and Labour Relations Court at Nakuru.
 3. The trial Principal Magistrate erred by assuming that the matter was filed in the wrong court yet the case number and receiving stamp were those of the Honourable Employment and Labour Relations Court and not Chief Magistrate Court.
 4. The Matter was filed in this Honourable Court but transferred erroneously without the knowledge of Appellant, by the Registry to the Chief Magistrate Court due to gazettelement for the said Court to handle small claims.
 5. The trial Principal Magistrate erred in law and fact in awarding costs to the Respondent by assuming that the Appellant was at fault for the mix up of the file being at the wrong Court which lacked jurisdiction, yet it was administrative issue as the file was taken to the said Court



without any request from any party but by the Employment and Labour Relations Court Registry.

2. The Appellant prayed for the following Orders; -
 - a. The Appeal be allowed.
 - b. The Orders for costs be set aside
 - c. The file be recalled to this Honourable Court for hearing and determination on merit
 - d. Costs of the Appeal be provided for.

Background of the case

3. The summary of the case herein is that the Appellant herein, acting as the claimant in the trial Court, filed an employment claim in this Court on 5th November, 2018 and on 11th December, 2018, they applied for the matter to be mentioned before this Court however no date was issued.
4. On 14th June, 2019, the Respondent filed a response to claim and counterclaim but this time, the response was received in the Chief Magistrate Court with the stamp of Chief Magistrate Civil Registry. Soon thereafter, on 20th June, 2019, the Respondent raised a Preliminary Objection on the jurisdiction of the Court to hear and determine the cause and sought for the suit to be struck out for want of jurisdiction.
5. Directions were taken for the Preliminary Objection to be canvassed by written submission and on the 19th July 2019, the Honourable J. M Omido, held that he did not have jurisdiction to entertain the matter and struck out the suit with costs to the Respondent.
6. It's the striking out of the Appellant's suit at the Magistrates Court that triggered the filling of this Appeal.
7. On 20th December, 2023, this Court directed the parties to canvass the Appeal by written submissions, with the Appellant filling on the 18th December, 2023 and the Respondent filed on 30th January, 2024.

Appellant's Submissions.

8. The Appellant submitted that it filed its Memorandum of Claim dated 20th day of 2018 on 3rd day of September 2018 in the Employment and Labour Relations Court at Nakuru. However, that this Court's Registry transferred the file to the Chief Magistrate Court on their own accord without any request from the Appellant herein. Subsequently, the Respondent filed their Response on 5th November 2018 in the Employment and Labour Relations Court at Nakuru but that the Chief Magistrate Court proceeded with the matter in the same Cause Number being ELRC Cause No. 61 of 2018 without giving it a new number or checking on how the file had been transferred to them without any Order of transfer from this Honourable Court.
9. It was submitted further that the Respondent filed its preliminary Objection dated 20th June 2019 under the same Cause Number, in the justification of the Employment and Labour Relations Court and not at the Chief Magistrate Court. Therefore, that the parties filed all their documents and pleadings under the justification of the Employment and Labour Relation Court.
10. On that note, it was submitted that the Magistrate's Court erred by proceeding with the hearing and determination of this cause when the same was a matter of this court. Further that the Court's Registry



erred in transferring the file to the subordinate court without following due procedure and consulting the Appellant.

11. Based on the foregoing, the Appellant urged this Court to quash the Ruling of the Chief Magistrate Court delivered on 21st June 2019 and recall the file for hearing and determination on merit before this Honourable Court, that has jurisdiction.

Respondent's Submissions.

12. The Respondent submitted on two issues; whether the primary suit herein, NAKURU E.L.R.C No.61/2018 was properly and meritoriously struck out on 19/7/2019 on grounds that the Court lacked jurisdiction to entertain a labour dispute between a trade union and an employer and who bears the costs of this Appeal.
13. On the first issue, it was submitted that the Appeal filed herein is incompetent, unmerited and should be dismissed with costs to the Respondent. It was argued that the cause herein cannot be recalled for hearing and determination on merit as the same was struck out with costs to the respondent on 19/7/2019 by the trial Court on grounds that it had no jurisdiction to entertain a labour dispute between a trade union and an employer.
14. To support its argument, the Respondent relied on the case of Law Society of Kenya Vs Malindi Law Society and 6 others [2017] eKLR, wherein the Supreme Court full bench led by Chief Justice D.K.Maraga held that;

“Magistrate Courts only have jurisdiction to hear and determine employment labour disputes in relation to employees and not between employers and trade unions.”

15. Accordingly, that the Appellant's instant appeal is a mere delaying tactic to the conclusion of this matter. It was argued that when the Respondent raised the issue of Jurisdiction at the trial Court, the Appellant herein filed submission and agreed that the suit before Court does not conform to the requirements of section 74 of the *Labour relations Act* 2007. Furthermore, that the appellant did not address the issue of the file in Nakuru ELRC No. 61/2018 being transferred to the Magistrate's Court before the ruling on the preliminary objection was delivered, yet they had all the opportunity to raise such an issue. Hence the said allegation is an afterthought, unfounded, baseless and aimed to defeat justice and ought to be disregarded.
16. On costs granted by the trial Court, it was submitted that the issue of awarding costs to the Respondent in the primary suit is based on the fact that costs follow the event. Similarly, that the trial Court was right in granting costs to the Respondent, in whose favor the case was decided.
17. On costs of this Appeal, the Respondent submitted that the Appellant elected to file an Appeal, four years after the lower Court's decision in NAKURU CMCC No.61/2018, which has delayed the final conclusion of this matter to the detriment of the Respondent. The Respondent then relied on the case of Republic Vs Rosemary Wairimu Munene, Ex-Parte Applicant Vs Ihururu Dairy Farmers Cooperative Society Ltd as cited in Cecilia Karuru Ngayu v Barclays Bank of Kenya & another [2016] eKLR where the court held as follows:

“The issue of costs is the discretion of the court as provided under the above section. The basic rule on attribution of costs is that costs follow the event..... It is well recognize that the principle costs follow the event is not to be used to penalize the losing party rather it



is for compensating the successful party for the trouble taken in prosecuting or defending the case.”

18. Accordingly, that given the determination of issues as enumerated above in favour of the Respondent, he is inevitably entitled to costs with respect to the Appeal filed herein.
19. I have examined all the averments and submissions of the parties herein. It is apparent that the claim being appealed from was filed on 3rd September, 2018 before the ELRC at Nakuru. Filing fees were paid and a receipt issued by the ELRC Nakuru. The respondent subsequently filed a memorandum of Response and counter claim on 14th June, 2019 before this same court.
20. It is not clear how this file was subsequently moved to the lower court and placed before Hon. J. Omido as there is no order of transfer of this file endorsed by the ELRC. When the matter was placed before Hon. J. Omido he proceeded to dismiss the claim on the ground that he had no jurisdiction to handle the claim, the same being a labour relations matter.
21. Indeed from the word go, the Chief Magistrate ELRC had no control of this claim without express order transferring the claim therein. It appears that the registry staff unilaterally decided to move the file on unknown instructions.
22. The Chief Magistrate’s ELRC was never seized of this file and any subsequent order given there were granted without jurisdiction and are therefore null and void.
23. The order granted condemning the claimants to pay costs are therefore without merit.
24. I find that the appeal succeeds. All the proceedings handled by the Chief Magistrate’s Court are declared null and void and are set aside accordingly.
25. I direct that this claim now proceeds for hearing and determination before this court on merit.

JUDGEMENT DELIVERED VIRTUALLY THIS 27TH DAY OF FEBRUARY, 2024.

HON. LADY JUSTICE HELLEN WASILWA.

JUDGE

In the presence of:-

Githiru for Respondent

No appearance for Appellants

Fred Court Assistant

