



**Opamba v Imprimatur Company Limited (Cause E349 of 2023)
[2024] KEELRC 871 (KLR) (22 April 2024) (Ruling)**

Neutral citation: [2024] KEELRC 871 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E349 OF 2023**

**JK GAKERI, J
APRIL 22, 2024**

BETWEEN

BRIAN ANDREW OPAMBA CLAIMANT

AND

IMPRIMATUR COMPANY LIMITED RESPONDENT

RULING

1. Before the court for determination is the Respondent’s Preliminary Objection dated 19th January, 2024 challenging the Claimant’s suit on the ground that:-
 1. The Claimant was earning Kshs.70,000/= as at the time of termination as admitted.
 2. The proper forum therefore is the Chief Magistrates Court.
2. On 24th January, 2024, the Claimant’s advocate confirmed in court that the Respondent’s Preliminary Objection was served that morning but had not been responded by the date the court retired to prepare this ruling and was present in court on 21st February, 2024 when the ruling date was fixed.
3. The pith and substance of the Respondent’s Preliminary Objection is that the Claimant’s suit ought to have been filed at the Chief Magistrates Court as opposed to this court as his salary was Kshs.70,000/=, thus, the question of the court’s jurisdiction has arisen.
4. It requires no gainsaying that jurisdiction is everything as held by Nyarangi JA in the often cited decision in Owners of Motor Vessel “Lillian S” V Caltex Oil (Kenya) Ltd (1989) as follows;

“Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law downs its tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction . . . Where a court takes it upon itself to



exercise jurisdiction which it does not possess, its decision amounts to nothing. Jurisdiction must be acquired before judgment is given.”

5. As held by the Supreme Court in *Samuel Kamau Macharia & another V Kenya Commercial Bank & 2 others* (2012) eKLR;

“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 . . .

Where *the constitution* confer upon Parliament to set the jurisdiction of a court of law or tribunal, the legislature would be within its authority to prescribe the jurisdiction of such a court or tribunal by statute law.”

6. Article 162(2)(a) of *the Constitution* of Kenya, 2010 provides that;

1. . . .

2. Parliament shall establish courts with the status of the High Court to hear and determine disputes relating to –

a. employment and labour relations

b. . . .

3. Parliament shall determine the jurisdiction and functions of the courts contemplated in clause (2).

7. It is in exercise of the power conferred by Article 162(2) of *the Constitution* of Kenya, 2010 that Parliament enacted the *Employment and Labour Relations Court Act*, 2011 which establishes the Employment and Labour Relations Court and prescribes its jurisdiction.

8. Section 12 of the *Employment and Labour Relations Court Act*, 2011 provides inter alia;

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 – . . .”

9. The foregoing provision leaves no doubt that the Employment and Labour Relations Court, a Superior Court of record, has unlimited original and appellate jurisdiction to hear and determine disputes on employment and labour relations.

10. Did Gazette Notice No. 6024 of 2018 dated 22nd June, 2018 affect the Jurisdiction of the Employment and Labour Relations Court as envisaged by *the Constitution* of Kenya, 2010 and the *Employment and Labour Relations Court Act*, 2011?

11. The Gazette Notice states as follows;

In exercise of the powers conferred by Section 29(3) and 4(b) of the *Employment and Labour Relations Court Act*, 2011, and in consultation with the Principle Judge of the Court, the Chief Justice appoints all Magistrates of the rank of Senior Resident Magistrates and above as Special Magistrates designated to hear and determine the following employment and labour relations cases within their respective areas of jurisdiction:



1. Disputes arising from contracts of employment (excluding trade disputes under the *Labour Relations Act*, 2007) where employees gross monthly pay does not exceed Kshs.80,000/= as commenced and continued in accordance with the Employment and Labour Relations Court (Procedure) Rules, 2016.
2. . . .
12. This Gazette Notice may have been precipitated by the inadequate human capital at the Employment and Labour Relations Court in light of the case backlog and astronomical increase in new suits.
13. Undoubtedly, the Gazette Notice by the Honourable Chief Justice in exercise of the powers conferred by the *Employment and Labour Relations Court Act*, 2011 merely off-loaded certain employment disputes from the Employment and Labour Relations Court, but did not interfere or affect its jurisdiction as conferred by Section 12 of the *Employment and Labour Relations Court Act*, 2011.
14. In a nutshell, this court has jurisdiction to hear and determine the suit before it.
15. Having found as above, it is essential to determine the fate of the Respondent's Preliminary Objection.
16. As held by the Court of Appeal in *Mukisa Biscuits Manufacturing Co. Ltd V West End Distributors Ltd (1969) EA 696*;

“ . . . a Preliminary Objection consists of a 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. Examples are an objection to jurisdiction of the court or a plea of limitation or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration.”

17. The foregoing sentiments capture the basis of the Respondent's Preliminary Objection namely jurisdiction and having found that this court has jurisdiction to hear and determine the suit by the Claimant dated 2nd May, 2023, the Respondent's Preliminary Objection does not meet the threshold in *Mukisa Biscuits Manufacturing Co. Ltd V West End Distributors Ltd (Supra)* and it is accordingly dismissed.
18. A cursory reading of the reliefs sought by the Claimant and a perusal of the Letter of Offer dated 1st October, 2021 leave no doubt that the Claimant's salary falls within the range designated by the Gazette Notice No. 6024 of 22nd June, 2018 and the proper court to hear and determine the suit is the Chief Magistrates Court and the court directs that the suit be transferred to the Chief Magistrate's Court Employment for hearing and determination.
19. Parties shall bear own costs.

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI ON THIS 22ND DAY OF APRIL 2024

DR. JACOB GAKERI

JUDGE

order

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions



of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court has been guided by Article 159(2)(d) of *the Constitution* which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of *the Constitution* and the provisions of Section 1B of the *Civil Procedure Act* (Chapter 21 of the Laws of Kenya) which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

DR. JACOB GAKERI

JUDGE

