



**Ondego & 55 others v Weihai International Economic Technical
Cooperative Company Limited (Employment and Labour Relations Appeal
E004 of 2023) [2024] KEELRC 1040 (KLR) (19 April 2024) (Judgment)**

Neutral citation: [2024] KEELRC 1040 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NYERI
EMPLOYMENT AND LABOUR RELATIONS APPEAL E004 OF 2023
ON MAKAU, J
APRIL 19, 2024**

BETWEEN

PAUL OMBIJA ONDEGO & 55 OTHERS APPELLANT

AND

**WEIHAI INTERNATIONAL ECONOMIC TECHNICAL COOPERATIVE
COMPANY LIMITED RESPONDENT**

*(Being an Appeal from the Ruling and Order of the Chief Magistrate's
Court at Nyeri (Hon.F.Muguongo-PM) issued, delivered and
dated 22nd March 2023 in Nyeri MELRC No. E033 of 2022)*

JUDGMENT

1. This appeal arises from employment relationship between the fifty-six (56) appellants and the respondent. The appellants brought a joint suit before Nyeri Chief Magistrate's Court seeking terminal dues following alleged redundancies. The aggregate sum of their claim as pleaded in the Memorandum of Claim is Kshs.24,844,173 plus costs and interest. However, the respective claims for each appellant was tabulated in a Schedule attached to the memorandum of claim ranging between Kshs.150,264 and Kshs.168,456.
2. The respondent entered appearance and filed defence. It also filed a Notice of Preliminary Objection praying for the suit to be struck out with costs on the following grounds: -
 - a. The court lacks pecuniary jurisdiction by dint of section 7 and 9 of the *Magistrate Court Act, 2015*.
 - b. The court lacks territorial jurisdiction to hear and determine the suit by dint of Section 15 of the *Civil Procedure Act*.



3. After considering the submissions made by the two sides, the trial Court (Hon.F.Muguongo-PM) upheld the preliminary objection on the two grounds and struck out the suit with costs.
4. The appellants were aggrieved and brought this appeal raising the following grounds: -
 - a. That the learned Magistrate erred in Law and fact by holding that the Chief Magistrate lacks Pecuniary Jurisdiction to hear and determine this matter yet the employees were all earning salary of less than Kshs.80,000/- hence Gazette Notice No.6024 dated 22nd June 2018 was applicable as it gave the Magistrates court the power to hear and determine the matter.
 - b. That the learned Magistrate erred in Law and fact by using the total sum claimed by all the employees as the factor to be considered in determining the jurisdiction of the court and not the salary earned by each employee as the factor to be considered in the determining the jurisdiction of the court. This went contrary to the provisions of Gazette Notice No.6024 dated 22nd June 2018.
 - c. That the learned Magistrate erred in Law and fact in dismissing the Appellants submissions on the fact that the appellants' advocate tried to file the claim in the Employment and Labour Relations Court at Nyeri but the Registry declined to admit the matter for filing and directed the advocate to file the claim in the Chief Magistrates court. The advocate did not have the power to file a claim without the same being admitted by the registry.
 - d. That the learned Magistrate erred in Law and fact by holding that the Magistrates court lack territorial jurisdiction to hear and determine the matter and ignoring the claimants' submissions that most of the claimants reside within Nyeri which is within the local limits of Nyeri Chief Magistrates court.
 - e. That the learned Magistrate erred in Law and fact by holding that the Chief Magistrates court lack territorial jurisdiction simply because the 1st claimant did not disclose his physical residence or the place he carries on business or personally works for gain.
 - f. That the learned Magistrate erred in Law and fact by dismissing the entire claim instead of transferring the matter to the court that has jurisdiction. Dismissing the matter has rendered the claim statute barred under section 90 of the *Employment Act* because the claimants were terminated on 11th March 2019 which period is more than three years. This has caused great injustice to the claimants as they are unable to file this suit afresh in any other court.
 - g. That the learned Magistrate erred in Law and fact in awarding the respondent the costs of the suit.
 - h. That the learned Magistrate erred in Law in making orders that violated the Constitution and the due proper administration of justice and further failed to handle the matter for the purpose of attaining a just determination thereof.
 - i. That in the circumstances of this case, justice was perverted.

Submissions on the Appeal

5. The appellant submitted that the Magistrates Court has pecuniary jurisdiction to hear and determine their suit. They contended that by a Gazette Notice No.6024 of 22nd June 2018 the Chief Justice designated all Magistrates of the rank of Senior Resident Magistrate and above as special Magistrates to hear and determine Employment and Labour Relations cases within their respective areas of



- jurisdiction. The Magistrates are to entertain suits where the employee's monthly gross salary does not exceed Kshs.80,000.
6. The appellants submitted that their monthly salary was between 5,900 and Kshs.15,250 and therefore the claims was well before the Magistrate's court. They contended that pecuniary jurisdiction referred to the individual's claim and not the aggregate sum of the claims by all the appellants. Therefore, they faulted the trial court for finding that it had no pecuniary jurisdiction to hear and determine the matter.
 7. The appellants further faulted the trial courts for holding that it had no territorial jurisdiction to hear and determine the suit. They contended that section 14 of the *Civil Procedure Act* gives them a choice to file the suit either in Thika where the project was situated or Nyeri where most appellants reside.
 8. The appellants further submitted that the trial court ignored the fact that they had tried to file the suit before this court but they were referred to the Magistrates court. They also faulted the trial court for striking out their suit with costs when indeed it had the jurisdiction to determine the suit. Consequently, they prayed for the appeal to be allowed, their suit reinstated and finally the court to transfer the suit to a court that has territorial jurisdiction to hear and determine the same.
 9. On the other hand, the respondent submitted that the trial court rightly found that the appellants claim was for a total of Kshs.24,844,173 which was beyond the pecuniary jurisdiction of Magistrates court. It submitted that, the court was right in finding that, it was not for the court to go dissecting each and every claim to ascertain the appellants' individual salary and apply the same to the earning limit set by the Gazette Notice No.6024 of 22nd June 2018.
 10. The respondent submitted that although the appellants have contended that their salaries ranged from Kshs.5900 to Kshs.15,250, the value of the suit was Kshs.24,844,173 as pleaded in the memorandum of claim dated 4th March 2022. Referring to section 7 and 9 of the *Magistrates Court Act*, 2015, the respondent submitted that the trial court was right in holding that the value of Kshs.24,884,173 was above the pecuniary jurisdiction of the Magistrates Courts which was a maximum of Kshs.20,000,000.00.
 11. It further submitted that a court cannot confer jurisdiction on itself. For emphasis it relied on the case of *Samuel Kamau Macharia & another v Kenya Commercial Bank Ltd & others* [2012] eKLR and *Phoenix of E. A Assurance Co.Ltd v S.M.Thiga t/a Newspaper Service* [2019] eKLR where the courts were unanimous that a court cannot confer jurisdiction upon itself where there is none.
 12. As regards territorial jurisdiction, the respondent submitted that the trial court was right in holding that the cause of action did not arise in Nyeri but in Gatundu and that the respondent did not reside or carry out business in Nyeri. Consequently, the respondent maintained that the trial court was right in holding that it lacked territorial jurisdiction. For emphasis, it relied on section 15 of the *Civil Procedure Act* and the case of *AVC Management Limited v Emmanuel Mwamunye Jilani* [2022] eKLR and *Korea Nyamai v Neema Parcels Limited* [2021] eKLR.
 13. The respondent further submitted that the trial court was right in not transferring the suit after it found that it had jurisdiction. It fortified the foregoing submission by the case of *Phoenix of EA Assurance Co.Ltd v S.M Thiga t/a Newspaper Service* (*supra*) and *Albert Chaurembo Mumba & 7 others v Maurice Munyao & 148 others* [2019] eKLR.
 14. The respondent submitted that, even this court should not transfer a suit from a court with no jurisdiction to a court with Jurisdiction since that would be sanctifying an incompetent suit. For emphasis, reliance was placed on the case of *Equity Bank Ltd v Bruce Mutie Mutuku t/a Diani Tour Travel* [2016] eKLR.



15. Finally, the respondent submitted that the trial court was right in awarding costs after striking out the suit. It submitted that costs follow the events. For emphasis, it relied on the case of *Cecilia Karuru Ngayu v Barclays Bank of Kenya & another* (2016) eKLR. In the end it prayed for the appeal to be dismissed with costs.

Issues for determination

16. This being a first appeal, my mandate is to evaluate the evidence and reach my own independent conclusion. This mandate was confirmed by the Court of Appeal in the case of *Selle v Associated Motor Boat Company Ltd* [1968] EA 123 thus:-

“The appellate court is not bound necessarily to accept the findings of fact by the court below. An appeal to the Court of Appeal from a trial by the High Court is by way of a retrial and the principles upon which the Court of Appeal acts are that the court must consider the evidence, evaluate itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect. In particular, the court is not bound necessarily to follow the trial Judge’s findings of fact if it appears either that he has clearly failed on some point to take account of particular circumstances or probabilities materially to estimate the evidence or if the impression based on the demeanor of a witness is inconsistent with the evidence in the case generally.”

17. Having considered all the material contained in the record of appeal and the submissions made herein, the following issues fall for determination: -
- a. Whether the Magistrate court lacks pecuniary jurisdiction to hear and determine the Appellants’ suit.
 - b. Whether Chief Magistrates court at Nyeri lacks territorial jurisdiction to hear and determine the appellants suit.
 - c. Whether the impugned decision should stand.

Pecuniary jurisdiction

18. The appellants contend that pecuniary jurisdiction should refer to their individual claims and not the aggregate sum sought. However, the respondent maintained that pecuniary jurisdiction refers to the total value of the Kshs.24,844,173 pleaded in the Memorandum of Claim.
19. There is no dispute that the appellants earned a gross salary below Kshs.80,000 and as such the only dispute is whether the court should determine existence of jurisdiction by considering the value sought by individual appellant or the aggregate sum sought by all of them in the suit. I did not find any relevant local precedents and therefore I sought help from other Commonwealth Countries.
20. In the Canadian case of *Kent v Conquest Vacations Co*, 2005 Can L112321 (ON SCDC) the Superior Court of Justice -Ontarios was faced with a similar appeal like the one before me. Two claimants filed one suit before the Small Claims Court whose pecuniary jurisdiction was \$10,000 maximum.



Each claimant had individual claim less than \$10,000 but the aggregate sum was over \$15,000. The defendant successfully objected to the pecuniary jurisdiction of the court but on appeal, it held that: -

“Since each has a contract, each has an action for breach. Multiple plaintiffs even if married to each other, maintain right to seek relief before the Small Claims Court up to a maximum \$10,000 per claim.”

21. The court went on to state that: -

“The Kents have not split their case, as prohibited by Rule 6.02. This Rule prevents a single plaintiff from dividing an action to come up within the court’s jurisdiction. This is not so in the case at bar, as both Mr.Kent and Mrs. Kent were parties to the contract and had the right to bring separate actions against Conquest.”

22. I entirely agree with the Canadian Superior Court and proceed to hold that where a suit is brought by multiple claimants, each claimant has a separate cause of action and the right to seek legal redress so long as his individual claim does not exceed the maximum limit of the court’s pecuniary jurisdiction. What the court ought to consider, therefore, is not the aggregate sum sought by all the claimants, but the maximum sum sought by each claimant.

23. It follows that where suit is before a Principal Magistrate like in this case whose maximum pecuniary jurisdiction is Ten Million shillings (see Section 7 of the *Magistrates Court Act*), it is proper for multiple claimants to file a joint suit provided each claimant does not claim more than ten million shillings.

24. Rule 9 of the *ELRC Procedure Rules*, 2016 provides that: -

- “1. A suit may be instituted by one party on behalf of other persons with a similar cause of action.
2. Where a suit is instituted by one person, that person shall, in addition to the statement of claim, file a letter of authority signed by all the other parties, provided that in appropriate circumstances, the Court may dispense with this requirement.
3. The statement of claim shall be accompanied by a schedule of the names of the other claimants in the suit, their address, description, and the details of wages due or the particulars of any other breaches and reliefs sought by each claimant.”

25. The suit herein was done in compliance with the above Rule. There is a memorandum of claim annexing a schedule of all the 56 appellants and their respective claims ranging between Kshs.150,264 and Kshs.168,456. There is also a written authority to represent the 55 other appellants duly signed by each of them. Consequently, I find and hold that the appellants voluntarily agreed to file a joint suit pursuant to Rule 9 of the *Rules* of this court but each maintaining a separate cause of action for a sum which is below the maximum pecuniary jurisdiction of the trial court.

26. In view of the foregoing reasons, I have reached my personal conclusion that the trial court erred in holding that it lacked pecuniary jurisdiction to hear and determine the suit on the basis of the aggregate sum sought by all the 56 appellants. The correct position is that in a suit with multiple claimants, the pecuniary jurisdiction of the court is not determined by the total sum claimed by all the claimants put together but the sums sought by the individual claimants.



Territorial jurisdiction

27. The respondent contended that territorial jurisdiction of the court is dependent on the place where the cause of action arose, or where the respondent resides or carries out business. The appellants purported that most of them resides in Nyeri and therefore they had an option to file the suit in Nyeri by dint of section 14 of the [Civil Procedure Act](#).
28. I have carefully considered the above contention and I agree with the respondent. Section 14 and 15 provides that territorial jurisdiction of a court, is determined by the place where the cause of action arose, and where the defendant resides or carries out business or is employed. What section 14 of the [Civil Procedure Act](#) provides is that the claimant has the liberty to chose where to file a suit based on the said factors. Consequently, I agree with the trial court that Nyeri Chief Magistrates Court lacked territorial jurisdiction to hear and determine the suit herein because the cause of action arose at Gatanga Murang'a County and the respondent does not reside, or work or ordinarily carry out business in Nyeri.

Whether the impugned decision should stand

29. I have found that the Magistrates Court has pecuniary jurisdiction to hear and determine the appellants suit. I have further found that Nyeri Chief Magistrates court lacks territorial jurisdiction to hear and determine the appellants suit. Consequently, the appeal partially succeeds to the extent highlighted above, and the impugned decision is set aside and substituted with the following orders: -
- a. The preliminary objection by the respondent dated 24th October 2022 is dismissed with costs.
 - b. The appellants' suit (Nyeri CMELRC No. E033 of 2022) is hereby reinstated and transferred to Chief Magistrates Court at Thika for hearing and determination.
 - c. The appellants are awarded costs of the Appeal.

DATED, SIGNED AND DELIVERED AT NYERI THIS 19TH DAY OF APRIL, 2024.

ONESMUS N MAKAU

JUDGE

ORDER

This judgment has been delivered to the parties via Teams video conferencing with their consent, having waived compliance with Rule 28 (3) of the [ELRC Procedure Rules](#) which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

ONESMUS N MAKAU

JUDGE

