



**Kanyago v Kerato & another (Employment and Labour Relations Cause E158 of 2023) [2024] KEELRC 2231 (KLR) (19 September 2024) (Ruling)**

Neutral citation: [2024] KEELRC 2231 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
EMPLOYMENT AND LABOUR RELATIONS CAUSE E158 OF 2023  
BOM MANANI, J  
SEPTEMBER 19, 2024**

**BETWEEN**

**JANE WANJIRU KANYAGO ..... CLAIMANT**

**AND**

**TIMOTHY KERATO ALIAS ASIAGO ..... 1<sup>ST</sup> RESPONDENT**

**ROBI KERATO PARTNERS ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. The issue before court is whether it has jurisdiction to entertain the instant dispute. The 1<sup>st</sup> Respondent contends that it (the court) has no jurisdiction to hear the case.
2. The Claimant contends that she was employed by the 1<sup>st</sup> Respondent in March 2022. The 1<sup>st</sup> Respondent is said to be a partner in the 2<sup>nd</sup> Respondent Firm. It is the Claimant's case that she worked for the Firm until 5<sup>th</sup> of January 2023 when she resigned following alleged persistent unwelcome sexual advances by the 1<sup>st</sup> Respondent.
3. The Claimant has not expressly stated her monthly salary. However, in paragraphs 14 and 17 of the amended Statement of Claim, she accuses the Respondents of having irregularly withheld her salary for January 2023. She then prays that the Respondents be compelled to pay her the sum of Ksh. 50,000.00 being her withheld salary for January 2023.
4. The 1<sup>st</sup> Respondent has filed a Notice of Preliminary Objection dated 23<sup>rd</sup> January 2024 and an application dated 26<sup>th</sup> January 2024 through which he challenges the court's jurisdiction to hear the case. He asserts that section 12 of the *Employment and Labour Relations Court Act* makes the presence of an employment relation a prerequisite for assumption of jurisdiction by the court over a dispute. He contends that there was no such relation between him and the Claimant. As such, there is no juridical basis upon which the court can assume jurisdiction over the case.



5. Second, the 1<sup>st</sup> Respondent argues that by virtue of Gazette Notice No. 6024 of 2018, employment disputes arising from employment relations where the employee's salary is less than Ksh. 80,000.00 per month ought to be processed by the Chief Magistrate's court. As such, the Claimant's case ought to have been filed before the Chief Magistrate's court.
6. Having regard to the foresaid, the 1<sup>st</sup> Respondent argues that the instant case was wrongly filed before this court. As such, it should be struck out with costs to the Respondents.
7. The Claimant is opposed to both the application and preliminary objection. She contends that the two are frivolous and an abuse of the court process.
8. In her view, article 162(2) of *the Constitution* vests jurisdiction in the court to entertain employment disputes and matters connected thereto. As such, the Respondents cannot invoke Gazette Notice No. 6024 of 2018 to countermand this jurisdiction.

### **Analysis**

9. It is not in doubt that this court has jurisdiction to entertain the instant dispute. In paragraph 3 of the amended Statement of Claim, the Claimant contends that the Respondents were her employers. She contends that the 1<sup>st</sup> Respondent harassed her sexually in the course of the employment relation forcing her to tender her resignation.
10. In my view, the assertion by the Claimant that she had an employment relation with the Respondents provides sufficient basis for this court to assume jurisdiction over the dispute. The validity of this assertion is a different matter which can only be tested through evidence during full trial.
11. The foregoing notwithstanding, the court is alive to the fact that by Gazette Notice No. 6024 of 2018, the Chief Justice appointed magistrates of the rank of Senior Resident Magistrate to handle employment disputes where the employee's monthly salary is less than Ksh. 80,000.00. Therefore, even though this court has jurisdiction to entertain such disputes, there would be no reason to do so if there is a Magistrate's Court which can hear the case.
12. In the instant case, it is not in dispute that the Claimant's exit monthly salary was Ksh. 50,000.00. Therefore, her case can properly be entertained by the Chief Magistrate's court sitting in Nairobi. As such, I find no compelling reason why I should hear the case.

### **Determination**

13. Having regard to the foregoing, I arrive at the conclusion that the Claimant's decision to file her claim before this court amounted to an unwarranted choice of jurisdiction.
14. As such, I order that the case be remitted to the Chief Magistrate's Court, Milimani, Nairobi for hearing and determination.
15. Costs of the application and objection shall abide the outcome of the case.

**DATED, SIGNED AND DELIVERED ON THE 19<sup>TH</sup> DAY OF SEPTEMBER, 2024.**

**B. O. M. MANANI**

**JUDGE**

**In the presence of:**

..... for the Claimant



..... for the Respondent/Applicant

**ORDER**

In light of the directions issued on 12<sup>th</sup> July 2022 by her Ladyship, the Chief Justice with respect to online court proceedings, this decision has been delivered to the parties online with their consent, the parties 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.

**B. O. M MANANI**

