



**Moiki v Ragos Trading Company Ltd (Cause E478 of 2023)  
[2024] KEELRC 2649 (KLR) (31 October 2024) (Ruling)**

Neutral citation: [2024] KEELRC 2649 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E478 OF 2023  
S RADIDO, J  
OCTOBER 31, 2024**

**BETWEEN**

**HANDSON ONGONDI MOIKI ..... CLAIMANT**

**AND**

**RAGOS TRADING COMPANY LTD ..... RESPONDENT**

**RULING**

1. Handson Ongondi Moiko (the Claimant) sued Ragos Trading Co Ltd (the Respondent) alleging unfair termination of employment and breach of contract.
2. The Claimant also alleged violation of his constitutional rights to fair labour practices, fair administrative action, human dignity and equal protection of the law.
3. When served, the Respondent raised a Notice of Preliminary Objection contending that:
  - i. The Honourable Court lacks jurisdiction to entertain the suit herein pursuant to Gazette Notice Number 6024 published on 22/6/2018 by the Chief Justice: where the Chief Justice designated special Magistrate's Courts' to determine disputes where the employees' monthly pay does not exceed Kshs 80,000/-.
  - ii. The Honourable Court's jurisdiction in this matter can only be invoked through the appellate process.
4. The Claimant filed Grounds of Opposition primarily asserting that he was seeking the enforcement of his fundamental rights and freedom, which dispute a Magistrates Court did not have jurisdiction over.
5. The Respondent filed its submissions on 16 October 2024, and the Claimant on 22 October 2024.
6. The Court has considered the Objection, Grounds of Opposition and submissions.



7. By dint of Gazette Notice No 6024 of 2018, employment disputes where the Claimant was earning below Kshs 80,000/- per month have been delegated to the Senior Magistrates' Court. The Claimant was earning Kshs 27,585/- per month.
8. It is correct that the Claimant has pleaded violation of constitutional rights.
9. A glimpse of the Memorandum of Claim shows that the alleged violations of constitutional rights are in essence allegations of breaches of statutory and contractual rights, to wit, dismissal without giving reasons, failure to comply with procedural fairness requirements, failure to grant annual leave, overtime work without payment and failure to pay terminal dues.
10. In this Court's view, a mere enumeration of constitutional rights in the body of pleadings and an assertion that they have been violated cannot convert a statutory claim into a constitutional dispute.
11. The heads of claim advanced by the Claimant can all be remedied under statutory law without an application or interpretation of *the Constitution*.
12. The Court will therefore uphold the Preliminary Objection.

### **Orders**

13. The Notice of Preliminary Objection is upheld with an order that the Cause herein be transferred to the Chief Magistrates Milimani Commercial Courts, Nairobi for hearing and determination.
14. Costs in the cause.

**DELIVERED VIRTUALLY, DATED AND SIGNED IN NAIROBI ON THIS 31<sup>ST</sup> DAY OF OCTOBER 2024.**

### **Appearances**

**RADIDO STEPHEN, MCIARB**

**JUDGE**

For Claimant Kilenyet & Co. Advocates

For Respondent Oyugi & Co. Advocates

Court Assistant Wangu

