



**Mbom v Global Apparels Kenya EPZ (Miscellaneous Application
E142 of 2024) [2024] KEELRC 2627 (KLR) (25 October 2024) (Ruling)**

Neutral citation: [2024] KEELRC 2627 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
MISCELLANEOUS APPLICATION E142 OF 2024**

**SC RUTTO, J
OCTOBER 25, 2024**

BETWEEN

GRACE AKINYI MBOM APPLICANT

AND

GLOBAL APPARELS KENYA EPZ RESPONDENT

RULING

1. Vide a Notice of Motion dated 26th February 2024, the Applicant seeks to have the suit CMEL Case No. E1491 of 2023; Grace Akinyi Mbom vs Global Apparels Kenya EPZ filed at the Chief Magistrate’s Court at Milimani transferred to Mavoko Law Courts for hearing and determination. The Application is expressed to be brought under Section 3 of the *Employment and Labour Relations Court Act* No. 2 of 2011, Sections 18 1(b) (i) and, 1A and 3A of the *Civil Procedure Act* Cap 21 Laws of Kenya.
2. The Application is premised on the grounds set out therein and the Supporting Affidavit sworn on 26th February 2024, by Brenda Malombo, Counsel on record for the Applicant. Ms. Malombo avers that on 23rd August 2023, the Applicant filed a suit CMEL No. E1491 of 2023 in the Milimani Commercial Chief Magistrate’s Court in Nairobi County. They only realized that the Respondent company is situated in Athi River, Machakos County at the time of serving the Respondent with the summons to enter appearance. That the Chief Magistrate’s Court at Milimani has no jurisdiction to hear the said matter since the Respondent’s physical address is in Athi River Machakos County.
3. Counsel further deposes that the mistake on the part of the Applicant’s Advocates was not deliberate. That the Applicant is desirous to continue with the suit and prosecute the claim at the Mavoko Law Courts which has jurisdiction to entertain the suit as per the prayers in the Statement of Claim. It is in the best interest of justice that the said suit be transferred to the Court with the right jurisdiction for hearing and disposal. That no prejudice will be occasioned to the Respondent if the orders sought are granted.



4. In opposition to the Application, the Respondent through its Counsel on record filed a Notice of Preliminary Objection dated 25th June 2024 in which it raises the following grounds:
 1. That the Court has no jurisdiction to transfer the matter from a court of no jurisdiction to a court of competent jurisdiction.
 2. That the orders sought are untenable in law.
 3. That the application is bad in law and fatally/incurably defective.
5. The Application was canvassed by way of written submissions. On its part, the Respondent submitted that since the matter was instituted at Milimani Law Courts in Nairobi County which is outside its geographical residence in Athi River, Machakos County where the alleged cause of action arose, the Court therefore lacks jurisdiction as established under Section 15 of the *Civil Procedure Act*. In support of the Respondent's submissions, reliance was placed on the case of Owners of Motor Vessel Lilian "S" vs Caltex Kenya Limited (1998) KLR 1.
6. The Applicant did not file written submissions as the same were missing from the Court's physical record and the online portal.
7. I have considered the Application, the grounds in support thereof, the Respondent's Objection as well as the submissions on record and the issues that stand out for determination have been identified as follows:
 - a. Whether this court has jurisdiction to transfer the suit CMEL E1491 of 2023 Grace Akinyi Mbom vs Global Apparels Kenya EPZ from the Chief Magistrate's Court at Nairobi Milimani Commercial Courts to Mavoko Law Courts; And
 - b. Whether this Court should exercise its discretion in favour of the Applicant and transfer CMEL E1491 of 2023 Grace Akinyi Mbom vs Global Apparels Kenya EPZ from Nairobi Milimani Commercial Courts to Mavoko Law Courts for hearing and determination.
8. On the question of jurisdiction, the Respondent has posited that this Court lacks jurisdiction to transfer the matter from a court of no jurisdiction to a court of competent jurisdiction.
9. The main contention by the Respondent is that the suit was instituted at Milimani Law Courts in Nairobi County which is outside its geographical residence in Athi River, Machakos County. On this issue, I would do no better than adopting the dicta in Betty Nyamusi Machora vs Betty Nyanduko Makori [2018] eKLR where it was held as follows:

“In my view, section 15 of the CPA provides for the convenient forum of instituting a suit. It does not divest the magistrates court of jurisdiction, hence a defendant who is dissatisfied with the place where the suit has been filed is entitled to invoke section 18 of the CPA and apply to the High Court to transfer the suit to the appropriate forum. This position still obtains following repeal of the MCA. The Magistrates Court Act, 2015 provides for the jurisdiction of the Magistrates Court on the basis of subject matter and/or its value; it does not limit the territorial jurisdiction of the Magistrates Court.”
10. I agree with the above decision that Section 15 of the *Civil Procedure Act* provides for the convenient forum of instituting a suit and does not divest the magistrates' court of jurisdiction.



11. In light of the foregoing, it is this Court's view that the place of filing a suit does not go to the jurisdiction of the Court. As such, the filing of the suit in question at Nairobi Milimani Commercial Courts did not divest that Court of jurisdiction to entertain the matter.
12. In the circumstances, my finding on this issue is that the argument by the Respondent lacks merit.
13. That said, I now proceed to determine whether this court should exercise its discretion in favour of the Applicant and transfer the suit CMEL E1491 of 2023 Grace Akinyi Mbom vs Global Apparels Kenya EPZ from Nairobi Milimani Commercial Court to Mavoko Law Courts for hearing and determination
14. The power of this Court to transfer a case from one subordinate court to another is found in Section 18 of the *Civil Procedure Act* which is couched as follows:
 18. Power of High Court to withdraw and transfer case instituted in subordinate court (1) On the application of any of the parties and after notice to the parties and after hearing such of them as desire to be heard, or of its own motion without such notice, the High Court may at any stage—
 - (a) transfer any suit, appeal or other proceeding pending before it for trial or disposal to any court subordinate to it and competent to try or dispose of the same; or
 - (b) withdraw any suit or other proceeding pending in any court subordinate to it, and thereafter—
 - (i) try or dispose of the same; or
 - (ii) transfer the same for trial or disposal to any court subordinate to it and competent to try or dispose of the same; or
 - (iii) retransfer the same for trial or disposal to the court from which it was withdrawn.
15. A party seeking to transfer a suit has the burden of providing sufficient reasons as to why the transfer is merited. In this regard, the Court is vested with discretion to either grant or decline to grant the transfer.
16. This Court holds the view that in exercising the power under Section 18 aforementioned, it ought to be guided by its principle objective which is to facilitate the just, expeditious, efficient and proportionate resolution of disputes.
17. Pursuant to Section 15 of the *Civil Procedure Act*, a suit ought to be instituted in a court within the local limits of whose jurisdiction the defendant or each of the defendants at the time of the commencement of the suit actually and voluntarily resides or carries on business or personally works for gain or the cause of action, wholly or in part, arise.
18. Coming back to this case, it is not in dispute that the Respondent in CMEL E1491 of 2023 Grace Akinyi Mbom vs Global Apparels Kenya EPZ is situated in Athi River. This being an employment matter, it is highly probable that the contract of employment was being performed in Athi River, Machakos County hence the cause of action arose within the said locality.
19. Therefore, it follows that the suit ought to have been filed at Mavoko Law Courts as opposed to Nairobi Milimani Commercial Courts.



- 20. To this end, I am satisfied that by allowing the Application herein, this court will be furthering its principal objective as decreed under Section 3 of the Employment and Labour Relations Court Act. I have also considered the fact that the Respondent will not suffer prejudice should the matter be transferred and if anything, it will be more convenient for all parties and less costly.
- 21. For the above reasons, I hereby allow the Application dated February 26, 2024 and CMEL E1491 of 2023 Grace Akinyi Mbom vs Global Apparels Kenya EPZ is hereby transferred to Mavoko Law Courts for disposal.
- 22. With respect to costs, the Applicant having filed the suit in the wrong court will bear the costs of the Application.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 25TH DAY OF OCTOBER 2024.

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STELLA RUTTO
JUDGE

In the presence of:
Ms. Malombo for the Applicant
Mr. Ondimu for the Respondent
Millicent Kibet Court Assistant
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 had 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.

STELLA RUTTO
JUDGE

