



**Kimatu v East Meat Supplies Limited (Miscellaneous Application
E004 of 2024) [2024] KEELRC 2531 (KLR) (17 October 2024) (Ruling)**

Neutral citation: [2024] KEELRC 2531 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT ELDORET
MISCELLANEOUS APPLICATION E004 OF 2024
MA ONYANGO, J
OCTOBER 17, 2024**

BETWEEN

BENSON NZIOKA KIMATU APPLICANT

AND

EAST MEAT SUPPLIES LIMITED RESPONDENT

RULING

1. This ruling is in respect of a Notice of Motion dated 20th February 2024, and filed in court on 26th February 2024, seeking the following orders: -
 - a. That the suit filed by the Applicant against the Respondent being E&LRD No. E19 of 2023, Benson Nzioka Kimatu versus East Meat Supplies Limited be transferred therefrom to the Chief Magistrate Court of Kenya within Kajiado County for hearing and determination
 - b. That the costs of the Application be provided for
2. The application is premised on the following grounds: -
 1. That the Applicant herein instituted a suit against the Respondent before the Chief Magistrate Court at Eldoret vide a statement of claim dated 15th February 2023 seeking for:
 - a. A declaration that the Applicant's service was unprocedurally, unlawful and unfairly terminated in the circumstances the Applicant is entitled to compensation of her dues for the unfair termination and also payment of the Applicant's terminal dues.
 - b. Payment by the Respondent of the sum of kshs 507,466/= as pleaded in paragraph 15 of the statement of claim.
 - c. A certificate of service as per Section 51 of the *Employment Act*.
 - d. Costs and interest of this suit.



- e. Any other relief(s) this Honourable Court May deem just and fit to grant.
2. That the Respondent herein subsequently filed a preliminary objection on the 13th February 2023 objecting to the territorial jurisdiction of the Honourable Court to hear and determine the suit.
3. That the Honourable Magistrate Christine Menya, found merit in the preliminary objection and directed that the Claimant make an application to have the matter transferred to a court in Kajiado County, where the cause of action arose.
4. That being agreeable to the directions by the magistrate, the Applicant brings this application
5. That substantial loss and irreparable damage will result to the Applicants unless the Orders sought are granted.
6. That it is equitable and in the interest of Justice to grant the Orders sought.
3. The application is supported by the annexed affidavit sworn 20th February 2024 by Counsel Sammy M. Mathai, the Applicant's counsel who reiterated the contents in the grounds of the application. He further averred that since the cause of action arose in Kajiado County plus the Respondent herein is a resident of the said county, it is fit to have the matter transferred to a Chief Magistrate Court in Kajiado for expeditious hearing and determination.
4. In the Applicant's further affidavit dated 6th March 2024, a copy of the Statement of Claim and the trial court's ruling on the Respondent's preliminary objection dated 13th February 2023 were annexed.
5. The Respondent opposed the Application through grounds of opposition dated 20th March 2024 on the grounds that:
 - a. The application is fatally defective.
 - b. The preliminary objection by the Respondent in the Chief Magistrate's court case no. CM ELRC No. 19 of 2023 that the said court lacked jurisdiction in the matter was upheld.
 - c. This court lacks jurisdiction to transfer a suit which had been filed in a court without jurisdiction to a county with jurisdiction.
 - d. An order for transfer of a suit from one court to another cannot be made unless the suit has been brought, in the first instance, to a court which has jurisdiction to try it
 - e. The filing of this application is a hallmark of abuse of court process.
 - f. The application is an abuse of process, is frivolous, is vexatious and a waste of judicial time.
 - g. The application was canvassed by way of written submissions. The Applicant filed submissions dated 6th May 2024 and the Respondent filed submissions dated 23rd April 2024.

Applicant's submissions

5. The Applicant, while placing reliance in the case of *Hangzhou Agrochemicals Industries Ltd v Panda Flowers Ltd* (2012) eKLR submitted that he has demonstrated that he meets the conditions for transfer of the suit to a court of competent jurisdiction within Kajiado County. It is his submission that the Respondent is based in Kajiado and having this matter transferred there for hearing and determination is more convenient, cost effective and will ensure that no hardship is experienced by the parties herein.



Respondent Submissions

6. On its part, the Respondent identified the main issue for determination to be whether this court is clothed with the requisite jurisdiction to transfer a suit which had been filed without jurisdiction to a court which has jurisdiction.
7. The Respondent opposed the transfer of CMELRC NO. E19 OF 2023 to Kajiado County by arguing that the court cannot exercise the discretionary power conferred upon it by section 18 of the *Civil Procedure Act* to transfer suits filed in courts lacking jurisdiction to a court with the competent jurisdiction. In support of this position, the Respondent cited the cases of *Equity Bank Limited v Bruce Mutie Mutuku t/a Diani Tour & Travel* (2016) eKLR, *Abraham Mwangi Wamigwi v Simon Mbiriri Wanjiku & Another* (2012) eKLR and *Albert Chaurembo Mumba & 7others v Maurice Munyao & 148 Others* (2019) eKLR.
8. In urging the court to dismiss the suit, the Respondent submitted that a suit initiated without proper jurisdiction stands devoid of legal validity, rendering a nullity.
9. Consequently, the Respondent sought to have the application dated 20th February 2024 dismissed with costs.

Determination

10. I have considered the application, the grounds of opposition and the submissions of parties on record and I find that the issue for determination is whether the Applicant has demonstrated good reasons to warrant transfer of Eldoret CMELRC NO. E19 of 2023 to Kajiado County for hearing.
11. The jurisdiction of the High Court and Courts of equal status to transfer suit from one Subordinate Court to another is provided for under Section 18 of the *Civil Procedure Act* as follows:
 - “a “(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: -
 - b. try or dispose of the same; or
 - c. transfer the same for trial or disposal to any court subordinate to it and competent to try or dispose of the same; or
 - d. retransfer the same for trial or disposal to the court from which it was withdrawn.
 - e. (2) Where any suit or proceeding has been transferred or withdrawn as aforesaid, the court which thereafter tries such suit may, subject to any special directions in the case of an order of transfer, either retry it or proceed from the point at which it was transferred or withdrawn.”



12. The power to transfer a suit is therefore discretionary and a party seeking to transfer a matter from one court to another has the burden of providing sufficient reasons as to why the transfer is merited.
13. Section 15 of the *Civil Procedure Act* stipulates: -

“Subject to the limitations aforesaid, every suit shall be instituted in a court within the local limits of whose jurisdiction—

- a. the defendant or each of the defendants (where there are more than one) at the time of the commencement of the suit, actually and voluntarily resides or carries on business, or personally works for gain; or
- b. any of the defendants (where there are more than one) at the time of the commencement of the suit, actually and voluntarily resides or carries on business, or personally works for gain, provided either the leave of the court is given, or the defendants who do not reside or carry on business, or personally work for gain, as aforesaid acquiesce in such institution; or
- c. the cause of action, wholly or in part, arises

14. In the case of *Francis Kibugi Wanjohi v Kenya Railways Corporation* [2021] eKLR, this court held; -

“a.

“In view of the above, it is my finding that adopting the proposal by the Respondent would go against the above provisions. The Applicant would be forced to file new pleadings that would force him to pay court fees again. He would then incur costs of serving the Respondent again. It could get worse if the claim is now time-barred the Claimant's case will have been dismissed without him having his day in court even though he had approached the Court timeously. This, in my view, goes against the above provisions and the emerging jurisprudence that cases ought to be heard and determined on the merits. The upshot is that the instant application succeeds.”

15. On perusal of the Notice of Motion, the affidavit in support as well as the further affidavit, and the grounds of opposition to the order on transfer of suit, I find that parties do not dispute that the matter fell within the jurisdiction of the courts in Kajiado County as the respondent resides and conducts business in Kitengela area within Kajiado County.
16. The Respondent has vehemently opposed the application to transfer of Eldoret CMELRC No. E19 of 2023 arguing that the court has no jurisdiction to transfer a suit which had been file without jurisdiction to a court which has jurisdiction.
17. Section 1A (1) of the *Civil Procedure Act* provides that the overriding objective of the Act and the rules made thereunder is to facilitate the just, expeditious, proportionate and affordable resolution of the civil disputes governed by the Act. Section 1B(1) of the said Act provides as follows-

“a.

“For the purpose of furthering the overriding objective specified in section 1A, the Court shall handle all matters presented before it for the purpose of attaining the following aims-

- a. the just determination of the proceedings;
- b. the efficient disposal of the business of the Court;



- c. the efficient use of the available judicial and administrative resources;
 - d. the timely disposal of the proceedings, and all other proceedings in the Court, at a cost affordable by the respective parties; and
 - e. the use of suitable technology.”
18. Flowing from the above, and noting that the Respondent resides and carries on business in Kitengela in Kajiado County, I hold that it is in the interest of justice to transfer Eldoret CMELRC No. E19 of 2023 to the Kajiado Magistrates’ court which is within Kajiado County for hearing and determination in accordance to the provisions of Section 18(1)(a) of the *Civil Procedure Act*.
19. It is material that the court where the suit was filed did not strike out the case but directed the applicant to come to a court with jurisdiction to transfer the case to the court with territorial jurisdiction. Those orders have not been set aside and which this court has been approached to give effect to.
20. Consequently, I allow the application dated 20th February 2024 and direct that Eldoret CMELRC No. E019 of 2023 be transferred to Kajiado Chief Magistrates’ court for hearing and disposal.
21. As for costs, the Applicant having necessitated the filing of the instant application, will meet the costs of this application.
22. Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY ON

THIS 17TH DAY OF OCTOBER 2024

MAUREEN ONYANGO

JUDGE

