



**Ayara v Kenya Power & Lighting Company Limited (Cause E068 of 2024)
[2024] KEELRC 13235 (KLR) (26 November 2024) (Ruling)**

Neutral citation: [2024] KEELRC 13235 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
CAUSE E068 OF 2024
JK GAKERI, J
NOVEMBER 26, 2024**

BETWEEN

ZILPA AUMA AYARA CLAIMANT

AND

THE KENYA POWER & LIGHTING COMPANY LIMITED RESPONDENT

RULING

1. Before the Court for determination is the Respondent's Notice of Preliminary Objection herein after Preliminary Objection dated 23rd October, 2024 that:
 1. The Court lacks jurisdiction to hear and determine the instant suit as the cause of action arose in Nairobi County within the jurisdiction of the Employment and Labour Relations Court at Nairobi.
 2. The Respondent and Claimant are domiciled in Nairobi County.
 3. There is no reasonable justification for filing the suit at the ELRC Kisumu as it contravenes Articles 48, 50(1), 159(2)(e) of *the Constitution* as read with Sections 3(1), 12(1) and 29(1) of the *Employment and Labour Relations Court Act*.
 4. The memorandum of claim dated 26th August, 2024 against the Respondent together with all consequential orders sought by the Claimant ought to be struck out with costs.
2. By a Replying Affidavit sworn by the claim on 28th October, 2024, the affiant deposes that she took retirement on 6th April, 2024 and had since moved to Ahero within Kisumu County which is under the jurisdiction of this Court.
3. That it was not true that she resides in Nairobi and the Court has jurisdiction to hear and determine the suit.



4. The affiant deposes that the statement of claim and other pleadings were served on the Respondent on 26th August, 2024 and were duly received and stamped by the Respondent and it filed a Response on 17th September, 2024.
5. That when the matter came up for pre-trial on 1st October, 2024 and a hearing date was fixed with leave to comply as the Respondent had not, it proceeded to file a Preliminary Objection on frivolous grounds in a bid to delay the hearing of the suit.
6. The affiant deposes that the Preliminary Objection is an afterthought as the Respondent had time to file the same but waited until the suit was set for hearing and the hearing date was close and had not demonstrated the prejudice it stands to suffer if the suit is heard by the Employment and Labour Relations Court in Kisumu and in any case the hearing is necessary.
That transfer of the suit to Nairobi will only delay the matter.
7. The affiant deposes that she is currently unemployed and is not in a position to meet the costs of travelling to Nairobi and prays for dismissal of the Preliminary Objection with costs.
8. Counsels canvassed the submissions orally in court on 5th November, 2024.

Respondent's Submissions

9. Owano for the Respondent submitted that the Preliminary Objection challenges the Court's jurisdiction because the cause of action arose in Nairobi and the Claimant resides there, as disclosed in the Memorandum of Claim.
10. Counsel cited the Articles of *the Constitution* and provisions of the *Employment and Labour Relations Court Act* relied upon as well as Rule 6 of the Employment and Labour Relations Court (Procedure) Rules, 2024 on the place of suing.
11. Counsel submitted that having indicated her residence in the suit, the change was an afterthought and it is therefore unclear as to where the Claimant resided.
12. Reliance was made on the decisions in LSK *Nairobi Branch V Malindi Law Society & Others Civil Appeal No. 287 of 2016*, and Korea Nyamai V Neema Parcels Ltd [2021] eKLR.

Claimant's Submissions

13. Onyango for the Claimant submitted that the Preliminary Objection is frivolous and intended to delay the matter and was silent on the Sections relied upon under the Rules.
14. Counsel submitted that the Claimant did not have to reside in Nairobi and the relevant rule does not state where the applicant resides and his law firm is based in Nairobi and the Claimant uses their address and no prejudice has been demonstrated and the Respondent was not challenging the competency of the Court and proceedings will be on-line at no cost.
15. Counsel prayed for dismissal of the Preliminary Objection for the matter to proceed.
16. In a rejoinder, Owano referred the Court to paragraph I of the Claimants memorandum of claim.
17. It is trite law that jurisdiction is everything as held in Owner of the Motor Vessel "Lilian S" V Caltex Oil (Kenya) Ltd [1989] eKLR and the Court must satisfy itself it has jurisdiction before proceeding with a matter before it.



18. For purposes of Article 162(2)(a) of *the Constitution* of Kenya and the provisions of Section 12 of the *Employment and Labour Relations Court Act*, this Court has jurisdiction to hear and determine employment and labour relations dispute arising in any part of Kenya as neither Article 162(2)(a) of *the Constitution* of Kenya nor Section 12 of the Employment and Labour Relations court territorially limit the Courts jurisdiction.
19. The foregoing is fortified by the holding of The Supreme Court in Samuel Kamau V Macharia & Another V Kenya Commercial Bank & Others [2012] eKLR, thus:

“ A Courts jurisdiction flows from either *the Constitution* or legislation or both. Thus, a Court of law can only exercise jurisdiction as conferred by *the Constitution* or to her written law...”
20. However, consistent with Article 48 of *the Constitution* of Kenya and to ensure access, efficient, effective and expeditious administration of justice the Employment and Labour Relations Court has stations and sub-registries in various towns in Kenya and the territory of Kenya is divided into a geographical regions served by different stations such as Nairobi, Nyeri, Nakuru, Eldoret and Kisumu.
21. Relatedly, the question of territorial jurisdiction of this Court seldom arises for the reason adverted to elsewhere in this ruling, coupled with the fact that proceedings are predominantly virtual and involve minimal costs.
22. While the Court has jurisdictions and would have heard and determined the suit, it behooves the Court to determine the Respondent’s Preliminary Objection.
23. The Respondent cites three grounds, namely, cause of action arose in Nairobi, this Court lacks jurisdiction and no justification has been provided for filing the suit in Kisumu.
24. It is correct for the Respondent to argue that the cause of action arose in Nairobi as that’s the residence of the Respondent and the Claimant was its employee and confirmed as much in her averments.
25. On territorial jurisdiction, the Court is not persuaded that it has no jurisdiction in the strict sense of the term jurisdiction.
26. However, the foregoing notwithstanding, the Respondent submitted that the Claimants residence remains unknown as she has indicated both Kisumu and Nairobi in her documents.
27. While the memorandum of claim dated 26th August, 2024 stated that she resides in Nairobi within the Republic of Kenya, the Replying Affidavit sworn on 28th October, 2024 deposes that she has since moved to Ahero within the County of Kisumu.
28. Regrettably, the Claimant has not indicated when she moved to Ahero.
29. This is material because the suit was filed barely two months earlier having taken early retirement in April, 2024.
30. Did the Claimant relocate from Nairobi to Ahero having confirmed that her residence was Nairobi about two months earlier or was the move temporal or seasonal?
31. These are circumstances the Claimant ought to have given an account of in the Replying Affidavit.
32. Significantly, Rule 6(1) of the Employment and Labour Relations Court (Procedure) Rules, 2024 provides that;
 1. Proceedings before the Court shall be instituted at the Court’s registry or sub-registry with respect to the county where—



the claimant, petitioner or applicant, at the time of commencement of the proceedings, actually and voluntarily resides or carries on business or personally works for gain; or (b) the cause of action, wholly or in part, arise

(a) The foregoing Rule is clear on the determinative factors in the initiation of a suit before the Employment and Labour Relations Court these are; the actual and voluntary place of residence work place of business or where the cause of action arose wholly or in part “at the time of commencement of the proceedings”

33. In this case, the relevant consideration is the Claimant’s residence at the time of commencement of the proceedings.
34. Bearing in mind that the memorandum of claim was filed on 27th August, 2024 at 13:46pm and the Claimant expressly stated on 26th August, 2024, that she was residing in Nairobi within the Republic of Kenya, and has not deponed that she had moved to Ahero in Kisumu County by 27th August, 2024, the suit ought to have been filed at the Employment and Labour Relations Court at Nairobi as opposed to Kisumu in consonance with Rule 6(1)(a) of the Employment and Labour Relations Court (Procedure) Rules, 2024.
35. The Claimant has not proved that her actual and voluntary place of residence on 27th August, 2024 was Ahero in Kisumu County.
36. Clearly, the proceedings had already commenced by the time the Claimant swore the Replying Affidavit on 28th October, 2024.
37. Consequently, KISUMU ELRCC NO. E068 OF 2024 be and is hereby transferred to the Employment and Labour Relations Court at Nairobi for hearing and determination.
38. There shall be no orders as to costs.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KISUMU ON THIS 26TH DAY OF NOVEMBER, 2024.

DR. JACOB GAKERI

JUDGE

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 has 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.

