



Karanja v Lake Naivasha Crescent Camp Limited (Employment and Labour Relations Cause E042 of 2024) [2024] KEELRC 13406 (KLR) (6 December 2024) (Ruling)

Neutral citation: [2024] KEELRC 13406 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU
EMPLOYMENT AND LABOUR RELATIONS CAUSE E042 OF 2024**

**AN MWAURE, J
DECEMBER 6, 2024**

BETWEEN

ISAAC MAINA KARANJA CLAIMANT

AND

LAKE NAIVASHA CRESCENT CAMP LIMITED RESPONDENT

RULING

Introduction

1. The Claimant instituted this claim vide a memorandum of claim dated 1st July 2024 praying for:
 - i. A declaration that the Respondent's decision to terminate him from employment was un-procedural and irregular amounting to unfair termination.
 - ii. Unpaid commission Kshs.1,583,886/=
 - iii. Salary arrears for April, 2024 Kshs.75,000/=
 - iv. One-month salary in lieu of notice Kshs.75,000/=
 - v. Service Gratuity for 6 years Kshs.225,000/=
 - vi. General Damages/compensation for unlawful termination Kshs.900,000/=
 - vii. Number of days worked in May, 2024 Kshs.40,000/=
 - viii. Certificate of service
 - ix. Interests at court rate in (ii), (iii), (iv), (v), (vi) and (vii) above from the date of unfair termination until payment in full
 - x. The immediate and unconditional release of the illegally withheld laptops to the claimant



- xii. Any other order that the court may deem fit to grant.
2. The Claimant avers that he was employed as a Sales and Marketing Executive Manager on a renewed contract for two years from 1st January 2023 to 1st January 2025.
3. The Claimant avers that he was earning Kshs.75,000/= per month plus a 10% Sale Commission.
4. The Claimant avers that he was unfairly terminated in May 2024.
5. The Respondent filed a Notice of Preliminary Objection dated 7th August 2024 on the following grounds:
 1. The Honourable Court lacks jurisdiction to entertain the suit herein pursuant to Gazette Notice Number 6024 published on 22/06/2018 by the Chief Justice where the Chief Justice designated special magistrates courts to determine disputes where the employee's monthly pay does not exceed Kshs.80,000/=.
 2. The Honourable Court's jurisdiction in this matter can only be invoked through the appellate process.
6. The Claimant opposed the Preliminary objection by filing grounds of opposition dated 6th September 2024 on the following grounds:
 1. The Gazette Notice No. 6024 of 2018 did not oust the jurisdiction of this Honourable Court to hear and determine the instant dispute.
 2. The Claimant has pleaded entitlement to a salary and commission exceeding Kshs. 80,000/= which forms the basis of this matter.
 3. The matters of salary and unpaid commissions are factual in nature and can only be determined after a full hearing of the instant matter.
 4. The Preliminary Objection is therefore without merit and should be dismissed with costs.
6. The Notice of Preliminary Objection was canvassed by way of written submissions.

Respondent's submissions

7. The Respondent cited section 29 (3) of the Employment and Labour Court Act Cap E provides that the Chief Justice by notice in the Gazette appointed certain magistrates to handle employment and labour relations cases with respect to area of the county.
8. Section 29(4) of the Employment and Labour Act, Cap E, states that, subject to Article 169(2)(a) of *the Constitution*, magistrates appointed under subsection (3) above have jurisdiction to handle employment-related offences as defined in any Act of Parliament related to employment and labour relations. Additionally, they can manage other disputes assigned by the Chief Justice in a Gazette Notice, based on the advice of the Principal Judge.
9. The Respondent cited section 9(b) of the Magistrate's Court Act, which states that the court has the authority to exercise its jurisdiction, as outlined in section 29 of the *Employment and Labour Relations Court Act*, to handle and resolve employment and labour disputes within the pecuniary limits specified in section 7(1).



10. The Respondent submitted that the Chief Justice issued [Legal Notice No. 6024 of 2018](#), appointing Senior Resident Magistrates and above as special Magistrates to handle employment cases where the employee's monthly pay does not exceed Ksh.80,000/=.
11. It is in the Respondent's submissions that such disputes are to be heard by subordinate courts and can only be brought to the Honourable Court through the appellate process.
12. The Respondent submitted that the suit herein involves a claimant who is earning a salary of Kshs.75,000/=, thus it falls under the jurisdiction of the Magistrates' Court.
13. The Respondent submitted that the Claimant argues that his salary plus commissions exceeded Kshs.80,000/= are deemed misleading.
14. The Respondent also submitted that the Claimant's pleadings differentiate commission from salary, stating a salary of Ksh.75,000/=. This is consistent across the claim, including paragraphs 4, 11, and 14, where salary-related damages and compensation are all based on Ksh.75,000/=.
15. The Respondent submitted that this court's jurisdiction can only be invoked during the appeal process, and therefore, the claim herein should be dismissed.
16. The Respondent relied on the case of *Nyandege V Ekaterra Tea Kenya Plc [2023] KEELRC 3351 (KLR)* where the court noted that the claimant's salary was Kshs.33,115/= at the time of termination and had not been disputed. Based on the gazette notice, the claim should have been lodged in the lower court. As a result, the court found the preliminary objection had merit and struck out the claim with costs.

Claimant's submissions

17. The Claimant cited the case of *Mukhisa Biscuits Manufactory Ltd V West End Distributors Ltd [1969] EA 696* where the court held that a preliminary objection must purely raise matters of law only.
18. The Claimant submitted that he was entitled to a monthly salary of Kshs.75,000/= plus a 10% sales commission which by the time of termination amounted to Kshs. 1,583,886/=.
19. The Claimant submitted that the issue of remuneration is a factual matter that needs to be proven through evidence during the hearing as it was held in *Anne Muchunu V NRS Sacco Society Ltd [2022] eKLR*.
20. The Claimant further submitted that Gazette Notice No. 6024 of 2018 does not affect the jurisdiction of the Employment and Labour Relations Court as section 4 of the [Employment and Labour Relations Court Act](#) vests this court with exclusive original jurisdiction over employment disputes as spelt out in section 12 of the [Employment and Labour Relations Court Act](#).
21. In *Kenya Plantation & Agricultural Workers Union V Primarosa Flowers Ltd[2023] eKLR* the court stated that it has exclusive and unlimited original and appellate jurisdiction over such matters and the legal notice that attempted to give concurrent jurisdiction to specific magistracy was not valid.
22. The Claimant urged this Honourable Court to dismiss the Preliminary Objection with costs.

Analysis and determination

23. The main issue of determination is whether the Preliminary Objection dated 7th August 2024 is merited.



24. In *Mukhisa Biscuits Manufactory Ltd V West End Distributors Ltd* (supra) the Court of Appeal held as follows:

“a preliminary objection consists of a point of law which has been pleaded or which arises by clear implication out of pleadings and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the jurisdiction of the Court or a plea of limitation or a submission that the parties are bound by the contract giving rise to the suit example being to refer the dispute to arbitration ... a preliminary objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion.”

25. In this particular case, the claimant alleges that he was unfairly and unlawfully terminated from his employment. He states that he was earning Kshs.75,000 plus 10% sale commission which amounted to Kshs.82,500/= which is over Kshs.80,000/= according to the Gazette Notice 6024 of 22nd June 2018.

26. Even if the Claimant was earning less than Kshs.80,000/=, this Honourable Court has exclusive original and appellate jurisdiction to hear and determine all disputes referred to it in accordance with Article 162(2) of *the Constitution* as set out in section 12 of the Employment and Labour Relation Court Act.

27. In *Owners of the Motor Vessel “Lillian S” V Caltex Oil (Kenya) Ltd* [1989] eKLR the Court of Appeal held as follows:

“Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law down tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.”

28. The case of *Kenya Plantation & Agricultural Workers Union -VS Primarosa Flowers Ltd* (2023) the court held:-

“My understanding of the above provisions of the Law is that this Court has exclusive and unlimited original and appellate jurisdiction in hearing and determination of the matters enlisted in the above provisions of the Law. What the Legal Notice alluded to above did, and which forms the basis of the PO by the Respondent, is that it gave concurrent jurisdiction to specific magistracy on matters spelt out in the said notice....”

29. In view of the foregoing, this Honourable Court clearly has jurisdiction to hear and determine this matter. This court could as well transfer the case to the magistrates’ court but because of the commissions which the claimant is claiming the court prefers to proceed with the case as it is and determine the same on merits.

30. The preliminary objection dated 7th August 2024 therefore is found to lack merits and it is dismissed.

31. Costs will be in the main suit.

Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY IN NAKURU THIS 6TH DAY OF DECEMBER, 2024.

ANNA NGIBUINI MWAURE



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 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.

A signed copy will be availed to each party upon payment of Court fees.

ANNA NGIBUINI MWAURE

JUDGE

