



**Mburu v KPMG Kenya (Cause 690 of 2017)  
[2023] KEELRC 97 (KLR) (20 January 2023) (Ruling)**

Neutral citation: [2023] KEELRC 97 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE 690 OF 2017  
SC RUTTO, J  
JANUARY 20, 2023**

**BETWEEN**

**DAVID MWANGI MBURU ..... CLAIMANT**

**AND**

**KPMG KENYA ..... RESPONDENT**

**RULING**

1. What comes up for determination is the Respondents' preliminary objection dated July 27, 2022. The Objection is premised on the following grounds: -
  - a. The Honourable Court does not have jurisdiction to determine the dispute herein under section 12 of the *Employment and Labour Relations Court Act* as there was never an employer employee relationship between the parties herein.
  - b. Without prejudice to ground (a) above, the claimant's claim, being based on defamation/libel, is time barred by virtue of the provisions of section 4(2) of the *Limitation of Actions Act*, having been filed more than one year after the alleged libel.
  - c. The suit is fatally defective and is for dismissal with costs to the respondent.
2. The preliminary objection was canvassed by written submissions. The claimant urged that the matter which was initially filed in the High Court being Milimani HCCC 367 of 2011, was transferred to this Court suo motu by Mbogholi Msagha J (as he then was). Indeed, I have perused the record and note that the matter which was pending at the High Court at Milimani since August 30, 2011, was



transferred to the Employment and Labour Relations Court on April 6, 2017 through an order of the Court. The Ruling reads in part:

“I note that this is a labour dispute. I order that this case file be transferred to the Employment and Labour Relations Court for hearing and determination.”

3. Notably, from the time the order was issued by the Court, the Respondent did not seek a review of the Court’s order transferring the suit to this court. Be that as it may, I have carefully considered the pleadings by both parties and note that the subject matter giving rise to this dispute has no bearing at all to employment and labour relations matters as contemplated under Article 162(2) (a) of the Constitution and section 12 of the Employment and Labour Relations Court Act.
4. Therefore, the matter falls outside the jurisdiction of this Court. I say so because the crux of the claimant’s case is that the Respondent maliciously printed and published certain information concerning himself which he says was untrue. To this end, the claimant has made reference to a report titled “Forensic Investigation Report for the Intercontinental Hotel, Nairobi factual findings draft report” which was allegedly prepared by the Respondent. He avers that the said report contains information which is factually incorrect.
5. In addition, the claimant has attributed his loss of employment to what he terms as malicious and injurious falsehood made by the Respondent against him.
6. It is instructive to note that the Respondent has been sued in its capacity as the Audit Firm that undertook the said forensic investigation.
7. It is worth noting that the claimant has not challenged his termination from employment through the instant suit. As stated herein, his only contention in that regard, is that the Respondent’s Forensic Investigation Report, which he has termed as having been maliciously printed and published, contributed to his termination from employment.
8. In light of the foregoing, it is evident that this Court lacks jurisdiction to entertain the matter herein and it is only just and fair that the same be heard and determined by the High Court which is clothed with the requisite jurisdiction.
9. Ultimately, the Objection by the Respondent is sustained and it is hereby ordered that the matter be transmitted back to the High Court for hearing and determination. The matter to be placed for further directions before the Presiding Judge, Civil Division, High Court.
10. There shall be no orders as to costs.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 20<sup>TH</sup> DAY OF JANUARY, 2023.**

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**STELLA RUTTO**

**JUDGE**

**Appearance:**

**For the Claimant Mr. Kamunya**

**For the Respondent Mr. Omino**

**Court Assistant Abdimalik Hussein**

**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 15<sup>th</sup> March 2020 and subsequent directions of 21<sup>st</sup> 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**

