



**Nyakundi & others v Veew Distributors Ltd (Cause E742 of 2022)
[2023] KEELRC 867 (KLR) (31 March 2023) (Ruling)**

Neutral citation: [2023] KEELRC 867 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E742 OF 2022
AN MWAURE, J
MARCH 31, 2023**

BETWEEN

WILFRED NYAKUNDI & OTHERS CLAIMANT

AND

VEEW DISTRIBUTORS LTD RESPONDENT

RULING

1. The respondent has filed a preliminary objection dated November 10, 2023 sitting that claimant used to earn kshs 21,000 per month and therefore falls short of courts pecuniary jurisdiction.
2. He also avers that there is no clarity who is the claimant since the pleadings simply read Wilfred Nyakundi & Others and then introduces another claimant as Andriano Mangi.
3. He also says claimant lacks privity of contract with the respondent.
4. The claimant opposed the preliminary objection and averred the honorable court has jurisdiction to hear this matter as per section 10 and 28 of employment and labour relations (procedure) rule 2016.
5. He further says the claimants are Wilfred Nyakundi and Others include Adrian Mangi. He prays the preliminary objection therefore be dismissed.
6. The Preliminary objection by the respondent is addressing jurisdiction on the matter of pecuniary jurisdiction since his salary was kshs 21,000 at the time of termination.
7. The gazette notice No 6024 of June 2018 denotes the subordinate court power to deal with employment and labour relations cases within their respective areas of jurisdiction for disputes not exceeding kshs 80,000/- per month.



8. This provision did not however take away the jurisdiction of Labour Relations Court (High Court) to hear and determine cases of employment and labour relations as provided in section 12 of *Employment and Labour Relations Court Act*.
9. However for the sake of doing things in a tidy manner and in compliance with gazette notice 6024 of 2018 referred hereinbefore and appreciating the backlog in the ELRC (High Court) there is no ban to transferring cases with relevant pecuniary status to the subordinate courts.
10. Hence the court holds that even though it has jurisdiction to still hear this case however let the same be transferred to the lower court. The case no 742 of 2022 is hereby referred to the Chief Magistrates Court for hearing and determination.
11. The claimants have not quoted the co claimant at the header of his claim but has quoted him in the pleadings. The claimants are acting in person and since the courts are focused on dispensing justice without undue technicality as provided in article 159(2)(d) of the *Constitution* the claimants can insert the name of the next claimant on the heading and remove the words and another. The court has so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 31ST DAY OF MARCH 2023.

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

