



**Ndung'u v Fapcl Group (Miscellaneous Application E111 of 2022)
[2023] KEELRC 634 (KLR) (17 March 2023) (Ruling)**

Neutral citation: [2023] KEELRC 634 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
MISCELLANEOUS APPLICATION E111 OF 2022**

J RIKA, J

MARCH 17, 2023

BETWEEN

BILL NDUNG'U APPLICANT

AND

FAPCL GROUP RESPONDENT

RULING

1. The Applicant seeks transfer of his Claim C.M.E.L No 216 of 2020, from the Chief Magistrate's Court to the E&LRC.
2. The reason for transfer is that the Claimant earned a monthly salary of more than Kshs 80,000, placing his Claim beyond the jurisdiction of the Chief Magistrate's Court.
3. The Application, dated August 2, 2022, is supported by the Affidavit of Counsel for the Applicant, sworn on the same date. It is supported further by the Claimant's Affidavit, sworn on September 22, 2022. He explains that filing at the Chief Magistrate's Court was through inadvertence. The Applicant invokes Article 159 [2] [d] of the *Constitution*, which stipulates that justice shall be administered without undue regard to procedural technicalities.
4. The Respondent is opposed to the Application. Its Group Chief Executive Officer, Martin Dias, swore the Replying Affidavit on September 19, 2022.
5. He explains that the Claimant resigned on October 10, 2019. He was paid all his benefits, cleared and discharged the Respondent. The Claim before the Chief Magistrate's Court is incompetent and this Court does not have jurisdiction to transfer the Claim, under Section 18 of the *Civil Procedure Act*. That Claim is a nullity ab initio, and is not capable of being transferred.
6. Parties agreed to have the Application determined on the strength of their Affidavits and Submissions on record. They confirmed filing and exchange of Submissions at the last mention on March 3, 2023.



Court Findings

7. There are two legal positions as expressed by the Parties, on transfer of matters from one Court to another, on account of jurisdiction. It is argued of the one part, that in the interest of justice, and going by Article 159 [2] [d] of the *Constitution*, a Claim filed at the wrong jurisdiction ought to be transferred to the right jurisdiction, rather than being struck out for want of jurisdiction at the Court which it was presented. The alternative thinking adopted by the Respondent, is that the Claim filed in the wrong jurisdiction is a nullity, and the Courts cannot transfer a nullity to any other jurisdiction.
8. The Court expressed its view on this, in Mombasa E&LRC Miscellaneous Application No. 13 of 2019, *Kenya Plantation and Agricultural Workers Union v. Cargill Kenya Limited & Another*.
9. The Claim before the wrong jurisdiction ought to be transferred in the interest of justice and on the strength of Article 159[2] [b] of the *Constitution*, read with Sections 3 and 12 [3][viii] of the *E&LRC Act*. A Claim is not defeated simply because it has been presented by error, in the wrong Court. Fair administration of justice allows the Court to rectify the error, by placing the Claim at the right forum. Jurisdiction of the E&LRC to transfer Claims, was explained in the above decision.
10. It is ordered: -
 - a. C.M.E.L No. 216 of 2020 between the Parties herein, is transferred to the E&LRC Nairobi for trial and disposal.
 - b. Costs in the cause.

DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY AT NAIROBI, THIS 17TH DAY OF MARCH 2023.

JAMES RIKA

JUDGE

