



**Isico Holdings Ltd v Atsali (Miscellaneous Application
E008 of 2022) [2023] KEELRC 537 (KLR) (3 March 2023) (Ruling)**

Neutral citation: [2023] KEELRC 537 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MERU
MISCELLANEOUS APPLICATION E008 OF 2022
ON MAKAU, J
MARCH 3, 2023**

BETWEEN

ISICO HOLDINGS LTD APPLICANT

AND

HERMAN KISIAVUKI ATSALI RESPONDENT

RULING

1. This ruling relates to the Notice of Motion dated September 21, 2022 seeking the following orders:-
 1. That this honourable court be pleased to certify this application as urgent and dispense with service in the first instance.
 2. That this honourable court be pleased to order stay of proceedings in the ELRC CASE no L62 of 2022 at Nakuru Chief Magistrate's court pending the hearing and determination of this application.
 3. That this honourable court be pleased to order the withdrawal and transfer of ELRC CASE no L62 of 2022 at Nakuru Chief Magistrate's court to Meru ELRC CHIEF Magistrate's Court for hearing and disposal.
 4. That the costs of this application be borne by the respondent.
2. The application is supported by the affidavit sworn by the applicants director, Mr Gerald Mwenda on the even date. The main grounds for the application are that the cause of action in the material suit arose in Meru county where the respondent was working until his retirement; that the applicant operates its business in Meru county; and that the respondent ought to have filed his suit within Meru county and not Nakuru county.



3. The respondent has opposed the application vide his Replying Affidavit sworn on October 4, 2022 in which he deposes that he filed the suit in Nakuru because he cannot afford to pay his advocate the fees to travel all the way to Meru to file the suit there when he is acting for him pro bono.
4. He further deposes that the suit will proceed virtually and therefore the applicant will not suffer any prejudice. Besides he deposes that by dint of section 7 of the *Magistrates Act*, the Magistrates court has jurisdiction to hear claims related Employment and Labour Relations subject to pecuniary limits under the Act. He concluded that he will suffer prejudice if the application is allowed because he is no longer in gainful employment.

Submissions

5. It was submitted for the applicant that the respondents suit should be transferred to Meru where the cause of action arose and where the applicant operates its business. Reliance was placed on section 15 of the *Civil Procedure Act* which provides that every suit shall be instituted in a court within the local jurisdiction where the defendant resides, or carries on business or personally works. Reliance was also placed on section 17 and 18 of the Act which empowers the court to transfer a suit from one court to another to hear and determine the dispute.
6. It was further submitted that the Resident Magistrate court where the suit is filed has no pecuniary jurisdiction to handle the claim since it is for kshs 6,590,000.00 and the court's jurisdiction pursuant to section 7 of the Magistrate's Act is kshs 5,000,000.00.
7. Finally it was submitted that the applicants are all based in Meru and as such it will cost for the respondent to transport them all the way to Nakuru for the hearing. Therefore it is in the interest of justice to transfer the suit to Meru.
8. It was submitted for the respondent that the proceeding in the respondent's suit at Nakuru should not be stayed and cited several judicial precedents that support the view that stay of proceedings is a grave matter that affects the parties rights to accessing justice and to be heard in their case.
9. Further it was submitted that the applicant had raised a preliminary objection on April 14, 2022 seeking for striking out of the suit on ground that the Nakuru court had no territorial jurisdiction but the objection was dismissed on ground that Magistrate court has jurisdiction over Employment and Labour Relations court by dint of section 7 of the Magistrate's court Act subject to the pecuniary limits under the Act.
10. Finally it was submitted that the applicant has not satisfied the court that the orders sought should be granted. Consequently, the court was urged to dismiss the application with costs.

Determination

11. The issues for determination is whether the applicant has demonstrated sufficient grounds warranting transfer of the respondent's suit from the Chief Magistrate's Court Nakuru to Meru Chief Magistrate's Court.
12. The relevant law in this dispute is section 15 of the *Civil Procedure Rules* which provides that:-
 - a. The defendant or each of the defendants (where there are more than one) at the time of the commencement of the suit, actually and voluntarily resides or carries on business, or personally work for gain, or



- b. Any of the defendant's (where there are more than one) at the time of commencement of the suit, actually and voluntarily resides or carry on business or personally work for gain, provided wither the leave of the court is given or the defendants who do not reside or carry on business, or personally work for gain, as aforesaid acquiesce in such action; or
 - c. The cause of action, wholly or in part arises.
13. Considering the above express provision it is clear that the location where a suit can be instituted depends on:-
- a. The place of residence, work or business operation for the defendant;
 - b. the place where the cause of action arose;
 - c. Court's leave or defendants acquiescence or waiver.
14. In the instant case the respondent has not demonstrated existence of the above factors to warrant his suit to be heard in Nakuru which is hundreds of kilometers from Meru County where the cause of action arose and also where the applicant herein resides and operates its business. The respondent has alluded to the fact that the applicant has not acquiesced to the suit being filed in Nakuru and that it had indeed raised a preliminary objection on the jurisdiction of the said court.
15. The law is clear about the place where every party wishing to institute suits should go to. In this case I am satisfied that the applicant has demonstrated sufficient grounds warranting withdrawal of the ELRC Cause no L62 of 2022 from Nakuru Chief Magistrates Court and transferring it to Meru Chief Magistrates Court for hearing and determination. The respondent is condemned to pay costs of this application to the applicant.

DATED, SIGNED AND DELIVERED AT NYERI THIS 3RD DAY OF MARCH, 2023.

ONESMUS N MAKAU

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 April 2020, this ruling has been delivered to the parties online with their consent, the parties having waived compliance with Rule 28 (3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

ONESMUS N MAKAU

JUDGE

