



**Kudheiha Workers Union v Pinewood Beach Resort & Spa (Cause E013 of 2023) [2023] KEELRC 1204 (KLR) (27 April 2023) (Ruling)**

Neutral citation: [2023] KEELRC 1204 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA  
CAUSE E013 OF 2023**

**M MBARŪ, J  
APRIL 27, 2023**

**BETWEEN**

**KUDHEIHA WORKERS UNION ..... CLAIMANT**

**AND**

**PINEWOOD BEACH RESORT & SPA ..... RESPONDENT**

**RULING**

1. The claimant filed the Memorandum of Claim on March 7, 2023 and in response, the respondent filed Notice of Preliminary Objections on the grounds that;

The court lacks jurisdiction to entertain this claim by virtue of Section 29(3) and (4) of the *Employment and Labour Relations Court Act*, 2011 and Gazette Notice 6024

Both parties attended and made oral submission.

2. The respondent submitted that the claims made by the claimant for its members are based on the provisions of the *Employment Act*, 2007 and not the *Labour Relations Act* and therefore these are not labour relations claims. Following the Chief Justice Gazette Notice No 6024, all claims relating to an employee earning a wage below Ksh 80,000 should be filed at the Magistrates Court and not this court. the claimant has lodged the claim herein seeking to represent employees who were earning between Ksh 30,000 to Ksh 40,000 and the claims relates to dismissal from employment and such matters should have been filed before the lower court and this court has no jurisdiction.
3. Special Magistrates have been gazetted to hear employment cases and the suit herein should not be heard by this court.
4. The claimant submitted that there is a trade dispute between the parties after parties were unable to agree during conciliation, the matter was reported to the conciliator but there was no agreement. A trade dispute is defined under the *Labour Relations Act*, 2007 (LRA) as one where the claimant



can represent its members. The cause of action arose following massive dismissals of employees by the respondent which gave this court the jurisdiction to hear and determine the suit herein and the objection by the respondent should be dismissed.

5. The Chief Justice is mandated under the provisions of Section 29 of the *Employment and Labour Relations Court Act*, 2011 to secure the right to access to justice protected under Article 48 of the *Constitution*, 2010 by ensuring reasonable and progressive access to judicial services in all counties and for this purpose, through a Gazette Notice, the Chief Justice appointed magistrates to preside over cases involving employment and labour relations in their area of jurisdiction.
6. The appointment of magistrates to preside over employment and labour relations claims does not remove the primary and original jurisdiction of the court to hear and determine such claims pursuant to Article 162(2)(a) of the *Constitution*.
7. In this regard, the Chief Justice published practice directions on 22nd June, 2018 vide Kenya Gazette Notice No.6024 dated 10th June, 2018 and allowing the following;

Disputes arising from contracts of employment (excluding trade disputes under the *Labour Relations Act*, 2007) where employees gross monthly pay does not exceed Kshs 80,000.00 as commenced and continued in accordance with the Employment and Labour Relations Court (Procedure) Rules, 2016. [Underline added].

8. These practice directions were to ensure the court retained its original jurisdiction over employment and labour relations matters by allowing litigant's access to justice with small claims except for trade disputes under the provisions of the LRA.

What then is an employment dispute as against a trade dispute?

Under the LRA, a trade dispute is defined under Section 2 to mean;

“trade dispute” means a dispute or difference, or an apprehended dispute or difference, between employers and employees, between employers and trade unions, or between an employers' organisation and employees or trade unions, concerning any employment matter, and includes disputes regarding the dismissal, suspension or redundancy of employees, allocation of work or the recognition of a trade union;

9. The main factor is a dispute in the realm of an employer and trade union or employers' association and a trade union.
10. All disputes filed by or against a trade union or employer association and federation constituted under the provisions of the LRA forms part of a trade dispute unlike a claim filed by any other party.
11. The original jurisdiction of the court to hear employment and labour relations dispute does not diminish. For administration and access to justice, magistrates are allowed to attend and hear employment disputes within a given monetary limit. Jurisdiction is for labour dispute and not trade disputes within the meaning of the LRA which are addressed by trade union such as the claimant herein.<sup>b</sup>This is aptly address in the case of *Watson Burugu v Attorney General & 2 others* [2021] eKLR and in *Law Society of Kenya Nairobi Branch v Malindi Law Society & 6 others* [2017] eKLR that;

... conferring jurisdiction on magistrates' courts to hear and determine does not diminish the specialization of the specialized courts considering that appeals from the magistrates' courts over those matters lie with the specialized courts. As urged by Mr Kanjama, under the doctrine of judicial precedent, the decisions of the specialized courts would bind the



magistrates' courts and the specialized courts would therefore undoubtedly imprint the "specialized jurisprudence" on the magistrate's courts

12. In the Memorandum of Claim filed on March 7, 2023 the claimant is defined as a registered trade union under the provisions of the LRA. The claim herein is filed for and on behalf of the claimant members who were in the employment and the respondent. the determining factor being that the claimant is regulated under the LRA to attend and file suit for and on behalf of its members and hence defined as a trade dispute, one between an employer and the trade union. Such a dispute is specifically removed from the mandate of a magistrate pursuant to Gazette Notice No 6024 of June 10, 2018. All trade dispute and suits filed by a trade union should be initiated with the court.
13. Objections by the respondent are without merit, this being a trade dispute, this court has jurisdiction. The Respondent shall pay costs.
14. The respondent is given 14 days respond to the claim and serve the claimant. Pleadings shall close within the next 21 days and parties shall attend on May 29, 2023 for taking hearing directions.

**DELIVERED IN OPEN COURT AT MOMBASA THIS 27<sup>TH</sup> DAY OF APRIL, 2023.**

**M MBARŪ**

**JUDGE**

**In the presence of:**

**Court Assistant: Japhet Muthaine**

.....and.....

