



**Omondi v Ark Constuction Ltd (Cause E488 of 2022)
[2023] KEELRC 857 (KLR) (6 April 2023) (Ruling)**

Neutral citation: [2023] KEELRC 857 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E488 OF 2022
AN MWAURE, J
APRIL 6, 2023**

BETWEEN

MICHAEL OTIENO OMONDI CLAIMANT

AND

ARK CONSTUCTION LTD RESPONDENT

RULING

1. The claimant has filed an application vide a notice of motion dated October 19, 2022.
2. The claimant is praying that ELRC Cause No 488 of 2022 be transferred from Employment and Labour Relations Court to the Chief Magistrate’s Court and further that costs be in the cause.
3. The deponent Francis Kioko avers that he prepared a memorandum of claim dated 8/7/2022 and annexed receipts FK1 and FK2 of Judiciary E filing platform and paid the filing fees.
4. He further says the cause of action arose between April 2018 to 13/7/2019 whereby respondent had employed the claimant at a salary of Kshs 21,600/-.
5. He says respondent unfairly terminated the claimant.
6. He says the salary qualified this suit to be filed in the subordinate court but his legal assistant file it in the High Court erroneously.
7. He says when they discover the error they wrote to the deputy registrar asking for a mention de in order to transfer the suit to the subordinate as per the gazette notice no 6024 of June 22, 2018.
8. He says he served the respondent with the mention notice but the respondent went ahead and field a notice of appearance.
9. He prays the suit to be transferred to the subordinate court for trial and determination.



10. The respondent in his grounds of opposition avers the prayer to transfer the suit from this court to the Chief Magistrate’s Court is not supported on any provision of law and so states the notice of motion of October 19, 2022 is defective and unfounded on any law.
11. The respondent is relying on the case No 39, 40, 41, 44, 52 and 53 of 2019 [Vincent Mwatsuma Ngunya vs Kilifi Mariakama Water & Sewerage Co Ltd](#) where court held that:

“It is the duty of the parties to ensure suits are filed in the right court.”
12. The court has considered his application for a transfer of the suit to the Chief Magistrate’s Court. The suit was filed around July 2022 but was erroneously filed in the High Court instead of Subordinate Court. The pecuniary jurisdiction of the Subordinate Court in employment matters is Kshs 80,000. The claimant salary was kshs 21,600/-.
13. The claimant was quick to take action as early as July 10, 2022 requesting to mention the case before the Deputy Registrar to transfer the suit to the Subordinate Court.
14. The court finds the claimant has been diligent in correcting the mistake made by his office. Mistakes happen all the time and it is commendable the claimant is keen to correct the same as soon as he discovered it.
15. The court finds no prejudice will be suffered by the respondent in transferring the suit to the Subordinate Court.
16. The court is also well aware that courts are to dispense justice urgently and without undue regard to technicalities as provided in article 159 (2) (d) of the [Kenya Constitution](#).
17. The court is inclined to grant the order prayed in the notice of motion dated October 19, 2022 and so transfers suit no 488 of 2022 to the Chief Magistrates Court.
18. Costs will be in the cause.
Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 6TH DAY OF APRIL 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 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.

A signed copy will be availed to each party upon payment of Court fees.

ANNA NGIBUINI MWAURE



JUDGE

