



**Kenya Plantation & Agricultural Workers Union v Primarosa Flowers Limited  
(Cause 7 of 2022) [2023] KEELRC 1565 (KLR) (25 May 2023) (Ruling)**

Neutral citation: [2023] KEELRC 1565 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU  
CAUSE 7 OF 2022  
DN NDERITU, J  
MAY 25, 2023**

**BETWEEN  
KENYA PLANTATION & AGRICULTURAL WORKERS UNION .. CLAIMANT  
AND  
PRIMAROSA FLOWERS LIMITED ..... RESPONDENT**

**RULING**

**I. Introduction**

1. In a memorandum of claim dated February 18, 2022 and filed in court on February 25, 2022, the claimant acting for and on behalf of one James Kiriungi Mithamo, the grievant, prayed for the following –
  1. An order directing the respondent to do the following;
    - a. To unconditionally reinstate the grievant herein;
    - b. To pay the grievant for the entire period within which he was dismissed;
    - c. To pay the grievant in respect of all the leave days due to him at the time of reinstatement;
  2. Should prayer 1 above fail, an order directing the respondent to do the following:-
    - a. Pay the grievant gratuity for the years he has served with the respondent at the rates provided for in the CBA;
    - b. Pay the grievant monthly salary for a period of twelve(12) months;
    - c. Pay the grievant in lieu of leave
    - d. Pay the grievant travelling allowance;



- e. Pay the grievant an equivalent of two months' salary in lieu of notice of termination;
  - f. Pay the grievant damages for unlawful, illegal and unfair dismissal;
  - g. Pay the grievant overtime of 35 hours;
  - h. Pay the grievant the costs of the cause;
  - i. Certificate of service;
  - j. Interest on(a), (b), (c), (d), (e), (f), (g), and (h) above
  - k. Any other relief this honourable court deems fit to grant.
2. The respondent entered appearance on June 6, 2022, through Odinga Oboge & Company Advocates, and filed a statement in response to the claim on June 1, 2022. In the said response to the claim the respondent raised an objection to the jurisdiction of this court to hear and determine the cause. Further, the respondent filed a notice of preliminary objection (PO) dated June 21, 2022 raising the following single preliminary issue –
1. That this honourable court lacks jurisdiction to hear and determine this claim as it is filed contrary to the provisions of gazette notice No 6024 of 2018.
  3. When the matter came up in court for directions on September 21, 2022, Miss Omwaka for the claimant, and Mr Odhiambo for the respondent, on the directions of the court, agreed that the PO be disposed of first by way of written submissions.
  4. Counsel for the respondent filed his submissions in support of the PO on October 17, 2022 while counsel for the claimant filed her submissions in opposition to the PO on October 21, 2022.
  5. Besides the written submissions the claimant filed a replying affidavit by Thomas Kipkemboi sworn on July 13, 2022 in opposition to the PO.

## ii. Submissions by Respondent's Counsel

6. Counsel argues that vide gazette notice No 6024 of June 10, 2018, the Chief Justice (CJ), pursuant to section 29(3) of the *Employment and Labour Relations Court*, appointed specific magistrates to hear and determine employment and labour disputes within their respective areas of jurisdiction limited to claims wherein gross monthly salary of the employee does not exceed Kshs 80,000/=. Since the undisputed gross monthly salary of the grievant herein, as at the time of dismissal, was Kshs 43,531/= counsel argues that this court has no jurisdiction over this matter and that the same ought to have been filed in the appropriate lower court for hearing and determination. He argues that this claim is null and void *ab initio*.
7. Counsel has cited *Owners of Motor Vessel "Lilian S" v Caltex Oil (Kenya) Ltd* (1989) eKLR and *Samuel Kamau Macharia v Kenya Commercial Bank Limited & 2 others* (2012) eKLR in emphasizing the primary and elementary importance of jurisdiction for any court to hear and determine a matter. Without jurisdiction a court has no business in the proceedings and all or any orders made without jurisdiction are mere nullities. Mutatis mutandis, upon a court appreciating its lack of jurisdiction in a matter, such a court must down its tools and take no more one step in the matter.
8. Counsel has cited *Rajiv Shem Sabisa v Limuru Water & Sewerage Co Ltd* (2021) eKLR wherein the court ordered transfer of the cause to the lower court for hearing and determination as the gross monthly salary of the claimant was below Kshs 80,000/= and as such a lower court had jurisdiction over the matter.



9. On the basis of the foregoing, counsel has urged this court to strike out this cause with costs to the respondent.

### iii. Submissions by Claimant's Counsel

10. Counsel argues that the cause relates to a trade dispute which is outside the jurisdiction of the lower courts under the referenced gazette notice. Counsel argues that while the gross monthly salary of the grievant was Kshs 43,531/= as at the time of dismissal, well below the limit of Kshs 80,000/= and hence within the range for the lower court, the lower court would have no jurisdiction over the matter as the same concerns a trade dispute. Counsel has cited *Benta Achieng Odinyo v University of Nairobi* (2021) eKLR in support of this argument.
11. For the foregoing reasons, mainly that the subject matter of this cause is a trade dispute, counsel urges the court to dismiss the PO with costs.

### iv. Determination

12. Upon careful consideration and analysis of the pleadings, evidence, and submissions from counsel for both parties, there is only one issue for determination by this court – should the PO by the respondent be upheld and hence this cause be struck out for lack of jurisdiction?
13. The holdings in *Owners of Motor Vessel "Lilian S" v Caltex Oil (Kenya) Ltd* (supra) and *Samuel Kamau Macharia v Kenya Commercial Bank & others* (supra) spell out the sanctity of a court in having jurisdiction over the subject matter before engaging in hearing and determining the issues in dispute. Even then, if a court indulges in hearing a matter but at some point realizes that it has no jurisdiction it has to down its tools and take no one more step as any orders made without jurisdiction are mere nullities. A PO on lack of jurisdiction may be raised at any point during the life of a matter. Once raised it is advisable for a court to determine the issue of jurisdiction before taking any further step(s) in the matter.
14. As it was held in the above two novel decisions, the jurisdiction of a court flows from the *Constitution*, statutes, or both. No court shall design or craft its own jurisdiction as such a move shall be null and void.
15. The respondent has raised a PO on jurisdiction at the earliest opportunity, before the hearing commences, and this court directed that the issue be disposed of first. A proper PO raises points of law which if successful should dispose of the matter – See *Mukhisa Biscuits Manufacturing Limited v West End Distributors Ltd* (1969) EA 696, *Oraro v Mbaja* (2005) eKLR and, *JN & 5 others v Board of Management of St George School Nairobi & another* (2017) eKLR.
16. This court belongs to the school of thought that where a court has no jurisdiction over the subject matter, such a court has no jurisdiction to make any order other than that of dismissal or striking out of the cause. A court without jurisdiction has no powers to order transfer of a cause in which it has no jurisdiction. The argument that a court without jurisdiction can “administratively” order or direct the transfer of a matter from itself to the court that has jurisdiction is superfluous and flawed. A court of law shall always act and operate within the law. It does not matter whether the action or order of transfer is administrative or judicial. The order or act by the court must always be within the provisions of the law, and where a court has no jurisdiction it has no business making any orders or directions, especially that of transfer, as such orders and or directions are mere nullities.
17. From the foregoing, if this court finds that it has no jurisdiction over the subject matter of this cause, then there is only one option available, the striking out of the cause with costs.



18. This court (ELRC) is established under section 4 of the [Employment and Labour Relations Court Act](#) pursuant to article 162(2) of the [Constitution](#). The exclusive original and appellate jurisdiction of the court to hear and determine all disputes relating to employment and labour disputes is spelt out in section 12 of the said Act.
19. My understanding of the above provisions of the law is that this court has exclusive and unlimited original and appellate jurisdiction in hearing and determination of the matters enlisted in the above provisions of the law. What the legal notice alluded to above did, and which forms the basis of the PO by the respondent, is that it gave concurrent jurisdiction to specific magistracy on matters spelt out in the said notice. Those matters are, *inter alia*, where the gross monthly salary of the employee does not exceed Kshs 80,000/= and the issues do not relate to trade disputes as defined under the [Labour Relations Act](#).
20. The [Labour Relations Act](#) defines a trade dispute as – “a dispute or difference, or apprehended dispute or difference, between employers and employees, between employers and trade unions, or between employers’ organization and employees or trade unions, concerning any employment matter, and includes disputes regarding the dismissal, suspension or redundancy of employees, allocation of work or recognition of a trade union.”
21. The [Black’s Law Dictionary](#), tenth edition, defines a trade dispute as “a dispute between an employer and employees over pay, working conditions, or other employment-related matters.”
22. My understanding of the above two definitions of a trade dispute is that a trade dispute involves more numbers than a single employee having a dispute with an employer. A trade dispute involves a large number of employees agitating or disputing the terms and conditions of employment with their employer by themselves or through their union. A trade dispute could also involve a trade union, on behalf of many employees, and an employer or employers’ organization. The dispute affects or involves a large number of employees in a sector or industry that is likely to affect that sector or industry in a detrimental way if not resolved as soon as practically possible.
23. The dispute or issues in this cause concern and involve one person, the grievant, against the employer, the respondent. Without a doubt the dispute in this cause is not and does not qualify as a trade dispute. It is an employment dispute between a single employee and the employer and hence the submission by counsel for the claimant that this cause is about a trade dispute is not only misleading but also wrong.
24. As noted above what the gazette notice donated to the magistracy from the rank of Senior Resident Magistrate is concurrent jurisdiction with this court to hear and determine employment and labour relations disputes where the gross monthly salary of the claimant or grievant does not exceed Kshs 80,000/=. This does not mean that this court lacks during over such matters. The jurisdiction created to the magistracy is concurrent to that of this court in those specific disputes.
25. For the foregoing reasons, the PO by the respondent is not well taken as this court has jurisdiction to hear and determine this cause while at the same time, it may transfer the matter to an appropriate magistrate’s court for hearing and determination. The submissions by counsel for the respondent on this issue are wrong and misleading. In *Rajiv Shem Sabisa v Limuru Water & Sewerage Company Ltd* (supra) the court did not rule that the judge had no jurisdiction to hear and determine the matter but rather administratively transferred the matter to the lower court which also had jurisdiction. That was done within the law as the order of transfer was made by a court that had jurisdiction to hear and determine the cause as well. This is the same issue that was tackled by Nduma J in [John Adoyo & others v De La Rue Currency and Security Print Limited](#) (2022) eKLR wherein the judge so ably distinguished



instances of concurrent jurisdiction from those of lack of jurisdiction. In the latter, a court cannot order a transfer of the cause as it lacks jurisdiction ab initio.

26. For all the foregoing reasons, the PO by the respondent is devoid of merits and the same is dismissed with costs in the cause.
27. The claimant has taken the option to have the matter heard and determined in this court. While it would make administrative sense for a party to file a cause in the lowest court with jurisdiction, it does not mean that a cause filed in the higher court is without jurisdiction if the higher court has concurrent jurisdiction as the matter may proceed for hearing in either court. He who files and proceeds in the higher court runs the risk of punitive costs in the event that the cause does not succeed.

**v. Orders**

- a. The preliminary objection by the respondent lacks merits and the same is hereby dismissed with costs in the cause.
- b. The cause shall proceed to hearing and determination in this court (ELRC).

**DATED, DELIVERED VIRTUALLY, AND SIGNED AT NAKURU THIS 25<sup>TH</sup> DAY OF MAY 2023**

.....

**DAVID NDERITU**

**JUDGE**

