



REPUBLIC OF KENYA



**KENYA LAW**  
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**Muchunu v NRS Sacco Society Limited (Cause E422 of 2022)  
[2023] KEELRC 1488 (KLR) (13 June 2023) (Ruling)**

Neutral citation: [2023] KEELRC 1488 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E422 OF 2022  
AN MWAURE, J  
JUNE 13, 2023**

**BETWEEN**

**ANN WANGUI MUCHUNU ..... PLAINTIFF**

**AND**

**NRS SACCO SOCIETY LIMITED ..... RESPONDENT**

**RULING**

1. The claimant instituted this claim on the 20/06/2022 claiming to have been unlawfully and unfairly terminated vide the termination letter dated the June 7, 2019. The claimant averred that she was employed on the 13/02/2018 as the BDAM vide a contract of even date. She says that her job description at the time included business development and HR which fell under administrative part. She was offered a gross pay of ksh 44,000. 00 made up of a basic pay of ksh 37,000.00 and an 18 % housing allowance of ksh 7,000.
2. She says that on the November 1, 2018 her salary was upscaled to ksh 68,970 basic and 20 % house allowance making a gross pay of ksh 82,764.00 which was not backdated at the time of her employment.
3. The Respondent filed the notice of preliminary objection dated the 26<sup>th</sup> day of July 2022 which is to the effect that;
  - a. The honourable court lacks jurisdiction to hear and determine this suit.

**Respondent's submissions**

4. The preliminary objection was canvassed by way of written submissions.
5. The respondent contends that the claimant at the material time of the alleged cause of action was earning the gross sum of ksh 48,100.00 which is below the pecuniary threshold of the High Court Employment & Labour Relations Court.



6. The respondent says that the pecuniary jurisdiction of this suit lies with the Magistrates Court pursuant to Gazette Notice Number 6024 of the June 22, 2018 whereby Magistrates of the rank of Senior Resident Magistrates and above are appointed by the Chief Justice as special Magistrates to hear and determine employment and labour relations cases their respective jurisdiction which include inter alia disputes arising from contracts of employment where employees gross monthly pay does not exceed ksh 80,000.00.
7. The respondent relied on the case of *Rajiv Shem Sabisa v Limuru Water and Sewerage Co Ltd* [2021]eKLR where the honourable court stated that ‘the court agrees with the respondent and takes judicial notice that the chief justice gazetted magistrates of the rank of Senior Resident and above to determine employment disputes where the employee’s salary is below ksh 80,000. The claimant was earning ksh 19,500 per month. Consequently, by dint of the said gazette notice, the suit herein ought to be heard and determined by the subordinate court.
8. The respondent further relied on the case of *Philip Muiruri Ndaruga v Gatemu Housing Co Ltd* [2019]eKLR where the court quoted the case of *Speaker of the National Assembly v James Njenga Karume* [1992] eKLR (2008) 1 KLR (EP) 428 and said that ‘where there is a clear procedure for the redress of any particular grievance prescribed by the constitution or an Act of Parliament, that procedure must be strictly followed.
9. The respondent argues that in this instance the claimant’s gross monthly income at the material time based on their own pleadings was ksh 48,100.00, which did not exceed the ksh 80,000.00 and as such she ought to have instituted this suit before the chief magistrate’s court.
10. The claimant/respondent contends that she was employed as a BDO, and was earning a gross salary of ksh 44,000.00. That upon her confirmation in September 2018, the respondent’s board noted an underpayment and made a recommendation to pay her ksh 68,970.00 basic pay. The house allowance at the time was at the rate of 20% and so total salary was ksh 82,764.00. The claimant was therefore entitled to a salary that was above the jurisdictional threshold which merits the filing of the suit in this court

### **Determination**

11. I have considered the rival submissions of the parties herein. The preliminary objection centres around the amount of salary that was payable to the claimant, and whether the court has jurisdiction in light of what is provided under gazette notice Number 6024 of June 22, 2018.
12. In my view, this is a factual matter that can only be determined upon hearing the parties as per the *Mukisa Biscuits Manufacturing Ltd v West End Distributors Ltd* [1969] EA 969.
13. According to the above case the court held that a preliminary objection consists of a point of law which has been pleaded or which arises by clear implication out of pleadings and which if agreed is a preliminary point may dispose of the suit.
14. The issue of the amount of salary of an employee is not a point of law as it has to be proved upon hearing of the suit. The claimant in his statement of claim avers her salary at termination was kshs 82,764/- and so had passed the threshold of kshs 80,000/-.
15. The court finds the issue raised by the respondent therefore does not qualify as per the principles of a preliminary objection. The same is therefore not merited and in any event this court has jurisdiction under section 12 of *Employment and Labour Relations Court act* to hear all Labour and Employment disputes. The Chief Justice’s gazette notice was meant just to unclog the backlog of cases heard in the



High Court but not to take away the court's jurisdiction. Therefore the preliminary objection dated July 26, 2022 is dismissed with costs to be in the cause.

Orders accordingly.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 13TH DAY OF JUNE, 2023**

**ANNA N. 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 March 15, 2020 and subsequent directions of 21<sup>st</sup> 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.

**ANNA N. MWAURE**

**JUDGE**

