



REPUBLIC OF KENYA



**KENYA LAW**  
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**Ndinda v Blue Ridge Medical Limited (Employment and Labour Relations Cause E044 of 2023) [2023] KEELRC 1904 (KLR) (27 July 2023) (Ruling)**

Neutral citation: [2023] KEELRC 1904 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
EMPLOYMENT AND LABOUR RELATIONS CAUSE E044 OF 2023**

**L NDOLO, J  
JULY 27, 2023**

**BETWEEN**

**CAROLINE NDINDA ..... APPLICANT**

**AND**

**BLUE RIDGE MEDICAL LIMITED ..... RESPONDENT**

**RULING**

1. The applicant's notice of motion dated February 28, 2023 seeks the following orders:
  - a. Transfer of MCELRC No E1784 of 2021 from Milimani Chief Magistrate's Court to this Court;
  - b. The aforesaid MCELRC No E1784 of 2021 to proceed from the point of transfer being hearing of Notice of Motion dated September 23, 2022 seeking to amend the Statement of Claim dated October 14, 2021.
2. The application is supported by an affidavit sworn by the Applicant's Counsel, Anthony Masila and is premised on the following grounds:
  - a. The Applicant filed MCELRC No E1784 of 2021 on October 14, 2021, seeking damages for unfair termination;
  - b. The Applicant now wishes to amend the Statement of Claim to include damages for violation of her constitutional rights and has since filed a Notice of Motion dated September 23, 2022 to amend the Statement of Claim;
  - c. However, the Magistrate's Court lacks jurisdiction to hear and determine claims for violation of constitutional rights in labour disputes;



- d. Section 18 of the *Civil Procedure Act* confers on this Court the power to transfer any suit or other proceeding pending in any court subordinate to it, and thereafter try and dispose of the suit;
  - e. Transferring the matter to this Court to enable the Applicant to pursue the claim for violation of her constitutional rights will avoid filing of multiplicity of suits and promote the overriding objectives of this Court.
3. The Respondent's response is contained in a Replying Affidavit sworn by Waleed El-Haddad who describes himself as a Director of the Respondent Company.
  4. El-Haddad depones that parties are yet to take directions before the Magistrate's Court on the application for leave to amend the claim.
  5. The Respondent takes the view that the application for transfer of the suit is based on a wish to amend the claim rather than transfer an existing claim.
  6. El-Haddad further depones that the claim at the Magistrate's Court is an incomplete claim incapable of being transferred. He states that the right procedure would be to withdraw the matter at the Magistrate's Court and file a fresh suit in this Court.
  7. According to the Respondent, the Magistrate's Court is fully clothed with jurisdiction to hear and determine the matter.
  8. By her application, the Applicant asks this Court to take over a matter pending before the Magistrate's Court because that Court lacks jurisdiction to hear claims touching on violation of constitutional rights.
  9. This application is problematic on two fronts; first, as it stands there is no claim for violation of constitutional rights pending before the Magistrate's Court; what exists is an application for leave to amend the claim to include alleged violation of constitutional rights. Second, even if such a claim was in place and if the Court were to agree that the Magistrate's Court lacks jurisdiction, it is now well settled that a suit filed in the wrong court is incompetent and cannot be transferred (see *Albert Chaurembo Mumba & 7 others v Maurice Munyao & 148 others [2019] eKLR*).
  10. Whichever lens one wears, this application cannot succeed and is therefore disallowed with no order for costs.
  11. Orders accordingly.

**DELIVERED VIRTUALLY AT NAIROBI THIS 27<sup>TH</sup> DAY OF JULY 2023**

**LINNET NDOLO**

**JUDGE**

Appearance:

Mr. Masila for the Applicant

Miss Maranya h/b for Mr. Hassan for the Respondent

NBI. ELRC. NO. E044 of 2023	0
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