



Mugaduka v Emmerging Ecomm Ventures Inc Limited (Cause E017 of 2023) [2023] KEELRC 1940 (KLR) (27 July 2023) (Ruling)

Neutral citation: [2023] KEELRC 1940 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
CAUSE E017 OF 2023**

**M MBARÚ, J
JULY 27, 2023**

BETWEEN

VENESSA MUGADUKA CLAIMANT

AND

EMMERGING ECOMM VENTURES INC LIMITED RESPONDENT

RULING

1. The ruling herein relates to Preliminary Objections by the respondent dated April 14, 2023 on the grounds that the;

1. This Honourable Court lacks jurisdiction to hear and determine this matter by virtue of the express provisions of Section 15 of the [Civil Procedure Act](#), CAP 21. The said Section provides that;

Other suits to be instituted where defendant resides or cause of action arises Subject to the limitations aforesaid, every suit shall be instituted in a court within the local limits of whose jurisdiction –

- a. the defendant or each of the defendants (where there are more than one) at the time of the commencement of the suit, actually and voluntarily resides or carries on business, or personally works for gain; or
- b. any of the defendants (where there are more than one) at the time of the commencement of the suit, actually and voluntarily resides or carries on business, or personally works for gain, provided either the leave of the court is given, or the defendants who do not reside or carry on business, or personally work for gain, as aforesaid acquiesce in such institution; or
- c. the cause of action, wholly or in part, arises.



2. The Respondent's principal office is located in Nairobi from where it carries on business. (See annexure marked 'EEV – A' for a certified copy of the Respondent's CR 12)
3. The Respondent, at all material times, had contracted the Claimant to perform her employment duties from the Respondent's principal office in Nairobi County.
4. This Honourable Court lacks jurisdiction to hear and determine this matter by virtue of the fact that;
 - a. The Respondent's principal office is located outside the territorial jurisdiction of this Court; and
 - b. The cause of action arose outside the territorial jurisdiction of this Court since the employment contract was made and performed in Nairobi. The Claimant did not perform any functions within the territorial jurisdiction of this Court. (c) Neither party resides or carries on business within the territorial jurisdiction of this Court.
5. This Honourable Court, therefore, lack jurisdiction to hear and determine the dispute hence the Claimant's Memorandum of Claim should be dismissed with costs to the Respondent.

2. In response, the claimant filed her Replying Affidavit and aver that she was working in Nairobi and Coast regions as her employment contract can confirm. She would make trips from Nairobi to Mombasa by preparing a route plan and the respondent would facilitate the same but said route plan is not accessible since the respondent has blocked access. The claimant worked for the respondent in Mombasa to market products and the objections made should be dismissed with costs.

Parties attended court and agreed to file written submissions.

3. The respondent submitted that its principal office is in Nairobi where it carries business and contracted the claimant to perform her duties from the principal office in Nairobi outside the jurisdiction of this court. In the case of *Phoenix EA Assurance Company Limited v SM Thiga t/a Newspaper Service [2019] eKLR* the court held that jurisdiction is primordial in every suit and has to be there when a suit is filed in the first place. If there is no jurisdiction, the remedy is to withdraw it.

The claim herein is filed outside the territorial jurisdiction of Nairobi County and should be dismissed with costs.

4. The claimant submitted that the respondent's objections fail to meet the threshold set in *Mukisa Biscuit Manufacturing Limited v West End Distributors [1969] EA* that such objections must be purely on points of law. The respondent has its business office in Nairobi but transact business in other parts of the country such as Mombasa and the claimant was working in Nairobi and Mombasa as stated in the employment contract that from November 1, 2022 to September 30, 2023 the claimant would work as Retail Load – Nairobi & Coast regions. The court has jurisdiction and the objections should be dismissed with costs.

Determination

5. The sole issue is whether the court has territorial jurisdiction to hear and determine the claim herein. The court is established pursuant to Article 162(2)(a) of the *Constitution* of Kenya, 2010 to hear and determine employment and labour relations disputes. The court has original jurisdiction.



Pursuant to Section 29(2) of the *Employment and Labour Relations Court Act*, 2011, the Chief Justice may designate a Judge in a county as a Judge for the purposes of this Act. This is purely in terms of access to justice and to ensure that parties seeking to be heard in terms of employment and labour relations disputes are heard without delay.

6. Wherever sitting, the court has original jurisdiction under the *Constitution*, where a cause of action arises within the Republic of Kenya, the court is granted jurisdiction and for expediency, there is a court station at Mombasa and other designated locations by the Chief Justice in terms of the constitutive legislation of the court, the *Employment and Labour Relations Court Act*, 2011 which is subsidiary to the Constitutional mandate.

The above put into account, the respondent employed the claimant and issued her with a contract dated June 20, 2022 and another contract running from 1st November 2022 to September 30, 2023. In the last contract, clause 1.1 provided that;

1 Position

You will perform in the capacity of Retail Lead – Nairobi & Coast reporting to the Operations manager. You will be based at Badili Offices – Chiromo Court – 2nd floor or from such other offices as the Company may designate from time to time operate its business.

7. Where the claimant was located at the time her employment terminated, the reasons leading to such termination of employment become matters of fact to be addressed at a full hearing and cannot be part of preliminary objections with regard to the territorial jurisdiction of the court which has mandate within the Republic of Kenya with regard to employment and labour relations disputes. To deny the claimant a hearing would be to abdicate the court’s original purpose.

To ensure access to justice, the claimant is properly before this court.

8. Accordingly, the objections by the respondent dated April 14, 2023 are hereby found without merit and dismissed. costs shall abide the outcome of the main suit.

Time to close pleadings is hereby extended by 14 days. Mention on September 18, 2023 to take hearing directions.

DELIVERED IN OPEN COURT AT MOMBASA THIS 27 DAY OF JULY 2023.

In the presence of:

Court Assistant: Japhet Muthaine

M. MBARŪ JUDGE

..... and

