



**Okwaro v Taita Taveta County Government (Cause 11 of 2016)
[2023] KEELRC 1737 (KLR) (10 July 2023) (Ruling)**

Neutral citation: [2023] KEELRC 1737 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
CAUSE 11 OF 2016**

**AK NZEI, J
JULY 10, 2023**

BETWEEN

SCHOLASTICA OKWARO CLAIMANT

AND

TAITA TAVETA COUNTY GOVERNMENT RESPONDENT

RULING

1. The suit herein was instituted on January 21, 2016 vide a memorandum of claim dated December 30, 2015. The Respondent filed response to the claim on March 23, 2016. On May 13, 2016, the Respondent filed a preliminary objection, dated May 12, 2016, challenging this Court’s jurisdiction; but the preliminary objection was dismissed vide this Court’s Ruling delivered on September 9, 2016:-
2. Nothing much appears to have been done on the suit as hearing never took off; and had not taken off as at November 24, 2021 when the suit was first listed before me. I fixed the same for hearing on March 17, 2022, but come the said date Counsel for the Respondent applied for an adjournment on grounds that he had no instructions, and sought to be given a date for hearing of an application to cease acting for the Respondent, which he had filed. Counsel’s prayer was granted, and the application to cease acting was eventually allowed on April 4, 2022.
3. On 2April 1, 2022, the Respondent appointed the Firm of Bwire & Company Advocates, which on July 12, 2022 filed a Notice of Preliminary Objection dated July 8, 2022. The Preliminary Objection was, however, withdrawn on September 28, 2022, and the suit was eventually fixed for hearing on February 22, 2023. Come the hearing date, and Counsel for the Respondent told the Court that he had filed an application whereby the Respondent was contesting this Court’s jurisdiction in view of Kenya Gazette Notice No 6024 Vol CXX No 74. This is the Notice of Motion dated February 21, 2023, and is the application before me.



4. The application is not shown to be brought under any specific law or rule of procedure, and the following orders are sought:-
 - a. that pending hearing and determination of the application, the Court be pleased to suspend and/or defer hearing of the main suit.
 - b. that the Court be pleased to dismiss the suit for want of pecuniary jurisdiction.
 - c. that in the alternative to prayer (b) above, the Court be pleased to direct that the suit be transferred to the Chief Magistrate's Court Voi for hearing and determination.
 - d. that costs of the application be awarded to the Applicant.
5. The application is premised on the supporting affidavit of one Liverson Mgendi, the Respondent's County Secretary, sworn on February 21, 2023. It is deponed in the said supporting affidavit that the Claimant was earning a gross monthly salary of ksh. 64,000 which pursuant to section 7 of the Magistrate's Courts Act and Gazette Notice No 6024 Vol. CXX-No 74 rests with the Magistrate's Court, that the cause of action arose in Taita-Taveta, and that the Claimant had not demonstrated why he had by-passed the Magistrate's Courts.
6. The application is opposed by the Claimant vide a replying affidavit of William O. Wameyo Advocate sworn on March 7, 2022. It is deponed in the said affidavit that this Court has exclusive original jurisdiction to hear and to determine the suit herein by dint of Article 162(2) of the Constitution and Section 12 of the Employment and Labour Relations Court Act, 2011; and that the gazette Notice (referred to by the Respondent) was non-existent at the time of filling the suit herein in January 2016.
7. It was further deponed on behalf of the Claimant/Respondent that the principle objective of this Court pursuant to Section 3 of the Employment and Labour Relations Court Act is to facilitate just, expeditious, efficient and proportionate resolution of disputes governed by the Act, and that the Respondent/Applicant was deliberately delaying hearing of the claim, and had refused to comply with pre-trial directions since 2016.
8. Indeed, the foregoing deposition is not without truth because on September 28, 2022, I granted the Respondent/Applicant 14 days leave to file further witness statement, bundle of documents, and to amend its Response to the claim if need be. The Respondent/Applicant did not file any document pursuant to that leave. On October 31, 2022, I granted the Respondent/Applicant a further 14 days to comply with the order dated 28th September 2022, but again, that order was not complied with.
9. The single issue for determination in the application before me is whether this Court is seized of pecuniary jurisdiction to hear and to determine the suit herein.
10. It must be noted that this Court is a Superior Court of equal status with the High Court, with unlimited original and appellate jurisdiction over disputes relating to employment and labour relations. Article 162(2) (a) of the Constitution of Kenya, 2010 and Section 12 of the Employment and Labour Relations Court Act are called in aid. The gazette notice/legal notice referred to by the Respondent/Applicant extending jurisdiction to the subordinate Courts over some employment matters did not diminish or take away this Court's unlimited jurisdiction over such matters. Further, the gazette notice came into being while the suit herein was pending in this Court.
11. The suit herein is over seven (7) years old, and is the kind of case backlog that should not be allowed to continue being such. The suit must be heard and determined on its merits and without any further delay. The respondent has not told the court why it has so far refused to comply with pre-trial directions, and why it has, all of a sudden, decided to file an urgent application seeking to transfer



the matter from this Court to Voi Magistrates Court. This Court frowns at the possibility of forum shopping, and will not transfer backlog to the Lower Court. Enough said on that.

12. The application has no merit, and is hereby dismissed with costs.

13. Orders accordingly.

DATED, SIGNED AND DELIVERED AT MOMBASA THIS 10TH JULY 2023

AGNES KITIKU NZEI

JUDGE

ORDER

This Ruling has been delivered via Microsoft Teams Online Platform. A signed copy will be availed to each party upon payment of the applicable Court fees.

AGNES KITIKU NZEI

JUDGE

Appearance:

Mr. Otieno for Claimant

Mr. Odenga for Respondent

