



**Mwashigadi v Seven Seas Technologies Limited (Miscellaneous Cause
E017 of 2023) [2023] KEELRC 2256 (KLR) (29 September 2023) (Ruling)**

Neutral citation: [2023] KEELRC 2256 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
MISCELLANEOUS CAUSE E017 OF 2023
BOM MANANI, J
SEPTEMBER 29, 2023**

BETWEEN

KEVIN NYAMBU MWASHIGADI APPLICANT

AND

SEVEN SEAS TECHNOLOGIES LIMITED RESPONDENT

RULING

Background

1. The Applicant was an employee of the Respondent until 30th November 2018 when he alleges that the Respondent unfairly terminated his contract of service by irregularly declaring his position redundant. Following the termination of the aforesaid contract, the Applicant filed suit before the Chief Magistrate's Court in which he prays for, inter alia, declaratory orders that the termination was unlawful.
2. From the record, the Applicant's exit salary was Ksh. 150,000.00. The Applicant now argues that he realizes that the decision to move to the Magistrate's Court may have been inappropriate since the jurisdiction of that court is limited to contracts of service with a gross monthly salary of Ksh. 80,000.00.
3. The Applicant avers that he has now stayed the cause before the Magistrate's Court in order to move this court for appropriate direction on handling of the dispute. Thus, he has by this application moved this court for enlargement of time to file a fresh claim in a court with the requisite monetary jurisdiction.

Analysis

4. Despite the clear provisions of law regarding which court has pecuniary jurisdiction to entertain an employment claim with the salary that the Applicant was earning, he elected to present his grievance before the Magistrate's Court. The record does not indicate why the Applicant opted for this action.



5. Whatever the reason, the fact of the matter is that a Magistrate's Court's jurisdiction on employment matters is limited to cases that arise from contracts of service with a maximum gross monthly salary of Ksh. 80,000.00. Undoubtedly therefore, the suit by the Applicant that is pending before the Magistrate's Court is before a court that is bereft of the requisite jurisdiction to entertain it.
6. The law is that a matter that has been filed in a court that is without jurisdiction cannot be transferred to a court that is seized of jurisdiction over it. The rationale for this position is that such matter is a non-suit. Therefore, there is nothing in law to transfer.
7. The Applicant finds himself in this unfortunate position. He presented his case before the Magistrate's Court which does not have monetary jurisdiction over it. Therefore, the action is a non-suit for want of jurisdiction.
8. For the above reason, the Applicant cannot apply to transfer the case to this court. Faced with this challenge, the Applicant has now moved this court to enlarge time within which he can file a fresh case.
9. Section 90 of the *Employment Act* provides as follows:-

“Notwithstanding the provisions of section 4(1) of the *Limitation of Actions Act* (Cap. 22), no civil action or proceedings based or arising out of this Act or a contract of service in general shall lie or be instituted unless it is commenced within three years next after the act, neglect or default complained or in the case of continuing injury or damage within twelve months next after the cessation thereof.
10. The edict of the statute is clear: no suit that is based on a contract of service may be instituted outside three years of the cause of action arising unless it is a continuing injury claim. Even then, such claim for continuing injury must be instituted within twelve months of cessation of the injury.
11. Whilst this provision sets out the limitation period, it does not grant the court the power to enlarge time for purposes of filing cases beyond the time that is prescribed (*Peter Katithi Kithome v Laboratory & Allied Limited* [2021] eKLR). Therefore, the Applicant's request for enlargement of time to file his action out of time is without legal foundation.

Determination

12. This court has no power to enlarge time to file suit outside the timelines that are set under section 90 of the *Employment Act*.
13. Consequently, the application to enlarge time is bereft of merit.
14. It is dismissed with no order on costs.

DATED, SIGNED AND DELIVERED ON THE 29TH DAY OF SEPTEMBER, 2023

B. O. M. MANANI

JUDGE

In the presence of:

..... for the Applicant

..... for the Respondent

ORDER



In light of the directions issued on 12th July 2022 by her Ladyship, the Chief Justice with respect to online court proceedings, this decision has been delivered to the parties online with their consent, the parties having waived compliance with Rule 28 (3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

B. O. M MANANI

