



Kenya Plantation & Agricultural Workers Union v Eastern Produce (K) Limited (Miscellaneous Application E004 of 2023) [2023] KEELRC 2444 (KLR) (12 October 2023) (Ruling)

Neutral citation: [2023] KEELRC 2444 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KERICHO
MISCELLANEOUS APPLICATION E004 OF 2023**

**HS WASILWA, J
OCTOBER 12, 2023**

**BETWEEN
KENYA PLANTATION & AGRICULTURAL WORKERS UNION .. CLAIMANT
AND
EASTERN PRODUCE (K) LIMITED RESPONDENT**

RULING

1. Before this Court for determination is the claimant/Applicant's Notice of motion dated 25th April, 2023, filed pursuant to section 12 of the [Employment and Labour Relations Court Act](#), Articles 162(2) (a) and 165(5) of the [Constitution](#) of Kenya, Sections 1A, 1B,3,3A,18 & 63(e) of the [Civil Procedure Act](#) and Orders 51 Rule 1 of the [Civil Procedure Rules](#), seeking for the following Orders;
 1. That the Honourable Court be pleased to order transfer of Kapsabet CMCC No 1 of 2022 from the subordinate Court to the Employment and Labour Relations Court in Kericho for hearing and determination.
 2. That costs herein be in the cause.
2. The grounds upon which the Application is made is that the applicant filed a cause in Kericho serialized ELRC Cause No E010 of 2022 which was transferred for hearing and determination to Kapsabet Chief Magistrates Court and serialized as Kapsabet CMCC No 1 of 2022.
3. It is stated that the Honourable Justice Onesmus Makau, while sitting in this Court, erred in the interpretation of legal notice number 6024 of 2018 in transferring the said suit o the subordinate Court.
4. He states that at the time of filling the said suit, this Court had and still has jurisdiction to determine that case pursuant to legal notice number 6024 of 2018 because the case is trade dispute which cannot be heard at the magistrate's court.



5. On that basis, the Applicant prayed for the suit to be transferred back to this Court for hearing and determination.
6. The Application herein is also supported by the affidavit of Cliffton Saya, the advocate who is in conduct of this matter on behalf of the Applicant, who reiterated the grounds of the application.
7. The Application herein is opposed by the Respondent who filed grounds of opposition dated 23rd May, 2023 based on the following grounds; -
 1. That the application was filed in flagrant violation of the well-established legal doctrines and statutory provisions relevant to the subject application and the same is devoid of merit whatsoever or at all.
 2. That the application is fatally defective for want of form and law.
 3. That the application has been lodged in bad faith and is incompetent.
 4. That the application as presently constituted will occasion miscarriage of justice and great prejudice to the Respondent if its allowed.
 5. That the application ought to be dismissed for the foregoing reasons with costs to the Respondent.
8. In addition, the Respondent filed a replying affidavit deposed upon on 23rd May, 2023 by Millicent N Wesonga, the Respondent's advocates.
9. The affiant stated that the application herein lacks merit, is frivolous and an abuse of Court process and thus should be dismissed at first instance.
10. She stated that the ELRC Cause number E010 of 2022 was transferred to Kapsabet Magistrate Court by Justice Makau on 24th May, 2022 in line with legal notice number 6024 of 2018.
11. It was her view, that Legal notice 6024 of 2018 was to effect that all disputes arising from contracts of employment where employees gross monthly pay does not exceed Kshs 80,000 are to be heard and determined by subordinate courts.
12. Accordingly, that both grievants, subject of this case earn a gross salary of Kshs 10,577.93 which amount is way below the Kshs 80,000, therefore the dispute should be heard in the subordinates Court.
13. She stated that the only disputes exempted are trade disputes under the *Labour Relations Act, 2007*. However, that the case at hand is not a trade dispute but a normal suit that arose out of negligent acts of the grievants which resulted to loss of the Respondent's properties thus necessitating the dismissal.
14. It is averred that the cause of action arose in Nandi Hill town which is within the jurisdiction of Eldoret ELRC, therefore that if the case herein was indeed a trade dispute, it ought to have been filed in Eldoret and not in this Court in line with territorial jurisdiction of the Court.
15. she prayed for the Application herein to be dismissed and the matter be allowed to proceed in Kapsabet until its conclusion.
16. The Application was canvassed by written submissions, with the Applicant filing on 22nd August, 2023 and the Respondent on 7th June, 2023.



Applicant's Submissions.

17. The Applicant argued that the main issue in dispute herein is on interpretation of Legal Notice number 6024 of 2018. He submitted that indeed the grievants, subject of this case, were earned gross monthly salary of Kshs 15,965, which their cases could have been determined in the subordinate Court if they were not members of the claimant. However, since the said grievants are members of the claimant union, their issues become trade disputes as defined under section 2 of the *Labour Relations Act* and the correct forum to hear and determine their case is the Employment and Labour Relations Court. To support this position, the applicant cited the case of *Benta Achieng Odinyo v University of Nairobi* [2021] eKLR where the Court held that:-

“My understanding of the foregoing gazette notice is that a Senior Resident Magistrate Court has been conferred with jurisdiction to hear and determine all employment and labour relations disputes arising from contracts of employment but not disputes under the *Labour Relations Act* 2007...”

18. The same position was restated in the case of *Kenya Plantation and Agricultural Workers Union v Flamingo Horticulture* [2023] eKLR where the Court referred to the gazette notice number 6024 of 2018 issued by the Chief justice on 10th June, 2018 that stated that; -

“Appointment of magistrates’ courts to hear matters relating to employment and labour relations in exercise of the powers conferred by section 29 (3) and (4) (b) of the *Employment and Labour Relations Court Act*, 2011, and in consultation with the Principal Judge of the Court, the Chief Justice appoints all Magistrates of the rank of Senior Resident Magistrates and above as Special Magistrates designated to hear and determine the following employment and labour relations cases within their respective areas of jurisdiction:

1. Disputes arising from contracts of employment (excluding trade disputes under the *Labour Relations Act*, 2007) where employees gross monthly pay does not exceed Kshs 80,000.00 as commenced and continued in accordance with the *Employment and Labour Relations Court (Procedure) Rules, 2016*.
2. Matters relating to the following specific areas;
 - (i) offences under the *Work Injury Benefits Act*, 2007.
 - (ii) offences under the *Employment Act*, 2007.
 - (iii) offences under the *Labour Institutions Act*, 2007
 - (iv) offences under *Occupational Safety and Health Act*, 2007; and
 - (v) offences under the Labour Relations court, 2007. The conferment under Gazette Notice No 9243 is revoked. Dated the 10th June, 2018”.

It is clear that the pecuniary jurisdiction granted to magistrate was where an employee's salary was not above 80,000/= . It is however true that the magistrate's jurisdiction fell outside the purview of trade disputes which are matters which are filed by or against Trade Unions under the *Labour Relations Act* like the instance case. The claim herein was filed by the Kenya plantation & Agricultural Workers Union and therefore the matter relates to labour relations from which the lower courts lack jurisdiction.”



19. Based on the foregoing, the applicant urged this Court to allow the Application as prayed.

Respondent's Submissions.

20. The Respondent submitted on two issues; Whether the subordinate court at Kapsabet has the requisite jurisdiction to hear and determine the suit herein and Whether Kapsabet CMCC No 2 of 2022 should be transferred to the Employment & Labour Relations Court at Kericho for hearing and determination.
21. On the first issue, it was submitted that pursuant to the legal notice 6024 of 2018, the chief justice provided for the appointment of magistrates of the rank of senior resident magistrates and above as special magistrates designated to hear and determine employment and labour relations cases including; Disputes arising from contracts of employment where employees gross monthly pay does not exceed Kshs 80,000, excluding trade disputes under the [Labour Relations Act](#) 2007. Therefore, that all disputes arising from contracts of employment where employees monthly pay does not exceed Kshs 80,000/= are to be heard and determined by subordinate courts. Similarly, that the grievants herein as at the time of their dismissal were earning Kshs 10,577.93, whose pecuniary jurisdiction falls within the Magistrates Court.
22. Furthermore, that, the suit herein is not a trade dispute because the claim arose out of negligent acts of the grievants which resulted to the loss of the Respondents properties thus necessitating their dismissal. Additionally, that the cause of action arose at Nandi Hills town which is within the jurisdiction of the subordinate court at Kapsabet. Thus Kapsabet Court is seized with the requisite jurisdiction. To support this argument, they relied on the case of [AVC Management Limited v Emmanuel Mwamunye Jilani](#) (2022) eKLR, where the Court stated that;
- “The jurisdiction of the Magistrate’s Court to handle employment and labour relations disputes arises from the power donated to the Chief Justice under section 29 of the [ELRC Act](#) to gazette magistrates to handle these matters. Pursuant to this power, the Chief Justice issued Gazette Notice No 6024 of 2018 mandating magistrates of the rank of Senior Resident Magistrate and above to hear, with some exceptions, disputes arising from employment contracts where the employee’s gross monthly salary does not exceed Kshs 80,000/=. The gazette notice provides that the magistrates will handle matters that fall within their areas of jurisdiction.”
23. On whether Kapsabet CMCC No 2 of 2022 should be transferred from the subordinate court at Kapsabet to the Employment & Labour Relations Court at Kericho for hearing and determination. It was argued that as per the legal notice number 6024 of 2018, this Court does not have either pecuniary or territorial jurisdiction to determine the claim herein because the grievants salaries was Kshs 10,556.93. Moreover, that the cause of action arose in Nandi hills town, which ELRC Eldoret could have had jurisdiction if the case was a trade dispute.
24. In conclusion, he reiterated that the claim herein is not a trade dispute and the orders sought should be declined.
25. I have examined all the averments and submissions of the parties herein.
26. The issue herein is for the transfer of this claim to the ELRC.
27. In determining this application, I have considered the gist of this claim which is filed by the claimant Trade Union. Matters filed by a union on behalf of their members fall under the [Labour Relations Act](#).



28. Where such matters should be filed is informed by legal Notice No 6024 of 2018 which states that matters to be handled by the subordinate courts are matters where the employees salaries fall below 80,000/= save for those under the *Labour Relations Act*.
29. This matter is such as one that falls within the labour relations for which the court with jurisdiction is the ELRC. I therefore agree with the applicants herein and allow the application seeking to transfer this matter to the ELRC.
30. This matter having arisen from Kapsabet, this is within the territorial jurisdiction of ELRC Eldoret to which I now transfer this matter for hearing and final determination.
31. Costs in the cause.

RULING DELIVERED VIRTUALLY THIS 12TH DAY OF OCTOBER, 2023.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:-

Saya for Applicant – Present

Kiptoo holding brief for Kirui for Respondent – Present

Court Assistant – Fred

