



REPUBLIC OF KENYA



**Lochab Bros Limited v Khisa (Miscellaneous Application E008 of 2023)  
[2023] KEELRC 3112 (KLR) (24 November 2023) (Ruling)**

Neutral citation: [2023] KEELRC 3112 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT ELDORET  
MISCELLANEOUS APPLICATION E008 OF 2023  
MA ONYANGO, J  
NOVEMBER 24, 2023**

**BETWEEN**

**LOCHAB BROS LIMITED ..... APPLICANT**

**AND**

**ENOCK MALEYA KHISA ..... RESPONDENT**

**RULING**

1. The application before me is a Notice of Motion dated 14<sup>th</sup> February, 2023 brought under the provisions of Sections 1A, 3A and 18 of the Civil Procedure Act, Article 159 of the Constitution and section 12(3) of the Employment and Labour Relations Court Act and all enabling provisions of law. The Applicant seeks the following orders –
  - i. Spent
  - ii. Spent
  - iii. That the Mombasa Chief Magistrate’s ELRC Case no E309/2021 be withdrawn from Mombasa Chief Magistrate’s Court and transferred for hearing and determination to Eldoret Chief Magistrate’s court
  - iv. Costs of this application be in the cause
2. The application is brought on the grounds on the face thereof and is supported by an affidavit sworn on 14<sup>th</sup> February 2023 by mr Narinder Singh Lochab, the Applicant’s Director. In that affidavit, the deponent states that the Respondent was employed as a driver at the Applicant’s Eldoret offices. It is averred that the Respondent in his statement of claim alleges that his services were terminated at Eldoret and that as such, the cause of action having arose at Eldoret, which means that this dispute should have been filed at Eldoret. The Applicant maintains that the filing of the dispute at Mombasa law court was meant to frustrate the Applicant and subject him to undue hardship and expenses.



3. The applicant further states that the case has now been transferred to Lamu Law courts for hearing and determination.
4. It is the Applicant's case that all the witnesses are based in Eldoret where the cause of action is alleged to have arisen and that no prejudice would be suffered by the Respondent if the case is heard and determined at Eldoret Law courts instead of Lamu Law court where the case is currently being heard.
5. A further affidavit was filed on 19<sup>th</sup> June 2023 by the Applicant. In that affidavit, the Applicant states that although it is involved in transportation business, all records of employees and Human Resource Personnel are situated in Eldoret. It is further stated that it would be prejudicial to have the case heard and determined in Mombasa and now Lamu as it will cause hardship to the Applicant.
6. The application is opposed vide a Replying Affidavit sworn by the Respondent/Claimant on 21<sup>st</sup> August 2023. He states that he is a resident of Jomvu within the county of Mombasa and that he has been continuously living in Mombasa and working for the Applicant from the year 2013 to the date of his termination from employment. He further avers that he has always driven the Applicant's heavy commercial trucks from Port Reitz in Mombasa to various destinations and occasionally to the Applicant's main offices at Eldoret.
7. The Claimant maintains that his duties have always been allocated in Mombasa yard and by virtue of his residence, it would not have made any sense for him to file suit in Eldoret where he is a stranger.
8. He further contends that his employment was terminated while in Molo and the decision was made through a phone call without any written reasons. That he was not terminated in Eldoret as alleged.
9. According to the Claimant, his employment obligations were discharged mostly from the Applicant's yard at Port Reitz.
10. It is contended that the allegation by the Applicant that the suit herein was transferred to Lamu is untrue as the case is being heard virtually by a court in Mombasa but through a Mombasa-decongestion program.
11. The Respondent further avers that the subject matter before court is a claim based on oral contract of employment, the place of business for purposes of employment is an issue in dispute that craves for determination in the main suit
12. It is the Claimant's case that all court proceedings are now virtual and that further, the Applicant has not demonstrated any prejudice it will suffer if the matter is heard and determined in Mombasa
13. The application was canvassed by way of written submissions. The Applicant's submissions were filed on 30<sup>th</sup> October 2021 and the Claimant's submissions were also filed on the even date.

### **Determination**

14. From the application, the rival affidavits as well as the submissions on record, the only issue for my determination is whether the Applicant has made a case for grant of the orders it is seeking.
15. The jurisdiction of the court to transfer suits from one Court to another is provided under Section 18 of the [Civil Procedure Act](#) which states as follows-
  - “(1) On the application of any of the parties and after notice to the parties and after hearing such of them as desire to be heard, or of its own motion without such notice, the High Court may at any stage—



- a) transfer any suit, appeal or other proceeding pending before it for trial or disposal to any court subordinate to it and competent to try or dispose of the same; or
- b) withdraw any suit or other proceeding pending in any court subordinate to it, and thereafter—
  - i try or dispose of the same; or
  - ii transfer the same for trial or disposal to any court subordinate to it and competent to try or dispose of the same; or
  - iii retransfer the same for trial or disposal to the court from which it was withdrawn.

(2) Where any suit or proceeding has been transferred or withdrawn as aforesaid, the court which thereafter tries such suit may, subject to any special directions in the case of an order of transfer, either retry it or proceed from the point at which it was transferred or withdrawn.”

16. A party seeking transfer of a suit has the burden of providing sufficient reasons why the transfer is merited.
17. In the instant application the Applicant has averred that the cause of action arose in Eldoret and that its Human Resource Personnel are based in Eldoret. The Claimant on the other hand contends that his duties were always allocated in Mombasa yard
18. Section 1A of the *Civil Procedure Act* provides that the overriding objective of the Act and the rules made thereunder is to facilitate the just, expeditious, proportionate and affordable resolution of the civil disputes governed by the Act. Section 1B of the said Act provides as follows: -
 

“For the purpose of furthering the overriding objective specified in section 1A, the Court shall handle all matters presented before it for the purpose of attaining the following aims-

  - (a) the just determination of the proceedings;
  - (b) the efficient disposal of the business of the Court;
  - (c) the efficient use of the available judicial and administrative resources;
  - (d) the timely disposal of the proceedings, and all other proceedings in the Court, at a cost affordable by the respective parties; and
  - (e) the use of suitable technology:”
19. The Applicant has not demonstrated what hardship it will suffer if the case is heard and determined in Mombasa Magistrate’s Court. Further, the court takes judicial notice that courts have embraced technology and hearing of cases can now be conducted virtually. The Applicant and its witnesses can testify from the comfort of their offices, homes or wherever they are.
20. The upshot is that the Application dated 14<sup>th</sup> February 2023 is without merit. The same is dismissed with costs to the Respondent.

**DATED, DELIVERED AND SIGNED AT ELDORET THIS 24<sup>TH</sup> DAY OF NOVEMBER 2023.**



**M. ONYANGO**  
**JUDGE**

