



Amukowa v Premier Cookies Limited & 3 others (Miscellaneous Cause E157 of 2023) [2023] KEELRC 2958 (KLR) (17 November 2023) (Ruling)

Neutral citation: [2023] KEELRC 2958 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
MISCELLANEOUS CAUSE E157 OF 2023
B ONGAYA, J
NOVEMBER 17, 2023**

BETWEEN

PAUL AMUKOWA APPLICANT

AND

PREMIER COOKIES LIMITED 1ST RESPONDENT

SHAHID DIAMOND LALJI NURANI 2ND RESPONDENT

DIAMONDALI HASHAM LALJI NURANI 3RD RESPONDENT

AHAMEDALI HASHAM LALJI NURANI 4TH RESPONDENT

RULING

1. The applicant filed the application on 31.07.2023 through Muthoni Ahago Advocates. The application was by the notice of motion under Articles 48, 159(2) (d) & (e) of the *Constitution*, section 1A, 1B, and 18 (1) (b) (ii) of the *Civil Procedure Act*, Cap 21 Laws of Kenya. The prayer is that the Honourable Court is pleased to transfer Milimani Cause no MCELRC E507 of 2022 *Paul Amukowa v Premier Cookies Limited & Others* to Milimani Small Claims Division for hearing and final determination; and, costs of the application be provided for. The application is based on the annexed supporting affidavit of the applicant and the following grounds:
 - a. The applicant retired from the respondents' employment in January 2016 having worked for 22 years from 01.05.1994. It was agreed that the respondents owed the applicant ksh 711, 349.44 including salary for days worked up to 15.01.2016, leave balance up to December 2015, gratuity for every year completed and any other benefits.
 - b. Parties entered a post- employment agreement for settlement of the amount owed in instalments. The respondents breached that agreement. The dispute is about general breach of that agreement to pay and the background of the contract of employment. The applicant filed



suit at the Magistrates' Court. Directions for the hearing have not been given. The agreement to settle by instalment was oral. The applicant wishes to opt to pursue it at the small claims court.

- c. No prejudice will occur to the respondents if prayer to transfer as made is granted.
2. The respondents opposed the application by filing the replying affidavit of Shahid Diamond Lalji Nurani sworn on 13.09.2023 and filed through Omuma Advocates LLP. The respondents also filed the grounds of opposition dated 18.10.2023. It is admitted that the claimant filed the suit in the Magistrate's Court subject of the transfer prayer herein. The applicant alleged that the respondents owed him terminal benefits but that suit was time barred whether as an employment dispute per section 90 of the *Employment Act* or as an ordinary contract per section 4(1) (a) of the *Limitation of Actions Act*. The applicant filed Milimani HC Miscellaneous Application no E039 of 2023 *Paul Amukowa v Premier Cookies Limited & Others* for orders that the suit in Magistrates' Court be transferred to the Small Claims Court. The High Court found that the dispute was about employment as it lacked jurisdiction and directed the applicant to move the Court. Hence the applicant filed the instant application. The Magistrates' Court should be allowed to determine the preliminary objection that the suit before it is time barred. Further the Small Claims Court lacks jurisdiction to hear and determine employment disputes. Further, the applicant must decide whether the dispute is employment or civil dispute. The Court should not transfer a time barred suit.
3. Submissions were filed for the parties. The Court has considered all the material on record. The Court returns as follows.
4. To answer the 1st issue, whether the suit in the Magistrates' Court is time barred is an issue to be determined by that Court.
5. To answer the 2nd issue, the applicant's case is predicated upon an alleged oral post-employment agreement. The end of alleged termination by retirement is said to be on 15.01.2016. It then follows without much that whether that oral agreement was concluded, its terms, and enforcement is an employment dispute. It is to be determined by the Court with competent jurisdiction. Whether the Small Claims Court has jurisdiction in the dispute under section 12 (1) (b) of the *Small Claims Court Act* appears to be a matter which would be decided by that Court if at all that Court were properly moved. As submitted for the respondents, such determination may entail taking and testing of evidence prior to determination by the competent trial Court. It is not a matter properly before the Court for determination in the instant application.
6. To answer the 3rd issue, the Court returns that it would amount to abuse of Court process for the suit in the Magistrates' Court to be transferred to the Small Claims Court as prayed for whereas the suit, by the applicant's own assertion, is in the appropriate or competent Court which the applicant says enjoys concurrent jurisdiction as the Small Claims Court. Further, the applicant has not shown the basis of the jurisdictional authority for the Court to grant the transfer orders as prayed for.

In conclusion and for the stated findings, the application is hereby dismissed with costs.

SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS FRIDAY 17TH NOVEMBER, 2023.

BYRAM ONGAYA

PRINCIPAL JUDGE

