



REPUBLIC OF KENYA



**KENYA LAW**  
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**Kuria & 13 others v Kartasi Industries Limited (Cause E531 of 2022)  
[2023] KEELRC 2736 (KLR) (3 November 2023) (Ruling)**

Neutral citation: [2023] KEELRC 2736 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E531 OF 2022  
B ONGAYA, J  
NOVEMBER 3, 2023**

**BETWEEN**

**JOHN MUTHANDI KURIA ..... 1<sup>ST</sup> CLAIMANT  
THOMAS MUTWIWA MUSYOKA ..... 2<sup>ND</sup> CLAIMANT  
KYALO MUNYAO ..... 3<sup>RD</sup> CLAIMANT  
JOHN GITONGA GITHAE ..... 4<sup>TH</sup> CLAIMANT  
ANDREW AMUNZE INYANGALA ..... 5<sup>TH</sup> CLAIMANT  
MOCHACHE OMBOGA DENILSON ..... 6<sup>TH</sup> CLAIMANT  
DAVID KARIUKI WANJIRU ..... 7<sup>TH</sup> CLAIMANT  
MILDRED NYANJE OJWANG ..... 8<sup>TH</sup> CLAIMANT  
COSMAS WAMBUA KATUMA ..... 9<sup>TH</sup> CLAIMANT  
IRENE NDUNGE KATUA ..... 10<sup>TH</sup> CLAIMANT  
DANIEL KINYUA KIGANO ..... 11<sup>TH</sup> CLAIMANT  
MAXIM NYAMAI MUTUA ..... 12<sup>TH</sup> CLAIMANT  
NELIUS WAIRIMU KIMANI ..... 13<sup>TH</sup> CLAIMANT  
FREDRICK MARK MACHINI ..... 14<sup>TH</sup> CLAIMANT**

**AND**

**KARTASI INDUSTRIES LIMITED ..... RESPONDENT**



## RULING

1. The respondent filed the application by the notice of motion dated 25.07.2023 through CM Advocates, LLP. The application did not cite the provisions of law under which the application was preferred and prayed for orders:
  - a. The suit be struck out.
  - b. The money held at Faulu Microfinance Bank, Kimathi Branch, Account No.1013838328 in the name of Owino Bukachi & Co, CM Advocates, LLP be released to the respondents.
  - c. Costs be awarded to the applicant on a full indemnity basis.
2. The application was based upon the grounds stated therein and the supporting affidavit Maheshi Rughani, a director of the applicant. It was urged as follows:
  - a. The amended claim dated 08.05.2023 is incurably defective as the Court lacks jurisdiction because the gross monthly salary of each of the claimants is below Kshs.80,000.00 per the statement of claim.
  - b. By reason of Gazette Notice No.6024 dated 10.06.2018 issued by the Chief Justice, Magistrates of the rank of Senior Resident Magistrates and above, are to hear employment matters within their respective areas of jurisdiction limited to pecuniary jurisdiction not exceeding Kshs.80,000.00 gross monthly salary of the claimant.
  - c. It is prudent use of judicial time for the amended statement of claim to be struck out.
3. The claimants opposed the application by filing the replying affidavit of John Muthandi Kuria sworn on 01.09.2023 and filed through Owino Bukachi & Company Advocates. It was urged as follows:
  - a. The amended statement of claim dated 08.05.2023 is not defective because the Court enjoys jurisdiction to hear and determine the suit. The Court enjoys the original and appellate jurisdiction per Article 162(2) of *the Constitution* and per the *Employment and Labour Relations Court Act*, 2011. Section 20 of the Act provides that the Court is to ensure reasonable, equitable, and progressive access to judicial services in all counties. The Gazette Notice No. 6024 of 22.06.2018 conferred powers upon Senior Resident Magistrates to deal with employment matters where employees gross salary does not exceed Kshs.80,000.00. it was per section 29 (3) and (4) (b) of the *Act* for equitable and progressive access to justice across all Counties and to reduce backlog and being a subsidiary legal instrument, it could not amend the primary legislation or be inconsistent as to deny the Court the relevant jurisdiction conferred by statute and *the Constitution*.
  - b. In alternative the Court therefore enjoys concurrent jurisdiction with the Magistrates Court. The suit is not incompetent because it is filed in a Court with concurrent jurisdiction or competent jurisdiction.
  - c. The money in issue is held at the said bank account upon parties' own consent order that the money be so held in that account until the main suit is heard and determined in circumstances that the respondent has been taken over by 3<sup>rd</sup> parties unknown to the claimants.
  - d. The respondent has willingly subjected itself to the jurisdiction of the Court and the consent on record is true testimony in that regard.



- e. Thus the application should be dismissed with costs.
4. Counsel for the parties made oral submissions for and against the application. The Court has considered the parties' respective positions and returns as follows.
5. Section 12 (1) (a) of the *Employment and Labour Relations Court Act* provides that the Court shall have exclusive original and appellate jurisdiction to hear and determine all disputes referred to it in accordance with Article 162(2) of *the Constitution* and the provisions of the Act or any other written law which extends jurisdiction to the Court- relating to employment and labour relations including disputes relating to or arising out of employment between an employer and an employee. As submitted for the claimants, the Gazette notice No.6024 of 2018 is subsidiary or delegated legislation subservient to the statutory provision on jurisdiction. Accordingly, the Court returns that by the constitutional and statutory provisions the suit was filed in the Court with competent jurisdiction and cannot be liable to striking out as prayed for the respondent.
6. The Court follows and sustains the holding in Jackline Oichoe -Versus- Jilag Limited [2022] eKLR where Dr. Gakeri J held thus, "22. Contrary to submissions by the respondent's Counsel, it is the Court's view that while the magistrates have jurisdiction to handle employment matters where the gross salary of an employee does not exceed Kshs.80,000/- by virtue of the gazette notice, it did not take away the jurisdiction conferred on the Employment and Labour Relations Court by *the Constitution* of Kenya 2010 and the *Employment and Labour Relations Court Act*, 2011."

In conclusion, the application filed for the respondent dated 25.07.2023 is hereby dismissed with costs in the cause and parties to forthwith take directions for further steps towards the expeditious hearing and determination of the suit.

**SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS FRIDAY 3<sup>RD</sup> NOVEMBER, 2023.**

**BYRAM ONGAYA**

**PRINCIPAL JUDGE**

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