



**Kenya Union of Commercial, Food and Allied Workers v Rutuma
Amalgamated Farmers Co-operative Society Ltd (Cause E026 of 2023)
[2023] KEELRC 3338 (KLR) (20 December 2023) (Ruling)**

Neutral citation: [2023] KEELRC 3338 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NYERI
CAUSE E026 OF 2023
ON MAKAU, J
DECEMBER 20, 2023**

BETWEEN

**KENYA UNION OF COMMERCIAL, FOOD AND ALLIED
WORKERS CLAIMANT**

AND

**RUTUMA AMALGAMATED FARMERS CO-OPERATIVE SOCIETY
LTD RESPONDENT**

RULING

1. This ruling relates to the respondent's Notice of Preliminary Objection dated September 14, 2023 which stands on the ground that this court lacks jurisdiction to hear and determine the suit.
2. The facts leading to this suit are that the claimant union brought the suit herein on behalf of its 15 members (the grievants) who are former employees of the respondent. The grievants were all served with a letter dated 31st July, 2023 terminating their services with effect from the date of the letter. The letters cited no reason for the termination but offered to pay one month salary in lieu of notice, accrued leave days and other benefits.
3. The respondent filed defence on September 15, 2023 denying that it terminated the employment of the grievants on account of redundancy. It further denied that the claimant is entitled to the reliefs sought and prayed for the suit to be dismissed with costs. Finally, it averred that the court lacks the pecuniary jurisdiction to handle the suit.

Submission

4. The respondent submitted that the grievants were earning less than Kshs.80,000.00 as at the time of separation and as such this court lacks pecuniary jurisdiction by dint of section 29 (3) of the [ELRC Act](#)



and Gazette Notice No.6024 volume CXX-No.74 dated 19th June, 2018. By the said Gazette notice, the Chief Justice appointed Magistrates of Senior Resident Magistrate and above to hear and determine Labour and Employment matters within their areas of jurisdiction where the employee's gross salary is below Kshs.80,000.00.

5. For emphasis reliance was placed on the case of *Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd* [1989] and John Adoyo and 6 others [2022] eKLR.
6. The claimant opposed the objection and submitted that this court has the requisite jurisdiction to determine the suit herein as donated by the ELRC Act. It was submitted that the parties have concluded CBA which has been referred to by the respondents in its defence. Finally, it was submitted that under section 74 of the *Labour Relations Act* provides that redundancy matters are to be filed in this court.

Issues for determination

7. There is no dispute that the cause of action herein arises from employment relationship between the grievants and the respondent. The issue for determination is whether the court has jurisdiction to determine the suit.
8. There is no dispute that this court has unlimited original and appellate jurisdiction in Employment and Labour Relations disputes. It is also true that section 9 of the Magistrate Court Act donates jurisdiction to the Magistrate court as provided under section 29 of the *ELRC Act*. It is also a fact that the Chief Justice gazetted Senior Resident Magistrates Court and above to determine employment disputes where the employees gross salary does not exceed Kshs.80,000.00.
9. The jurisdiction of the Magistrate is however subject to the pecuniary jurisdiction set out in section 7(1) of the Magistrates Court Act. The question that begs for answer is whether the suit herein meets the foregoing statutory requirements to warrant a referral to the Magistrates Court.
10. To begin with the value of the case, at glance is below Kshs.15 million. Consequently, under section 7(1) of the Magistrates court Act, a Senior Principal Magistrate and above, can try it. Further under section 29 (3) of the ELRC Act, the same Magistrate court can try the suit because all the grievants were earning gross salary below Kshs.80,000.00 which was the ceiling set by the Chief Justice in the Gazette Notice No.6024 of 2016, as maximum pay in suit that a Magistrate court can try.
11. In view of the above, I find that the claimants' suit can be tried by a Senior Principal Magistrate court in the area where the cause of action arose or where the respondent carries out business. The claimant submitted that a redundancy dispute ought to be tried by this court under section 74 of the *Labour Relations Act*.
12. Section 74 entitles a trade union to file suit in this court under certificate of urgency if the dispute concerns redundancy. The suit is only allowed where the trade union has already referred the dispute for conciliation, or where the employer has retrenched employees without giving notice.
13. There is nothing to show that the dispute had been referred for conciliation before the suit was filed. Further the termination letters did not cite redundancy as the reason for the abrupt termination.
14. Having considered the above provisions of law and the pleadings, I am satisfied that a Senior Principal Magistrate court can try the suit. This court also has unlimited original jurisdiction to determine Employment and Labour Relations disputes by dint of section 12 of the ELRC Act as read with Article 162 (2) (a) of the Constitution.



15. The court appreciates that Chief Justice exercised the power under section 29 (3) of the *ELRC Act* in 2016 by gazette Notice No.6024 of 10th June, 2016 to ease the pressure of work on the twelve pioneer Judges of the Court. However, there has been an out cry that Employment and Labour disputes involving trade unions ought to be tried by this court. Another outcry is that the matters are getting delayed more at the Magistrates court and as such many litigants are preferring to file suits before this court. I have no statistics but I opine that, a study should be done.
16. In view of the matters above, I overrule the Preliminary Objection. The pecuniary jurisdiction alone cannot extinguish the original jurisdiction of the court as contemplated by the Constitution. Costs of the objection shall be in the cause.

DATED, SIGNED AND DELIVERED AT NYERI THIS 20TH DAY OF DECEMBER, 2023.

ONESMUS N MAKAU

JUDGE

Order

This ruling has been delivered to the parties via Teams video conferencing with their consent, 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.

ONESMUS N MAKAU

JUDGE

