



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT NAIROBI

CAUSE NO 1530 OF 2018

UNIVERSITIES ACADEMIC STAFF UNION.....CLAIMANT

VERSUS

KIRINYAGA UNIVERSITY COUNCIL.....RESPONDENT

RULING

1. By its Notice of Motion dated 30th September 2021, the Claimant seeks transfer of this case from the Employment and Labour Relations Court at Nairobi to the Employment and Labour Relations Court at Nyeri.
2. The Motion is supported by an affidavit sworn by the Claimant's Counsel, Titus Koceyo and is based on the following grounds:
 - a. That Kirinyaga University is within the jurisdiction of Nyeri County in terms of location;
 - b. That the transfer will save costs on witnesses who are also based in Kirinyaga;
 - c. That no prejudice whatsoever shall be visited upon the Respondent if the order sought herein is granted;
 - d. That the matter had been filed in Nairobi at a time when there was no functioning Employment and Labour Relations Court in Nyeri;
 - e. That there has been no delay in bringing this application.
2. The Respondent opposes the Claimant's Motion by a replying affidavit sworn by its Legal Officer, Jane Ndegwa on 29th October 2021.
4. Ndegwa states that the Claimant chose to file this suit in Nairobi on 15th November 2018 and upon being served with Summons, the Respondent engaged the services of an Advocate who is based in Nairobi to save on costs. She adds that the transfer of the suit to Nyeri will be expensive and prejudicial to the University.
5. Ndegwa disagrees with the Claimant's averment that when the suit was filed there was no functioning Employment and Labour Relations Court in Nyeri and states that there was a functional ELRC in Nyeri in November 2018, when the case was filed.
6. Regarding the cost on witnesses, Ndegwa depones that the Claimant has only one witness in its list of witnesses who in his witness statement confirms that he is based in Nairobi. She further depones that the Claimant's Advocates are also based in Nairobi.
7. This is a single issue Motion being whether there are justifiable grounds for transfer of this case from the Employment and Labour Relations Court at Nairobi to the Employment and Labour Relations Court at Nyeri.
8. Section 3(1) of the Employment and Labour Relations Court Act provides that the principal objective of the Act is to enable the Court to facilitate the just, expeditious, efficient and proportionate resolution of disputes.
9. Section 5 of the Act states that the Court is composed of the Principal Judge and such number of judges as may be determined and recruited by the Judicial Service Commission and appointed in accordance with Article 166(1) of the Constitution of Kenya.
10. Section 12(1) sets out the jurisdiction of the Court in the following terms:

1. 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 this Act or any other written law which extends jurisdiction to the Court relating to employment and labour relations.

11. Rule 3 of the Employment and Labour Relations Court (Procedure) Rules provides that the Court may sit in any station established by the Chief Justice in consultation with the Principal Judge.

12. Pursuant to the foregoing provisions, eight (8) stations namely; Nairobi, Mombasa, Nakuru, Nyeri, Eldoret, Kericho, Malindi and Bungoma have been established to hear and determine cases within the respective geographical areas.

13. Section 15 of the Civil Procedure Act requires that suits be instituted where the cause of action arose or where the defendant resides or works for gain.

14. It is now well settled that the transfer of a case from one station to another will not be effected merely on the basis of convenience of either party (see *Kithita Ngeana v Mwaniki Kisume [2018] eKLR* and *Grohe Dawn Watertech Pty Ltd v Ideal Ceramics [2018] eKLR*.)

15. The Respondent states that it will be expensive for it to prosecute the matter in Nyeri because its Advocate is based in Nairobi. However, costs alone cannot be the reason why a case is retained in a court beyond the territorial limits. Admittedly, litigation is not a cheap undertaking and that is why there is provision for costs. What is more, filing of cases outside the established geographical boundaries interferes with case load equilibrium across the courts.

16. By definition, the Respondent is based in Kirinyaga County and that is where the cause of action arose. This case therefore falls within the territorial jurisdiction of the Employment and Labour Relations Court at Nyeri.

17. The Claimant's Motion dated 30th September 2021 is therefore allowed and this case is consequently transferred to the Employment and Labour Relations Court at Nyeri for hearing and determination.

18. The costs of the Motion will be in the cause.

19. Orders accordingly.

DELIVERED VIRTUALLY AT NAIROBI THIS 3RD DAY OF FEBRUARY, 2022

LINNET NDOLO

JUDGE

Appearance:

Miss Merich for the Claimant

Mr. Kamotho for the Respondent