



REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS COURT OF KENYA

AT NYERI

PETITION NO.E002 OF 2021

(AS CONSOLIDATED WITH ELRC PETITION NO.E003 OF 2021)

(Before D.K.N.Marete)

DEBBIE ATIENO ODHIAMBO.....PETITIONER

VERSUS

MHASIBU HOUSING COMPANY LIMITED.....1ST RESPONDENT

MORRIS NJAGI.....2ND RESPONDENT

R U L I N G

This is an application by way of notice of motion dated 2nd March, 2021 and seeks the following orders of court;

- a. THAT the Honourable court be pleased to order the transfer of ELRC Petition No.E003 of 2021, Caroline Gathoni Mbutia vs Mhasibu Housing Company Limited and Morris Njagi from Employment and Labour Relations Court at Nairobi for hearing and final determination.
- b. THAT the Honourable Court be pleased to make any other orders within its inherent jurisdiction.
- c. THAT the costs of the Application be in the cause.

It is grounded as follows;

- a. The cause of action in this matter arose in the city of Nairobi within Nairobi County within the jurisdiction of the Employment and Labour Relations Court at Nairobi and not Employment and Labour Relations Court at Nyeri and therefore it is not convenient for the parties involved in the suit.
- b. The 1st Respondent operates its business in Nairobi City within Nairobi County where its offices are located and not within the territorial jurisdiction of Employment and Labour Relations Court at Nyeri.
- c. The 2nd Respondent also resides in Nairobi and he is employed by the 1st Respondent in Nairobi, but he is sued in his own capacity.
- d. All the 1st and 2nd Respondents’ witnesses are based in Nairobi County; and it will be costly on the part of the Respondents to transport them and cater for their allowances and accommodation as and when need arises.
- e. That the 1st Respondent is a Company incorporated for the benefit of members of Mhasibu Sacco and as such it derives its finances from the paid-up membership. As such any costs borne by the 1st Respondent in reference to defence of this suit will be met by the membership hence the need to transfer the suit to Nairobi so as to minimise the costs to be suffered by the membership
- f. The Respondents will be highly inconvenienced and their business to the members disrupted should the suit proceed in Nyeri.
- g. It is only fair and just that the orders sought herein be granted for the expeditious fair disposal of the suit.

The Respondent/Applicant entirely relies on the provisions of the Civil Procedure Act in support of the Application. This is by submitting on Section 15 of the Civil Procedure Act (Cap 21) which provides as follows;

“15. Other suits to be instituted where the defendant resided or cause of action arises subject to the limitations aforesaid, every suit shall be instituted in a court within the local limits of whose jurisdiction-

- a. The defendant or each of the defendants (where there are more than one) at time of the commencement of the suit, actually and voluntarily resides or carries on business, or personally works for gain; or
- b. Any of the defendants (where there are more than one) at the time of the commencement of the suit, actually and voluntarily resides or carries on business, or personally works for gain, provided either the leave of the court is given, or the defendants who do not reside or carry on business, or personally work for gain, as aforesaid acquiesce in such institution; or
- c. The cause of action, wholly or in part, arises.

It is her case that this indeed is the bedrock and basis of her application and therefore prays that it sees the light of the day.

The Petitioner/Respondent in his Replying Affidavit dated 17th May, 2021 denies the application. She seeks to rely on the authority of **Judith Anyango Irukan v Muthaiga Golf Club (2018) eKLR** the court held as follows;

“4. The court is established under Article 162 (2) and is a specialized court with the status of the High Court. It is not the High Court and the civil procedure Rules do not apply here. That said, the issue of transfer of cases is an inherent power this court enjoys. The Employment and Labour Relations Court is stationed in various counties and has a number of gazetted sub-registries. There are even circuit courts but the territorial jurisdiction of the court is countrywide.”

Again, in the authority of **Peter Ochola Omburo v Inter-Diocesan Properties Limited (2016)eKLR** the court held thus;

“We need not belabour, Article 162 (2) (a) of the Constitution of Kenya, 2010 set out of this court as a court with the status of the high court and therefore it is conferred with unlimited original jurisdiction in matters under its purview. An issue of territorial jurisdiction would in the circumstances be difficult to establish.”

It is settled law and practice that the Employment and Labour Relations Court does not have territorial jurisdiction. Its reliance and application of the Civil Procedure Act and Rules is also fifty-fifty. The Civil Procedure Act, only comes in in clear situations of a vacuum in the Employment and Labour Relations Procedure Rules, 2016. In the event of a lapse to this extent, the Civil procedure Act comes in handy, again depending on relevance and context.

This court does not have territorial jurisdiction. Her jurisdiction is national in nature and practice. It was never intended that victims of Employment and Labour Relations exercises would be forced to stick to their areas of labourer territory so as to sustain a suit against an offending labour practitioner. They are free to file these proceedings at any location within Kenya.

I am therefore inclined to dismiss this application with costs to the Petitioner/Respondent.

DATED AND DELIVERED AT NYERI THIS 9TH DAY OF MARCH, 2022

D.K.NJAGI MARETE

JUDGE

Appearances

1. Miss Githuku instructed by Githuku & Githuku Company Advocates for the Respondent/Applicants
2. Mr. Kihara instructed by Mwangi & Kihang'a Advocates for the Petitioner/Respondents