



REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS COURT

AT NAIROBI

PETITION NO.E.060 OF 2021

BETWEEN

BRIAN OWARU KAFWA.....PETITIONER

AND

SENSATIONS LIMITED.....RESPONDENT

RULING

1. The Petitioner instituted this Petition on the 7th April 2021, alleging violation of his rights by the Respondent employer. The Petitioner says that he was employed by the Respondent as their sales representative at a monthly salary of Kshs.18,000/= and an allowance of 2% of the total monthly sales.
2. He says that his services were terminated following an allegation of theft against his brother. He says he failed to trace the brother but was asked to go on a number of unpaid leaves by the Respondent which compelled him to resign from his position. The claimant alleges violation of the Employment Act 2007 and the Constitution of Kenya 2010.
3. The Respondent entered an appearance through the firm of Mwaniki Njuguna & Co Advocates. It then raised a Notice of Preliminary Objection which comes out as follows;

That the Respondent shall at the most opportune of time raise a Preliminary Objection on points of law to be determined in Limine that the Honourable Court lacks jurisdiction to hear and determine the current application for want of pecuniary jurisdiction.

4. The Notice Preliminary Objection was canvassed by way of written submission. The Claimant filed the submissions dated the 24/11/2021 whilst the Respondent did not file the submissions.

CLAIMANT'S SUBMISSIONS

5. The claimant submitted that the Court has jurisdiction to hear all the disputes referred to under section 12 of the Employment & labour Relations Court Act No 20 of 2011. That the Gazette Notice was to supplement the Employment & Labour Relations Court Act where the gross salary does not exceed Kshs.80,000/=.
6. The Claimant relied upon the case of **JANET MURIUNGU VERSUS CHIEF OFFICER DEPARTMENT OF EDUCATION 2018 ECLR** where it is said that Nzioki Wa Makau whilst dismissing a similar claim said that the Gazette Notice did not oust the jurisdiction of the Court granted by the Constitution of Kenya 2010 as per the Article 162 as well as the Labour Relations Act 2011 and Employment Act 2007. The claimant further submits that Article 165(3) as read with rule 7 and 8 of the Employment and Labour Relations Court Act allows the Court to hear and determine matters relating to allegation of violation of fundamental freedoms in the Bill of Rights.
7. I have considered the contention in the Notice of Preliminary Objection and the submissions of the claimant filed therein. In my view the key issue is the amount of salary earned by the claimant which can be said to fall within the ambit of the claims that is said can be heard by the Magistrates Court as provided in gazette notice dated 22nd June, 2018. In my view this is a factual matter which can be determined upon hearing the parties herein. See Wasilwa J holding in **MARY WAKARIMA MAINA VERSUS SUADA SHEIKH AHMED & 2 OTHERS 2012 ECLR CAUSE NO 23 OF 2021**.

8. In **JOHN ADOYO & 6 OTHERS V DE LA RUE CURRENCY AND SECURITY PRINT LIMITED [2022] ECLR** Mathews Nderi Nduma J observed that 'a suit filed at Employment and Labour Relations Court in which the claimant is earning a gross monthly salary of

less than Kshs.80,000/= may be transferred meromotu and/or upon application by the Employment and Labour Relations Court to a Magistrate Court with jurisdiction to hear and determine the matter. This is because the Employment and Labour Relations Court has concurrent jurisdiction with the Magistrates Courts over matters filed at Employment and

Labour Relations Court by claimants who earn a gross monthly salary of less than Kshs.80,000/=.

9. The Employment & Labour Relations Court at any rate has concurrent jurisdiction with the special magistrates court in claims where the gross salary does not exceed Kshs.80,000/=

10. This matter at the same time apart from raising issues of non-payment of accrued salaries also raises issues of violation of constitutional rights under Sections 27 and 28 and 41 and 47 and since such constitutional issues are in the ambit of this court and limited in the subordinate courts I will leave the matter to be handled by this court. Having said so the matters that deal with issues of subject matter of less than Kshs.80,000/= ideally should be filed in the subordinate courts to ease the backlogs even with the High courts.

11. The matter will proceed in this court and the respondent is given 14 days to file their response and serve. Thereafter the petitioner will file their submissions within 14 days and the Respondent will file their submissions as well 14 days after service. Mention will be on **12th May 2022** to confirm compliance and give a Judgement date.

Orders accordingly.

DELIVERED, DATED AND SIGNED IN NAIROBI THIS 5TH DAY OF APRIL, 2022.

ANNA NGIBUINI MWAURE

JUDGE

ORDER

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with **Order 21 Rule 1 of the Civil Procedure Rules**, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court has been guided by Article 159(2) (d) of the Constitution which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of the Constitution and the provisions of **Section 1B of the Civil Procedure Act (Chapter 21 of the Laws of Kenya)** which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

A signed copy will be availed to each party upon payment of court fees.

ANNA NGIBUINI MWAURE

JUDGE