



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT MALINDI

MISCELLANEOUS APPLICATION NO E001 OF 2022

AVC MANAGEMENT LIMITED.....APPLICANT

VERSUS

EMMANUEL MWAMUNYE JILANI.....RESPONDENT

RULING

1. This is an application to transfer the following matters from the Principal Magistrate's court Kaloleni to the Principal Magistrate's court Kilifi for purposes of hearing and disposal: CMELRC E007 of 2020; CMELRC E008 of 2020; CMELRC E009 of 2020; CMELRC E010 of 2020; CMELRC E011 of 2020; CMELRC E012 of 2020; CMELRC E013 of 2020; CMELRC E014 of 2020; CMELRC E015 of 2020; CMELRC E016 of 2020; CMELRC E017 of 2020; CMELRC E018 of 2020; CMELRC E019 of 2020; CMELRC E020 of 2020; CMELRC E021 of 2020; CMELRC E022 of 2020; CMELRC E023 of 2020; CMELRC E024 of 2020; CMELRC E025 of 2020; CMELRC E026 of 2020; CMELRC E027 of 2020; CMELRC E028 of 2020; CMELRC E029 of 2020; CMELRC E030 of 2020; CMELRC E031 of 2020; CMELRC E032 of 2020; CMELRC E033 of 2020; CMELRC E034 of 2020; CMELRC E035 of 2020; CMELRC E036 of 2020; CMELRC E037 of 2020; CMELRC E038 of 2020; CMELRC E043 of 2020; CMELRC E044 of 2020; CMELRC E045 of 2020; CMELRC E046 of 2020; and CMELRC E047 of 2020. The matters involve Emmanuel Mwamunye Jilani, the Respondent herein together with 36 other individuals as Claimants and the Applicant as the common Respondent in all of them.

2. The application is inter alia, expressed to be brought pursuant to the Employment and Labour Relations Court (Procedure) Rules, 2016 (ELRC rules). Although the Applicant does not set out the specific ELRC rules under which it invokes the court's jurisdiction, I deem this as a mere procedural error that does not go to the competence of the application. It suffices that the application is expressed to be filed under the ELRC rules.

3. I have previously expressed the view that it is not appropriate for parties to an employment and labour relations dispute that is pending before an Employment and Labour Relations Court (ELRC) to invoke the Civil Procedure rules to seek orders before the court except as is permitted under the ELRC rules. Where the ELRC rules are silent on a particular scenario, the parties ought to apply under section 3 (1) of the Employment and Labour Relations Court Act (ELRC Act) as read with Section 12 (3) (viii) of the Act and Rule 17 of the ELRC rules (see *Vincent Mwatsuma Nguma & 5 others v Kilifi Mariakani Water & Sewerage Co Ltd (KIMAWASCO) [2021] eKLR*).

4. The jurisdiction of the Magistrate's Court to handle employment and labour relations disputes arises from the power donated to the Chief Justice under section 29 of the ELRC Act to gazette magistrates to handle these matters. Pursuant to this power, the Chief Justice issued Gazette Notice No. 6024 of 2018 mandating magistrates of the rank of Senior Resident Magistrate and above to hear, with some exceptions, disputes arising from employment contracts where the employee's gross monthly salary does not exceed Ksh 80,000/=. The gazette notice provides that the magistrates will handle matters that fall within their areas of jurisdiction.

5. While it is arguable that under the Magistrates Act a magistrate's jurisdiction is countrywide, the question of geographical location of the trial court in comparison with the residence of the parties and the area the cause of action is said to have arisen is in my view of critical importance in considering where to file a case as submitted by the Applicant. This consideration goes into ensuring that the choice of the court facilitates the overall objective of the law to dispense justice in a manner that is just, affordable, proportionate and expeditious.

6. The grievances by the Respondents against the Applicant are said to have arisen within Kilifi town where the Applicant runs a hotel business. This fact is not disputed by the Respondents' Advocates.

7. The Applicant states that there is a Principal Magistrate's court at Kilifi town. This fact is also not disputed by the defense. In any event, the presence of a Magistrate's court within Kilifi town is a notorious fact which the court takes judicial notice of.

8. This court falls within the rank of those courts which Gazette Notice No. 6024 of 2018 applies. Again, this fact is not contested by the defense.

9. The several Claimants (Respondents) opted to file their claims at the Kaloleni Magistrate's court within Kilifi County. Although Kaloleni is still within Kilifi County, the closest court within the geographical limits of the area the disputes arose is the Kilifi Principal Magistrate's Court.

10. The Respondents argue that the matters were filed at Kaloleni to enable optimum use of judicial resources. That as the matters have already been prepared for trial, it does make sense to let them be heard and determined where they are currently filed.

11. I have considered the rival positions by the parties. I do not doubt that one of the cardinal principles that guide the handling of judicial disputes is the need to ensure the fair, just and expeditious disposal of cases. In this regard, the argument that the Kaloleni court may be better placed to expeditiously handle the current causes could, if the caseload data of the two stations was availed, have merit.

12. However, it must also be remembered that justice is two way. The party that has been dragged to court is entitled to be handled (just as the claimant) in a manner that encourages his confidence in the concept of fairness.

13. It is unjust to haul a defendant to court in a geographical location that is well outside his way when there is a court next door where he resides or undertakes business. There must be compelling reasons that justify the claimant's decision to avoid the court in close proximity of the defendant for the decision to move to a court that is stationed further to be justified.

14. Since it is the Claimant who has sought justice in court, he should be prepared to meet the cost of pursuing the cause. After all, his effort will normally be rewarded by an order for costs should he succeed in the case. It appears outright improper for the court to turn a blind eye to the fact that the choice of the forum where the claimant elects to file his case will unfairly burden the defense with high expense in defending the matter when there is an option to the parties that would perhaps have lessened this burden.

15. I find the decision to file the several cases outside Kilifi town where the defendant ordinarily operates and where there is a court of competent jurisdiction to handle the cases not defensible. This decision is likely to unfairly burden the defendant with added costs in defending these claims. Accordingly, I order that the several suits aforesaid be transferred to the Principal Magistrate's Court, Kilifi for hearing and disposal.

16. There shall be no order as to costs.

DATED, SIGNED AND DELIVERED ON THE 4TH DAY OF APRIL, 2022

B. O. M. MANANI

JUDGE

In the presence of:

Khalwale for the Applicant

No appearance for the Respondent

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 April 2020, this Ruling has been delivered to the parties online with their consent, the parties 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.

B. O. M. MANANI

JUDGE