



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT KISUMU

MISC. APPL. NO. E046 OF 2021

KENYA NATIONAL BUREAU OF STATISTICS.....APPLICANT

VERSUS

RICKY HENRY OSURI.....RESPONDENT

RULING

1. Before Court is the Applicant's Motion application dated 23rd June, 2021, and filed on 29th June, 2021. The Applicant seeks that this court transfers **Kisumu ELRC Cause No. 64 of 2019** to the Chief Magistrates Court at Nairobi, on the premise that the cause of action in the matter arose in Nairobi.
2. The Application is supported by grounds on the face of the motion and an affidavit sworn by one **Josiah M. Omosa**, the Company Secretary for the Applicant. The basis of the application is that the cause of action arose in Nairobi where the Applicant has her headquarters, and not Kisumu where the suit was filed.
3. The application was urged interparties on 14th March, 2021. The Counsel for the Applicant argued that the Applicant's registered offices and headquarters is at Nairobi and hence, the suit should have been instituted at Nairobi and not at Kisumu.
4. The Respondent opposed the application vide a replying affidavit filed on 8th July, 2021. The Respondent avers that he resides at Kisumu and was hired and accepted the job with the Applicant at Kisumu. He further avers that at no time did he ever work at the Applicant's Nairobi offices.
5. The Counsel for the Respondent argued that the Applicant has offices at Kisumu, and that the Claimant was employed and stationed at the Applicant's Kisumu branch Offices.
6. The Respondent further argued that the application is only intended to frustrate his case, and seeks that the court dismisses the application.

Determination

7. I have considered the application, the grounds and affidavit in support, the Respondent's reply and the oral submissions by both parties. The issue for determination is whether the Applicant has made a case for grant of the orders sought.
8. Section 18 of the Civil Procedure Act, provides states:

“(1) On the application of any of the parties and after notice to the parties and after hearing such of them as desire to be heard, or of its own motion without such notice, the High Court may at any stage— (a) ...

(b) withdraw any suit or other proceeding pending in any court subordinate to it, and thereafter—

(i) try or dispose of the same; or

(ii) ...

(iii) retransfer the same for trial or disposal to the court from which it was withdrawn.

(2) Where any suit or proceeding has been transferred or withdrawn as aforesaid, the court which thereafter tries such suit may, subject to any special directions in the case of an order of transfer, either retry it or proceed from the point at which it was transferred or withdrawn.”

9. The foregoing provisions are clear that this court has jurisdiction to transfer suits pending in the magisterial courts, and this issue is not disputed.

10. The applicant’s reason for seeking transfer, is that her headquarters is at Nairobi and hence, deems the cause of action to have accrued at Nairobi and not Kisumu where the suit has been instituted.

11. The Respondent’s position is that he is based at Kisumu and was hired at the Applicant’s Kisumu offices, where he offered services to the Applicant.

12. The Applicant has not produced any evidence to rebut the Respondent’s assertion that he was hired and worked at their Kisumu offices. Mere statements will, in the circumstances not hold.

13. Considering that the Respondent is based at Kisumu and worked at the Applicant’s Kisumu branch offices, it is only fair that the case is heard and determined at Kisumu, where it was filed to save the Respondent money and time. In ***Daniel Kabungu v Zikarenga & 4 others, Kampala HCCs No. 36 of 1995***, it was held that in exercising its powers of transfer, the court has to consider a number of factors including the balance of convenience, questions of expense, interests of justice and possibilities of hardship.

14. The court further notes that the suit subject of this ruling was heard *ex parte* for reason of the non-attendance of the Applicant and their Counsel, but the resultant orders were set aside and the matter ordered to be heard afresh. A transfer would in the circumstances, occasion further delay of this case.

15. The Respondent having been hired and worked at the Applicant’s Kisumu offices, I find and hold that the cause of action in **Kisumu ELRC Cause No. 64 of 2019**, arose at Kisumu.

16. The upshot is that the Applicant’s motion of 23rd June, 2021, lacks merit and is hereby dismissed with costs to the Respondent.

17. Orders accordingly.

SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT KISUMU THIS 4TH DAY OF APRIL, 2022

CHRISTINE N. BAARI

JUDGE

Appearance:

Ms. Mwangi Present for the Applicant

Mr. Odhiambo Present for the Respondent

Ms. Christine Omollo-C/A