



**Kenyan Plantation Agricultural Workers Union v Lauren International Flowers Limited (Cause E306 of 2022) [2022] KEELRC 109 (KLR) (10 June 2022) (Ruling)**

Neutral citation: [2022] KEELRC 109 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E306 OF 2022  
SC RUTTO, J  
JUNE 10, 2022**

**BETWEEN  
KENYAN PLANTATION AGRICULTURAL WORKERS UNION ... CLAIMANT  
AND  
LAUREN INTERNATIONAL FLOWERS LIMITED ..... RESPONDENT**

**RULING**

1. The claimant which is a union representing employees, some of who work for the respondent, moved this Court vide a Memorandum of Claim and Application both dated May 12, 2022.
2. On May 16, 2022, the matter was certified urgent and the claimant directed to serve the Claim and the Application upon the respondent. The Application was listed for hearing on May 24, 2022. On the said date, the respondent was absent. The claimant argued the Application and urged the Court to allow the same as prayed.
3. The Court reserved its Ruling for May 27, 2022. On the said date, the respondent through its Counsel, Mr. Murage, informed the Court that it had filed an Application to arrest the Ruling. The Court was further informed that the respondent had lodged a Notice of Preliminary Objection which touched on the Court's jurisdiction.
4. In view of these developments and in as much as the Application was not on record, the Court put on hold its Ruling and allowed the respondent to respond to the Application and to allow time for the Preliminary Objection to be placed on record. By consent of both parties, the matter was set for interpartes hearing on May 31, 2022.
5. In view of the fact that the Preliminary Objection raised a jurisdictional question, the Court dealt with it first. Parties made oral arguments through their respective counsels and later filed written submissions with leave of the Court.



6. The Notice of Preliminary Objection which is dated May 25, 2022 was premised on the following grounds: -
  - a. That the instant Suit and Application dated May 12, 2022 contravenes the mandatory provisions of Section 12 & 15 of the Civil Procedure Act, CAP 21 Laws of Kenya.
  - b. That the Claimant's Memorandum of Claim and Application is devoid of jurisdiction as the instant Suit and Application is not instituted where the Defendant resides and or where the cause of action arose.
  - c. That the cause of action arose in Thika within the County of Kiambu whereas the Claimant has filed the present Suit and Application in Nairobi which by dint of Sections 12 and 15 of the Civil Procedure Act seizes Jurisdiction from the Court.
  - d. That the Claimant herein has no locus standi to institute the present Suit and the Application against the Respondent herein and is a stranger to the issues raised before this Honourable Court.
  - e. That the instant Suit and Application lacks merit; is bad in law and it is a waste of this Honourable Court's time.
  - f. That the Orders prayed for are incapable of being granted.
  - g. That the entire suit is defective, frivolous and violates the provisions of Civil Procedure Act, Cap 21 Laws of Kenya.
7. Mr. Murage, Counsel for the respondent argued in support of the preliminary objection. He submitted that section 29(3) of the Employment Act, empowers the Chief Justice to appoint magistrate courts to preside over employment matters. He placed reliance on Gazette Notice No. 6024 of 2018 through which the Chief Justice appointed magistrates in the rank of Senior Resident Magistrates and above, to hear and determine employment matters where the employees gross monthly pay does not exceed Kshs.80,000.00.
8. That the claim shows that the grievant was earning a monthly salary of Kshs 8,580/= hence the claim ought to have been filed at Thika Law Courts, where the cause of action arose. That as such, this Court lacks both the pecuniary and area jurisdiction to hear and determine the suit. In support of its submissions, the respondent cited the case of Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd [1989] eKLR.
9. Counsel further argued that the claimant union lacked the locus standi to bring the instant suit as the grievant, Mr. Festus Walubengo, is no longer an employee of the respondent having been terminated in April, 2022. That as such, he was not a unionisable employee of the union. In addition, Counsel submitted that the dispute is contractual in nature and not trade related as crafted by the claimant. He invited the Court to consider the determination in Republic v Mwangi S. Kaimenyi ex parte KIPPRA [2013] eKLR.
10. In further submission, Counsel told Court that an order for transfer of suit from one Court to another cannot be made as it has not been brought in the first instance to a court of competent jurisdiction.
11. It was Mr. Murage's further submission that the prayers sought in the Application are final in nature hence cannot be granted. It was further submitted on behalf of the respondent that the court lacks jurisdiction to grant prayers 6 and 10 which are in respect of access to the respondent's premises.



12. The claimant argued against the Preliminary Objection through its Counsel Ms. Ateko who submitted that section 12 and 15 of the Civil Procedure Act being relied on by the respondent, focuses on pecuniary jurisdiction where moveable property is involved, which was not the case herein. She further submitted that Thika law courts do not have an Employment and Labour Relations Court. She further submitted that the instant suit does not focus on the grievant only and that it raises other issues relating to deduction and remittance of union dues. She further urged that the claimant has locus to represent all employees.
13. It was the claimant's further submission that the Court has jurisdiction to hear the suit as it concerns a trade dispute under the Labour Relations Act, 2007. Reference was made to alleged violations of sections 4(1) and (2) and 5 of the Labour Relations Act. The claimant further argued that it had locus standi to being the claim on behalf of the grievant by virtue of section 12 of the Employment and Labour Relations Court Act.
14. It is evident that the main issue for determination is whether the Court has jurisdiction to hear and determine the suit herein.
15. The respondent's contention is that the suit herein ought to have been filed at the Magistrates Court at Thika Law Courts on grounds of pecuniary and area jurisdiction.
16. In order to resolve this issue, Gazette Notice no 6024/2018, is key and I will reproduce the same as hereunder: -

“IN EXERCISE of the powers conferred by section 29(3) and (4)(b) of the Employment and Labour Relations Court Act, 2011, and in consultation with the Principal Judge of the Court, the Chief Justice appoints all Magistrates of the rank of Senior Resident Magistrates and above as Special Magistrates designated to hear and determine the following employment and labour relations cases within their respective areas of jurisdiction:

1. Disputes arising from contracts of employment (excluding trade disputes under the Labour Relations Act, 2007) where employees gross monthly pay does not exceed Kshs 80,000.00 as commenced and continued in accordance with the Employment and Labour Relations Court (Procedure) Rules, 2016.
2. ....”

17. A clear construction of the above legal notice is that magistrates above the rank of Senior Resident Magistrate have jurisdiction hear and determine employment matters arising from contracts of employment, where employees gross monthly pay does not exceed Kshs 80,000/=. This is with the exclusion of trade disputes under the Labour Relations Act, 2007.
18. Accordingly, the jurisdiction of the magistrates court is not only limited to the monthly gross salary earned by an employee, but also to the nature of the dispute. It is therefore evident that magistrates court have no jurisdiction to hear and determine trade disputes under the Labour Relations Act, 2007.
19. The instant matter seeks the following main orders: -
  - a. A declaration that Festus Walubengo services were unprocedurally, unlawfully and unfairly terminated;
  - b. An order directing the respondent to pay from its funds undeducted and unremitted union dues to the claimant; and



- c. An order barring the respondent from interfering with the membership of the claimant unless as provided under law.
20. These are no doubt, claims enforceable under *the Constitution*, *Employment Act*, 2007 and the *Labour Relations Act*, 2007.
21. Further, the claim as couched, is composite in nature as it seeks redress at three levels to wit; individual level, union level and membership level.
22. At the individual level, the claimant seeks orders in favour of one Mr. Festus Walubengo, who it avers is its member, while at the union level, it seeks to enforce its constitutional right as a union in terms of deduction and remittance of union dues as well as access to the respondent's premises and at the membership level, it seeks orders against victimization by the respondent of its members, on the basis of membership and participation in trade union activities.
23. These rights are enforceable under Article 41 of *the Constitution*, sections 40, 43, 45 and 47 of the *Employment Act* and sections 48 and 56 of the *Labour Relations Act*.
24. It is therefore apparent that magistrates lack the jurisdiction to hear and determine the instant dispute on account of its cross-cutting nature in terms of the applicable law. In this case, the ultimate jurisdiction rests with this Court by dint of Article 162(2)(a) of *the Constitution* and Section 12(1) the *Employment and Labour Relations Court Act* which grants this Court original jurisdiction to hear and determine all employment and labour relations matters.
25. I also find it imperative to address an issue raised by the respondent to the effect that the court lacks jurisdiction in regards to the issue of access to its premises. With due respect, this does not reflect the true position in view of the provision of section 56 of the *Labour Relations Act*, which grants trade unions access to employer's premises subject to reasonable conditions.
26. In light of the limitation of the jurisdiction of the magistrates court and taking into account the composite nature of claim herein, it is evident that the magistrates court lacks jurisdiction to hear and determine the same.
27. In total sum, the Notice of Preliminary Objection dated 25<sup>th</sup> May, 2022 is dismissed.
28. Costs shall be in the cause.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 10<sup>TH</sup> DAY OF JUNE, 2022.**

.....  
**STELLA RUTTO**

**JUDGE**

**Appearance:**

Ms. Ateko for the Claimant

Mr. Murage for the Respondent

Court Assistant Barille Sora

**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 15<sup>th</sup> March 2020 and subsequent directions of 21<sup>st</sup> 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 had 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.

**STELLA RUTTO**

**JUDGE**

