



**Atelo v Valentines Education Limited (Cause 760 of 2017)
[2022] KEELRC 1491 (KLR) (2 June 2022) (Ruling)**

Neutral citation: [2022] KEELRC 1491 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
CAUSE 760 OF 2017**

**AK NZEI, J
JUNE 2, 2022**

BETWEEN

LILIAN JESCAH ATELO CLAIMANT

AND

VALENTINES EDUCATION LIMITED RESPONDENT

RULING

1. The suit herein was instituted on 21st September 2017 by the Claimant vide a Memorandum of Claim dated 30th August 2017. The Claimant pleads that she was employed by the Respondent from 9th June 2016, and that her fixed term contract was set to end on 30th November 2017.
2. The Claimant further pleads that her employment was unlawfully and unprocedurally terminated by the Respondent on 19th April 2017. The Claimant seeks several reliefs, which include compensation for unlawful termination of employment, unpaid salary for April 2017, pro-rated leave for ten months, unpaid house allowance, one month salary in lieu of notice, damages for breach of contract and issuance of a Certificate of Service; among others.
3. I have not seen on the Court's record any pleadings filed by the Respondent.
4. On 10th November 2021, the Respondents Advocates, Conrad Law Advocates LLP, filed a Notice of Preliminary Objection dated 22nd October 2021 stating that:

“ this Honourable Court lacks jurisdiction to entertain this claim by virtue of Section 29(3) and 4(b) of the *Employment and Labour Relations Court Act*, 2011 and Gazette Notice No. 6024.”
5. On 15th November 2021, I directed both parties to file submissions on the said Preliminary Objection, which they have since done.



6. Section 12(1) of the *Employment and Labour Relations Court Act*, 2011 sets out the jurisdiction of the Court as follows:-

“The Court shall have exclusive original and appellate jurisdiction to hear and determine all disputes referred to it in accordance with Article 162(2) of *the Constitution* and the provisions of this Act or any other written law which extends jurisdiction to the Court relating to employment and labour relations including:

- a. Disputes relating to or arising out of employment between an employer and an employee.
- b. Disputes between an employer and a trade union.
- c. Disputes between an employer’s organization and a trade union’s organization.
- d. Disputes between trade unions.
- e. Disputes between employer organizations.
- f. Disputes between an employer organization and a trade union.
- g. Disputes between a trade union and a member thereof.
- h. Disputes between an employers’ organization or federation and a member thereof.
- i. Disputes concerning the registration and election of trade union officials; and
- j. Disputes relating to the registration and enforcement of collective agreements.”

7. On the other hand, Section 29(3) of the Act provides:-

“The chief Justice may, by notice in the Gazette, appoint certain Magistrates to preside over cases involving employment and labour relations in respect of any area of the country.”

8. The Respondent submitted that vide Gazette Notice No. 6024 of 2018, the Chief Justice appointed all magistrates of the rank of Senior Resident Magistrate and above as special magistrates designated to hear and determine employment and labour relations cases arising from employment contracts where employee’s gross salary does not exceed kshs.80,000.

9. It is to be noted that the said Gazette Notice, which was published long after institution of the suit herein, cannot in any way be said to have taken away this Court’s exclusive jurisdiction over matters referred to therein. The said gazette notice does not amount to an amendment of Section 12(1) of the *Employment and Labour Relations Court Act*, 2011.

10. This Court still retains unfettered jurisdiction over all matters referred to under Section 12 of the *Employment and Labour Relations Court Act*, 2011; but when faced with a suit falling within the parameters of Gazette Notice No. 6024 of 2018, the Court may decide to either try the suit and determine it or to refer it to the Magistrates’ Courts for hearing and determination.

11. The suit herein was filed on 21st September 2017, long before the date of Gazette Notice No. 6024 of 2018. Parties herein have been waiting for hearing and determination of the suit for over four years now. The suit must be heard and determined without any further delay.



12. Consequently, and having considered written submissions filed by counsel for and against the Preliminary Objection, I make the following orders:-
- a. The Preliminary Objection dated 22nd October 2021 is hereby overruled and dismissed with no order as to costs.
 - b. The suit will be mentioned in Court on 9/6/2022 for fixing of a hearing date.
13. Orders accordingly.

DATED, SIGNED AND DELIVERED AT MOMBASA THIS 2ND DAY OF JUNE 2022

AGNES KITIKU NZEI

JUDGE

ORDER

In view of restrictions on physical Court operations occasioned by the COVID-19 Pandemic, this Ruling has been delivered via Microsoft Teams Online Platform. A signed copy will be availed to each party upon payment of Court fees.

AGNES KITIKU NZEI

JUDGE

Appearance:

Mr. Ochieng for Claimant

Miss Wamanga for Respondent

