



**Abungana v Broadway Bakery Limited (Miscellaneous Case
E002 of 2022) [2022] KEELRC 3812 (KLR) (29 July 2022) (Ruling)**

Neutral citation: [2022] KEELRC 3812 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT ELDORET
MISCELLANEOUS CASE E002 OF 2022
NJ ABUODHA, J
JULY 29, 2022**

BETWEEN

PATRICK BENARD ABUNGANA CLAIMANT

AND

BROADWAY BAKERY LIMITED RESPONDENT

RULING

1. By motion dated January 24, 2022, the applicant sought orders that this court transfers cause number 84 of 2019 from Eldoret to Thika.
2. The application was based on ground *inter alia* that the claimants contract having been entered in Thika where the applicant has its head office, the claimant has filed a suit in Eldoret Magistrates Court and that by virtue of the contract being entered into in Thika, the cause of action arose therein and as such the said suit should have been filed in the Magistrate's Court at Thika in line with section 15 of the *Civil Procedure Act*, cap 21.
3. The applicant further contended that its witnesses are based in Thika thus unless the case was transferred, the applicant stood to suffer undue hardship in defending the case due to logistical burden.
4. The respondent approved the application and filed a Replying Affidavit in which he deponed among others that it was incorrect and misleading for the applicant to insinuate that the cause of action arose within Thika. According to the respondent, the cause of action arose in Eldoret and not Thika therefore the trial court had proper jurisdiction. The respondent was employed at the applicants Eldoret Branch hence the suit was properly instituted. The applicant assigned the respondent as a driver to transport Bakery products from Eldoret Branch to Mumias Route when the motor vehicle was involved in a road accident resulting to the respondent's dismissal.
5. The Court has carefully considered the application and noted that from mere allegation that the contract giving rise to the suit in the Magistrates Court was entered into at the applicant's head office



in Thika, no such contract has been produced to support the averment. The respondent deponed that he was employed by the applicant at its branch office in Eldoret. This has not been contradicted by the applicant through production of the letter of contract or any document to show the claimant was working at Thika.

6. When this application was filed on January 27, 2022, the Court declined to certify the same urgent and further noted that the matter sought to be transferred was filed in 2019 and the applicant filed a response thereto without raising the issue of the jurisdiction of the Court in Eldoret to entertain it.
7. The court is therefore of the view that the present application is merely intended to delay the prosecution of the claim before the Magistrates Court. The same is therefore found without merit and is hereby dismissed with costs.
8. It is so ordered.

DATED AT ELDORET THIS 29TH DAY OF JULY, 2022

DELIVERED THIS 29TH DAY OF JULY, 2022

ABUODHA JORUM NELSON

JUDGE

