



**Muckoya v Nevira Minerals Limited (Cause E488 of 2021)  
[2022] KEELRC 1333 (KLR) (7 July 2022) (Ruling)**

Neutral citation: [2022] KEELRC 1333 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E488 OF 2021**

**AN MWAURE, J  
JULY 7, 2022**

**BETWEEN**

**MARY MAGDALENE MUCKOYA ..... CLAIMANT**

**AND**

**NEVIRA MINERALS LIMITED ..... RESPONDENT**

**RULING**

1. The Claimant (Mary Magdalene Muckoya) was an employee of the Respondent (Nevira Minerals Limited) and worked between September 23, 2019 and April 20, 2021 when she was terminated.
2. It is not in dispute that the claimant earned a gross monthly salary of Kshs. 69,747.64 which is less than eighty thousand Kenyan Shillings (80,000) at the time of her termination.
3. The Respondent has brought a Notice of Preliminary Objection Application dated April 7, 2022 pursuant to Gazette Notice No. 6024, Volume. CXX-No. 74 of 22<sup>nd</sup> June 2018 stating that this Honourable Court lacks jurisdiction to hear and determine the Claim dated 11<sup>th</sup> June 2021 at this stage as the same belongs to the Chief Magistrates Court.
4. The Claimant in her Replying Affidavit accepts that she earned a gross monthly salary of Kshs. 69,747.69 and that she has been advised by her advocates that employment matters where the salary is below Kshs. 80,000 is within the jurisdiction of the Chief Magistrate's Courts. Further, in her affidavit in opposition to the Notice of Preliminary Objection she seeks that this Honourable Court considers hearing and determining this matter without relying on legal technicalities.
5. This Court relies on Paragraph 1 of Gazette Notice No. 6024, Volume. CXX-No. 74 of 22<sup>nd</sup> June 2018 which provides as follows:

Paragraph 1.



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:

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.

6. Further, the case of *John Adoyo & 6 Others v De La Rue Currency and Security Print Limited* [2022] eKLR is relied upon. In that case at Paragraphs 23 and 24 on the issue of transferability of matters Learned Judge is quoted to have stated as follows:

23. The circumstances of this case must however be distinguished from instances where a suit is filed in a Court with concurrent jurisdiction with another, in respect of which an application for transfer is made by the claimant.

24. For example a suit filed at Employment and Labour Relations Court in which the claimant is earning a gross monthly salary of less than Kshs.80,000, may be transferred meromotu and/or upon application by the Employment and Labour Relations Court to a Magistrate Court with jurisdiction to hear and determine the matter. This is because the Employment and Labour Relations Court has concurrent jurisdiction with the Magistrates Courts over matters filed at Employment and Labour Relations Court by claimants who earn a gross monthly salary of less than Kshs.80,000.

7. Additionally, the Court is guided by the decision of the Court of Appeal in *Professor Daniel N. Mugendi vs Kenyatta University & Others* – Civil Appeal No. 6 of 2012 [2013] eKLR. The Court of Appeal stated:

“Believing as we do that the approach taken by Majanja J, is the correct one, and in the end endeavoring to meet the ends of justice untrammelled by procedural technicalities, we set aside the order striking out the appellant’s petition and direct the High Court do transfer it to the Industrial Court which also has jurisdiction and authority to consider the claims of breach of fundamental rights as pertains to industrial and Labour Relations matters. And in order to do justice, in the event where the High Court, the Industrial Court or Employment and Labour Relations Courts comes across a matter that ought to be litigated in any of the other Courts, it should be prudent to have matters transferred to that Court for hearing and determination.”

8. Actually the case was filed at Chief Magistrates Court of Kenya in Nairobi in Nairobi as Civil Case E488/2021. It is unclear how it ended at the Employment and Labour Relation Court (High Court).

9. It is therefore ordered that this matter be transferred to the Chief Magistrates Court which has jurisdiction to hear and determine it.

It is so ordered

**DELIVERED, DATED AND SIGNED IN NAIROBI THIS 7<sup>TH</sup> DAY OF JULY, 2022.**

**ANNA NGIBUINI MWAURE**

**JUDGE**



## **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 has 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 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.

A signed copy will be availed to each party upon payment of court fees.

**ANNA NGIBUINI MWAURE**

**JUDGE**

