



REPUBLIC OF KENYA



**Mwonyonyi v Mufaddal Glass Distributors Limited (Cause
E784 of 2021) [2022] KEELRC 3828 (KLR) (18 August 2022) (Ruling)**

Neutral citation: [2022] KEELRC 3828 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E784 OF 2021
AN MWAURE, J
AUGUST 18, 2022**

BETWEEN

FELIX M'MAINA MWONYONYI CLAIMANT

AND

MUFADDAL GLASS DISTRIBUTORS LIMITED RESPONDENT

RULING

1. Vide his Statement of Claim dated 21st September 2021 the Claimant (Felix M'Maina Mwonyonyi) avers that he was offered employment as a loader by the Respondent (Mufaddal Glass Distributors Limited) on or about the 19th September 2020 a position whose starting salary was Kshs. 18,600 per month. He further states that he incurred some injuries in late October 2020 and during his recuperation period the Respondent continued paying his salary up to and including the month of April 2021. He received no salary from May 2021 and came to learn later that he had been dismissed.
2. In its Memorandum of Reply dated 1st November 2021, the Respondent did not deny the contents of Paragraph 5 of the Claimant's Statement of Claim which confirmed that the Claimant's starting monthly was Kshs. 18,600 per month. The amount of salary earned by the Claimant is therefore not in dispute.
3. The Respondent has brought a Notice of Preliminary Objection Application dated 10th May 2022 pursuant to Gazette Notice No. 6024, Volume. CXX-No. 74 of 22nd June 2018 stating that this Honourable Court lacks the requisite pecuniary jurisdiction to handle this cause as it is clearly within the jurisdiction of the Magistrate's Court.
4. This Court seeks to rely on Paragraph 1 of Gazette Notice No. 6024, Volume. CXX-No. 74 of 22nd June 2018 which provides as hereunder:



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:

1. Disputes arising from contracts of employment (excluding trade disputes under the *Labour Relations Act*, 2007) where employees gross monthly pay does not exceed KSh. 80,000.00 as commenced and continued in accordance with the Employment and Labour Relations Court (Procedure) Rules, 2016.
5. 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.

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 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 Environment 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.”

6. This matter is well fit to be transferred to the Magistrate’s Court having been filed in 2021 after the Gazette Notice that gave magistrates the requisite jurisdiction to hear cases where employee’s salary was below Kshs.80,000 having been passed in 2018. The High Court Employment and Labour Relations Court also can properly hear any case but for tidiness it is only proper it is heard in the Chief Magistrate Court.
7. It is therefore ordered that this matter be transferred to the Chief Magistrate’s Court Nairobi which has jurisdiction to hear and determine it.

Orders accordingly.

DELIVERED, DATED AND SIGNED IN NAIROBI THIS 18TH AUGUST, 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 15th March 2020 and subsequent directions of 21st 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.

ANNA NGIBUINI MWAURE

JUDGE

