



**Jiffy Pictures Limited v Ofula (Civil Appeal E140 of 2021)
[2022] KEELRC 4022 (KLR) (29 September 2022) (Judgment)**

Neutral citation: [2022] KEELRC 4022 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CIVIL APPEAL E140 OF 2021**

**L NDOLO, J
SEPTEMBER 29, 2022**

BETWEEN

JIFFY PICTURES LIMITED APPELLANT

AND

RAYMOND OFULA RESPONDENT

(Appeal from the Ruling of Hon Gathogo Sogomo, PM delivered on 3rd November 2021 in MCELRC No E746 of 2021: Raymond Ofula v Jiffy Pictures Limited)

JUDGMENT

1. The subject of this appeal is the ruling delivered by Hon Gathogo Sogomo, PM on November 3rd, 2021 in MCELRC No E746 of 2021.
2. In its Memorandum of Appeal dated January 11, 2022, the appellant raises the following grounds:
 - a. The learned magistrate erred in both law and fact by failing to appreciate that his court lacks the jurisdiction to entertain the matter;
 - b. The learned magistrate erred in both law and fact by failing to interrogate this court's pecuniary limit as set out by law in rendering his impugned ruling on November 3, 2021;
 - c. The learned magistrate erred in both law and fact by failing to acquaint himself with the provisions of the Gazette Notice No 6024 of June 22, 2018;
 - d. The learned magistrate erred in law and fact by failing to consider the appellant's submissions in rendering his ruling;
 - e. The learned magistrate erred in law by failing to substantively examine the merits of the Notice of Preliminary Objection as raised by the appellant which points out from the onset that his court lacks the power to entertain the matter;



- f. The learned magistrate erred in both law and fact by failing to discern the basis of the preliminary objection and as a result he was blinded to the fact that he was not cloaked with jurisdiction and went on to deal with non-issues;
 - g. The learned magistrate erred in law and fact in rendering the ruling having blatantly disregarded the appellant’s preliminary objection;
 - h. The learned magistrate’s decision was contrary to the constitutional thresholds of justice, national values and principles of governance in that it skirts from inquiring into the grave matter in issue by examining the substratum of the preliminary objection as presented by the appellant which would have given the law and justice a chance to prevail.
3. On March 10, 2022, the court directed the parties to file their written submissions and gave May 17, 2022 as the date for highlighting of the submissions. However, by the time of writing this judgment, only the appellant had filed submissions.
 4. In its submissions dated April 25, 2022, the appellant cites the decision of the Court of Appeal in *Owners of Motor Vessel “Lillian S” v Caltex Oil (Kenya) Limited* (1989) KLR 1 where Nyarangi JA stated thus:

“I think that it is reasonably plain that a question of jurisdiction ought to be raised at the earliest opportunity and the court seized of the matter is then obliged to decide the issue right away on the material before it. Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law downs tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.”

5. The appellant further relies on Gazette Notice No 6024 of June 22nd, 2018, which donated power to magistrates of the rank of Senior Resident Magistrate and above, to hear and determine disputes arising from contracts of employment where the employee’s gross monthly salary does not exceed Kshs 80,000.
6. The appellant submits that the respondent’s gross monthly salary as disclosed in the respondent’s own pleadings and his employment contract, was Kshs 140,000 plus an additional Kshs 10,000 as fuel allowance.
7. The jurisdiction to hear and determine disputes arising from employment contracts is specialised jurisdiction initially vested in the Employment and Labour Relations Court. Pursuant to Gazette Notice No 6024 of June 22nd, 2018, this jurisdiction was shared with magistrates of the rank of Senior Resident Magistrate and above, designated as special magistrates.
8. The subject Gazette Notice provides as follows:

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 Magistrate 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 as commenced and continued in accordance with the Employment and Labour Relations Court (Procedure) Rules, 2016.



2. ...

9. There is no denial that at the time of leaving employment, the respondent's gross monthly pay was in excess of Kshs 80,000. That being the case, the trial magistrate did not have jurisdiction to entertain the respondent's claim. The appellant's preliminary objection was therefore well taken and ought to have been sustained.
10. In the result, I allow this appeal, set aside the order of November 3, 2021 overruling the appellant's preliminary Objection and replace it with an order upholding the said objection.
11. Each party will bear their own costs.

DELIVERED VIRTUALLY AT NAIROBI THIS 29TH DAY OF SEPTEMBER 2022

LINNET NDOLO

JUDGE

Appearance:

Mr Andere for the appellant

Mr Kiti for the respondent

