



REPUBLIC OF KENYA



**Muya v Lukenya Group of Schools (Petition 22 of 2018)  
[2022] KEELRC 12928 (KLR) (25 October 2022) (Ruling)**

Neutral citation: [2022] KEELRC 12928 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
PETITION 22 OF 2018  
JK GAKERI, J  
OCTOBER 25, 2022**

**BETWEEN**

**STELLAMARIS MUTHEU MUYA ..... CLAIMANT**

**AND**

**LUKENYA GROUP OF SCHOOLS ..... RESPONDENT**

**RULING**

1. Before the court for determination is a Notice of Motion Application by the Respondent/Applicant dated August 19, 2022 seeking orders that;
  - i. The suit herein be and is hereby transferred to the Employment and Labour Relations Court at the Chief Magistrates Court at Mavoko for hearing and determination.
  - ii. The costs of this Application be in the cause.
2. The Application is based on the grounds annexed thereto and supported by the Affidavit of Stanslaus Mwilu who deposes that he is the Director at the Lukenya College.
3. The affiant states that the Petitioner filed the suit herein at Nyeri as Nyeri ELRC Case No. 54 of 2018.
4. That after objection on March 12, 2018, the suit was transferred to Nairobi.
5. The affiant further states that there has been an Employment and Labour Relations Court at Mavoko since June 10, 2018 which is within the local limits of the territory where the subject matter arose.
6. It is further deposed that the petitioner's gross salary of Kshs.21,000/= falls within the jurisdiction of Magistrates appointed by the Chief Justice by Gazette Notice to preside over employment and labour relations matters where the pecuniary jurisdiction does not exceed Kshs.80,000/=.



7. That a suit filed in this court and where the claimant earns a gross monthly pay of less than Kshs.80,000/= may be transferred *mero motu* or by application to a Magistrate's court with jurisdiction to hear and determine employment and labour relations matters.
8. That since the matter has not been heard, it is in the interest of justice that it be heard by the lowest court of competent jurisdiction and the Mavoko Law Court fit the bill.
9. That the transfer contributes to the decongestion of this court and permits the parties more levels of appeal if dissatisfied with the outcome.
10. Finally, it is deponed that it is in the wider interests of justice and fairness that the orders sought herein be granted.
11. When the matter came up for mention on July 25, 2022, the parties were represented by counsel, Mr. Kituku for the respondent and Mutinda for the claimant.
12. Mr. Kituku informed the court that the matter was before the court for directions on jurisdiction of the Magistrates Courts. Counsel sought the transfer of the suit to the Mavoko Law Courts for hearing and determination.
13. Mr. Mutinda for the Petitioner/Respondent opposed the application on the ground that the matter was filed on February 2, 2018 and the Chief Justice had not by then gazetted the jurisdiction of Magistrates Courts.
14. The application was a delaying tactic by the respondent. He urged the court to fix a hearing date.
15. The court directed the Respondent/Applicant herein to file a formal application and serve within 14 days and the respondent had 14 days after service.
16. Hearing of the application was scheduled for September 22, 2022.
17. Mr. Kituku told the court that he had filed the application and submissions and sought a ruling date.
18. Mr. Mwanzia who was holding brief for Mr. Mutinda informed the court that Mr. Mutinda was experiencing challenges with the e-filing but had served the response to the claimant. That he had challenges obtaining an invoice to pay.
19. The court directed the Petitioner/Respondent's counsel to refile its submissions and/or seek assistance of the Registry.
20. A ruling was reserved for October 25, 2022.
21. By September 30, 2022 when the court retired to write this ruling, the Petitioner/Respondent had not filed responses to the Application dated August 19, 2022.

### **Respondent/Applicant's submissions**

22. The Applicant submits that by Gazette Notice No. 6024 dated June 10, 2018, the Chief Justice appointed Magistrates of the rank of Senior Resident Magistrate and above to hear employment matters within their respective areas of jurisdiction where the pecuniary jurisdiction did not exceed Kshs.80,000/= and the claimant's gross salary was Kshs.21,000/=.
23. It is further submitted that since June 10, 2018, there has been an Employment and Labour Relations Court at the Chief Magistrates Court at Mavoko with jurisdiction to hear this suit and being the lowest court with jurisdiction, it is competent to hear and determine the suit.



24. Finally, reliance is made on the sentiments of Nduma Nderi J. in *John Adoyo and 6 others V De La Rue Currency and Security Print Ltd* (2022) eKLR as follows;

“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 Magistrates 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 the Employment and Labour Relations Court by claimants who earn a gross monthly salary of less than Kshs.80,000/=.”

25. The court is urged to grant the application as prayed.

### **Determination**

26. The only issue for determination is whether the respondent/applicant’s Notice of Motion Application is merited.

27. As explained by the Court of Appeal in *Owners of Motor Vessels “Lillian S” V Caltex Oil (Kenya) Ltd* (1989)

“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 its tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.”

28. Relatedly, in *Prisca Jepngetch V Generation Careers Readiness Social Initiative* (2021) eKLR, Rika J. expressed himself as follows;

“The Employment and Labour Relations Court does not exercise transfer jurisdiction under the *Civil Procedure Act*. Matters before Employment and Labour Relations Court both at the Chief Magistrates Court and the Employment and Labour Relations Court are both regulated by the *Employment and Labour Relations Court Act* and the *Employment and Labour Relations Court (Procedure) Rules*, 2016.”

29. It is well settled that an incompetent suit cannot be transferred. (See *Equity Bank Ltd V Bruce Mutie Mutuku t/a Diani Tour Travel* (2016) eKLR where the Court of Appeal was emphatic that;

“. . . Jurisdiction is a weighty fundamental matter and to allow a court to transfer an incompetent suit for want of jurisdiction to a competent court would be to muddle up the waters and allow confusion to reign.”

30. Finally, in *Kagenyi V Musiramo & another* (1968) EALR 43 cited with approval by the Supreme Court in *Albert Chaurembo Mumba & 7 others V Maurice Munyao & 148 others* (2019) eKLR, the court stated that an order for transfer of a suit from one court to another cannot be made unless the suit has been brought in the first instance to a court which has jurisdiction to try it.

31. In the instant suit, the Petitioner/Respondent has not alleged that the suit is incompetent or the court has no jurisdiction to hear and determine it.



32. The only contest is that the court to which the Respondent/Applicant seeks to have the suit transferred to, had no jurisdiction to hear and determine the suit when it was originally filed.
33. No judicial or statutory authority was relied upon to buttress submission.
34. For unexplained reason(s), the claimant was an employee of an institution within Machakos County but filed the suit herein at the Nyeri Law Courts bypassing Nairobi and no demonstrable steps were taken to prosecute the suit before 2022.
35. Finally, it is not in dispute that the claimant's monthly salary is far below the threshold prescribed by Gazette Notice No. 6024 of June 2018 of Kshs.80,000/=.
36. In the upshot, the Respondent/Applicant's Notice of Motion Application dated August 19, 2022 is merited and is granted with no orders as to costs.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI ON THIS 25<sup>TH</sup> DAY OF OCTOBER 2022**

**DR. JACOB GAKERI**

**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 *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.

**DR. JACOB GAKERI**

**JUDGE**

