



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

MISC. APPLICATION NO. E070 OF 2020

BETWEEN

PRISCA JEPNGÉTICH.....CLAIMANT

VERSUS

GENERATION CAREER READINESS SOCIAL INITIATIVE LIMITED.....RESPONDENT

RULING

1. The Claimant filed a Claim at Chief Magistrate's Employment & Labour Relations Court at Nairobi, Cause No. 2243 of 2019, on 28th November 2019.
2. Although she has not exhibited Pleadings of that Claim in her present Application, it is common ground that the Claimant earned a gross monthly salary of Kshs. 96,874 monthly, which is above the pecuniary jurisdiction of the Chief Magistrate's Court.
3. The Respondent raised a point of preliminary objection on jurisdiction at the Chief Magistrate's Court. This prompted the Claimant to file this Miscellaneous Application, seeking to transfer the Claim from the Chief Magistrate's Court.
4. The Application is based on the Affidavit of Makena M' Mwirichia, Counsel for the Claimant, sworn on 7th December 2020.
5. She explains that she received instructions to file Claim against the Respondent, from her Client on or about 28th November 2018. She did not indicate in the Statement of Claim, that she wished to file in the Chief Magistrate's Court. Unknown to her, the Registry Staff decided to have the Claim filed in the Magistrate's Court. She states that the Respondent has raised preliminary objection in the Chief Magistrate's Court on jurisdiction. She prays for transfer.
6. The Respondent is opposed to the Application, relying on the Replying Affidavit of Peter Ouma, Head of its Human Resources Department, sworn on 18th January 2021. The Application is meant to defeat preliminary objection at the Chief Magistrate's Court. A Party and its Advocates are duty bound to ensure the Claim is taken before the right jurisdiction. The E&LRC does not have the power to transfer Claims under Section 18 of the Civil Procedure Act, invoked by the Claimant. The Claim in the Magistrate's Court is a nullity and there is nothing to transfer.
7. Parties agreed that the Application is considered and determined on the strength of their Affidavits and Submissions on record.

The Court Finds: -

8. The E&LRC does not exercise transfer jurisdiction under the Civil Procedure Act. Matters before the E&LRC both at the Chief Magistrate's Court and the E&LRC, are regulated by the E&LRC Act, and the E&LRC [Procedure] Rules, 2016.
9. The E&LRC is a specialized, rather than a civil jurisdiction. The Civil Procedure Act applies to proceedings in the High Court, and subject to the Magistrate's Court Act, to proceedings in the Subordinate Courts.
10. Pursuant to Section 29 [3] of the E&LRC Act, the Chief Justice has appointed through Gazette Notice, Magistrate's to exercise employment and labour relations jurisdictions. Subsection [4] defines the specific matters Magistrates may deal with.
11. In transfer of Claims from the Magistrate's Court to the E&LRC, the appropriate enabling law would be Section 12 [3] [viii] as read with

Section 3 [1] of the E&LRC Act, and Rule 17 of the E&LRC [Procedure] Rules, 2016.

12. Parties must avoid citing the Civil Procedure Act on all procedural matters before the E&LRC. These are different jurisdictions, as established in Supreme Court of Kenya decision, **Republic v. Karisa Chengo & 2 Others [2017] e-KLR**.

13. The Civil Procedure Act applies to proceedings of the E&LRC only as a may be specifically allowed, under the E&LRC [Procedure] Rules 2016, such as applies in Rule 32 [2], which states, ‘‘Rules on execution of an order or decree, shall be enforceable in accordance with the Civil Procedure Rules.’’

14. The Claimant in CMLE No. 2243 of 2019 has therefore invoked Section 18 of the Civil Procedure Rules to proceedings before the E&LRC improperly.

15. It is difficult to understand how the Staff Registry determined for the Claimant, where her matter should be filed. Did she not prepare the Pleadings, clearly indicating the Court in which filing was to be done? She has not exhibited the Statement of Claim in her Application, which makes it more difficult for the Court to understand her position. The statement of the Claimant’s Advocate, about the advice of the Registry Staff, on the place of filing, is not convincing. Even assuming it is a correct statement, did not the Claimant’s Advocate realize there was a mistake before service of the summons on the Respondent? If the Claim was filed at the wrong forum on 28th November 2018, should the Claimant have waited until 7th December 2020, to seek transfer? The Court agrees with the Respondent, that it is the duty of Parties and their Advocates to ensure their matters are presented at the right forum.

16. This is more so, where there is likely to be no doubt on jurisdiction. Matters of pecuniary jurisdiction, unlike for instance, subject-matter jurisdiction, are ordinarily clear-cut. The Claimant does not plead that she did not know about the pecuniary jurisdiction of the Chief Magistrate’s Court; she blames Registry Staff for filing of the Claim at the wrong forum.

17. This Court does not think that the Respondent should be denied the right to be heard, before the Chief Magistrate’s Court, on its preliminary objection. There are other aspects of the dispute to be dealt with by that Court, such as costs sustained in responding to the Claim.

18. The Claimant would be in a position to file a fresh Claim at the right forum, if her matter is dismissed for want of jurisdiction, assuming she is still within the time allowed under Section 90 of the Employment Act 2007. As pointed out by the Respondent, if the Chief Magistrate’s Court upholds the preliminary objection, the result would be that the Claim is deemed a nullity, as good as if it was never filed, and would not therefore, impact the Claimant’s ability to relaunch her bid, at the correct forum.

19. This Court does not think it is proper to interfere with the work of other Courts. The Chief Magistrate’s Court should be allowed to complete the work assigned to it by the Parties, without the interference of this Court.

IT IS ORDERED: -

a. The Application dated and filed on 7th December 2020, by the Applicant herein and Claimant in CMEL Cause No. 2243 of 2019, is declined.

b. No order on the costs.

DATED, SIGNED AND RELEASED TO THE PARTIES UNDER MINISTRY OF HEALTH AND JUDICIARY COVID-19 GUIDELINES, AT CHAKA NYERI, THIS 28TH DAY OF MAY 2021

JAMES RIKA

JUDGE