



IN THE REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT NAIROBI

ELRC. CAUSE NO. E6576 OF 2020

RAJIV SHEM SABISACLAIMANT

-VERSUS-

LIMURU WATER AND SEWERAGE CO. LTD.....RESPONDENT

RULING

1. The Claimant is a layman in law and he brought this suit on 23.12.2020 without the help of a counsel. The suit challenges termination of his employment contract and prays for declaration that his dismissal was unlawful, unprocedural and discriminatory. He further seeks damages plus costs.

2. In the meanwhile, the Claimant has filed Notice of Motion dated 24.11.2020 seeking reinstatement to his employment pending hearing and determination of the application. It also seeks 19 months' salary as damages from unlawful termination. The grounds for the application are set out in its face and supporting affidavit sworn on 23.11.2020 and his further affidavit sworn on 10.5.2021. In brief the applicants case is that the termination of his services was without justification and he was not accorded any hearings.

3. The Respondent has raised a preliminary objection vide the notice dated 27.4.2021. The objection is on the grounds that there is a similar suit pending before the Chief Magistrate's Court Milimani, being CMel No. 381 of 2020, between the same parties; that the application is Res judicate as a similar application was dismissed on 26.7.2019; and that Chief Magistrate has jurisdiction to hear the claim since the Claimant's salary was below Kshs. 80000. It averred therefore that a transfer of the suit is warranted for consolidation with CMel 381 of 2021.

4. In addition, the Respondent filed Replying affidavit sworn by its Managing Director Ms. Margaret Maina. In brief the affiant deposed that the Claimant's salary being Kshs. 19500 per month, the Chief Magistrate's court has jurisdiction to determine the suit together with CMel 381 of 2020 which is pending in the subordinate court. She also reiterated the grounds raised in the Notice of Preliminary objection above and urged the court not to allow multiplicity of suits.

SUBMISSIONS

5. The Claimant relied on his Affidavits to support the application and urged the court to give a ruling.

6. Ms. Muhuhu opposed the application and urged the court to dismiss it. She also urged the court to allow the Preliminary Objection. She submitted that the suit herein and the application are similar to CMel. No. 381 of 2020 and urged that the instant suit to be transferred to the lower court. She maintained that the lower court has jurisdiction by dint of gazette notice which delegated jurisdiction. She urged the court to bar multiplicity of suits

7. She further submitted that the application is res-judicate as per the annexed pleadings of the lower court.

8. In response, the Claimant contended that the lower court suit is different from his suit since it is against three (3) respondents and it is dealing with failure to remit statutory deduction, breach of contract by extending probation period and reduction of his salary. He maintained this court is the proper court to determine this suit.

9. After careful consideration of the material presented by the parties the issues for determination are:

a. Whether the lower court has jurisdiction to determine the suit herein.

b. Whether the application should be allowed.

Jurisdiction of the Chief Magistrate's court

10. The court agrees with the Respondents and takes judicial notice that the Chief Justice gazetted magistrates of the rank of Senior Resident and above to determine employment disputes where the employees' salary is below Kshs. 80,000. The Claimant herein was earning Kshs. 19,500 per month. Consequently, by dint of the said Gazette Notice, the suit herein ought to be heard and determined by the subordinate court.

Whether the application should be allowed

11. The application seeks reinstatement of the applicant plus salary from 19 months. The said orders are final in nature and can only be granted after trial. Therefore I decline to grant the same at this juncture because it is premature to do so.

12. In the end I find no merits in the application and I dismiss it. I agree with the Respondent's objection and direct that the suit to be transferred to the Chief Magistrate' Court Nairobi for hearing and determination. Costs shall be in the cause. It is so ordered.

DATED, SIGNED AND DELIVERED IN NAIROBI THIS 20TH MAY, 2021

ONESMUS N. MAKAU

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 April 2020, this ruling has been delivered to the parties online with their consent, the parties having waived compliance with Rule 28 (3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

ONESMUS N. MAKAU

JUDGE