

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT BUNGOMA

ELR CAUSE NO. 38 OF 2018

MACTILDA WANYELACLAIMANT

VERSUS

BOARD OF MANAGEMENT, ST. THERESA'S GIRLS

SECONDARY SCHOOL..... RESPONDENT

R U L I N G

This is an application by way of Notice of Motion dated 26th May 2021 and supported by affidavit of Mactilda Wanyala, the Claimant, dated 26th May 2021. The application was listed for hearing today and the parties were absent. The application seeks an order to transfer the suit to Kimilili Principal Magistrate's Court for hearing and determination. The suit is dated 9th May 2018.

The Claimant states the Kimilili Principal Magistrates Court has jurisdiction to hear the matter. The Claimant has attached Gazette Notice No. 6024 of 10th June, 2018 by Chief Justice Maraga (Rtd) which gave jurisdiction over employment and labour relations cases to the jurisdiction of our Magistrates of the of the rank of Senior Resident Magistrates and above for gross claims of gross salary of **Kshs.80,000** and below.

I have examined the attached non- teaching staff pay roll for the month of November, 2016 under the Respondent's list of documents where the Claimant Matilda Wanyela is indicated to have been earning gross salary of **kshs. 14,174/-**. The gross salary of the Claimant being below Kshs.80,000/- would make the claim fall within the magistrate's jurisdiction. However, the gazette Notice is of 10th June 2018 and the suit sought to be transferred was filed on 9th May, 2018. As at 9th May, 2018 the Magistrates as stated in the Gazette Notice did not have jurisdiction to handle Employment and Labour cases. It is for this reason the application for transfer of the suit is denied.

The Application is dismissed. Costs in the cause.

The suit to be mentioned before this court on the 4th October, 2021 for directions on the hearing on priority basis.

It is so ordered.

DATED, SIGNED AND DELIVERED IN BUNGOMA THIS 27TH DAY OF SEPTEMBER, 2021

HON. J. W KELI,

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 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.

HON. J. W. KELI

JUDGE.