REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU

MISC. APPLICATION NO. E050 OF 2021

DR. BILLY GEORGE NG'ONG'A .....APPLICANT

VERSUS

MASENO UNIVERSITY.....RESPONDENT

RULING

1. This ruling relates to a Notice of Motion application dated 4th August, 2021, brought pursuant to the provisions of Gazette Notice No. 6024, Section 29(3) of the Employment and Labour Relations Court Act, 2011, Section 1A, 1B and 3A of the Civil Procedure Act and Order 51 Rule 1 of the Civil Procedure Rules.

2. The Applicant seeks orders:

i. Spent.

ii. That civil suit **CMCC NO. 443 OF 2007- DR. BILLY GEORGE NG'ONG'A VS MASENO UNIVERSITY** be transferred to Employment and Labour Relations Court for hearing and final determination

iii. The costs of this application be provided for.

3. The application is premised on grounds set out on the face of the application and a supporting affidavit sworn by the Applicant herein. The crux of which, is that the Applicant filed the suit subject of this application in the year 2007, before the Employment and Labour Relations Court was in place and that he filed his suit No. CMCC NO. 443 OF 2007 at the Magistrates court.

4. The Applicant deposes that he later instructed his counsel to amend his claim to include unpaid gratuity and annual leave, which remains due and owing from the Respondent from when he was terminated in the year 2009.

5. The Applicant further asserts that by dint of Gazette Notice No. 6024 of 2018, the Magistrates court now lacks jurisdiction to hear and determine his case, for reason that his salary at the time of termination was more that Kshs. 80,000/=.

6. The Applicant avers that at the time he filed his suit reference **CMCC NO. 443 OF 2007** at the Magistrates court, the court had jurisdiction until 10th June, 2018 when the gazette notice was published. The notice required claimants earning salary of Kshs. 80,000/= and above to file their claims at the Employment and Labour Relations Court instead of the Magistrates court.

7. The Respondent file grounds of opposition wherein, it avers that the issue of jurisdiction ought to have been raised earlier and as currently filed, the Applicant is only meant to waste the court's time.

8. Both parties urged their matter during the hearing interparties.

Determination

9. The fact that a claim/plaint has been amended does not in itself mean the Applicant has filed a new case. The suit before court is still that which was filed in 2007. In **Nairobi Civil Appeal No. 133 of 2011 – Attorney General –Versus- Law Society of Kenya & Another [2017] eKLR**, the Court of Appeal held that where a new judicial forum is created or established to replace the existing system, matters commenced under the previous system shall be heard and finalized under such forum.

10. The application to transfer ought to have been filed in the court where the suit was filed and as an application in that case instead of a new application.

11. A gazette notice has the force of law and just like any other law, does not apply retroactively. The suit before the magistrate court is properly before that court and the court has jurisdiction to hear and determine the case.

12. The court concludes that the application is without merit and is hereby dismissed with costs.

SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT KISUMU THIS 11TH DAY OF NOVEMBER, 2021.

CHRISTINE N. BAARI

JUDGE

Appearance:

N/A for the Applicant

N/A for the Respondent

Ms. Christine Omollo -C/A