



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR
RELATIONS COURT AT MOMBASA
MISC. APPLICATION NUMBER 13 OF 2019

BETWEEN

KENYA PLANTATION AND AGRICULTURAL
WORKERS UNIONCLAIMANT

VERSUS

1. CARGILL KENYA LIMITED
2.INSIGHT MANAGEMENT CONSULTANTS LTD.....RESPONDENTS

Rika J

Court Assistant: Benjamin Kombe

Sharia Nyange Njuguna & Company Advocates for the Claimant

Mutua, Waweru & Company Advocates for the 1st Respondent

Mudao & Company Advocates for the 2nd Respondent

RULING

1. The Claimant filed at the Chief Magistrate's Court Mombasa, Employment and Labour Relations Cause No. 85 of 2018. The Hon. Chief Magistrate, in a Ruling dated 3rd April 2019, ordered that his Court did not have pecuniary jurisdiction to entertain the Claim. The Claimant sought a total amount of Ksh.50 million for its Members/Grievants. The Chief Magistrate has a pecuniary limit of Ksh.20 million.
2. The Chief Magistrate directed Parties to move the relevant Court for transfer of the Claim.
3. This resulted in the filing of this Miscellaneous Application at the E&LRC Mombasa on 12th April 2019. The Claimant seeks transfer to the E&LRC. The Application is based on the Affidavit of Branch Secretary Dalphine Muunde, sworn on 4th April 2019.
4. It is opposed by the Respondents on the basis of Notice of Preliminary Objection and Grounds of Opposition filed on 11th June 2019 and 28th May 2019, by the 1st and 2nd Respondents respectively.
5. The Respondents state that there is nothing to transfer, the Chief Magistrate's Court having ruled it does not have jurisdiction; the Application is not made in good faith; and the E&LRC does not have jurisdiction to transfer.
6. The Application was heard on 6th February 2020.

The Court Finds:-

7. Proceedings of the E&LRC are special proceedings, of a specialized Court, regulated under E&LRC (Procedure) Rules 2016 and not by the Civil Procedure Act cited by the Respondents.
8. The Civil Procedure Act and the Rules made thereunder, apply only to the extent allowed by the E&LRC Act and Procedure Rules.
9. Section 2 of the Civil Procedure Act defines 'Court' to mean the High Court or Subordinate Court in exercise of its civil jurisdiction.
10. The E&LRC is neither the High Court, nor a Subordinate Court exercising civil jurisdiction.
11. It is a specialized Court, created pursuant to Article 162 (2) (a) of the Constitution and the E&LRC Act, 2011.
12. Magistrate's Courts exercising employment and labour relations jurisdiction are similarly specialized Courts, which do not exercise civil jurisdiction in their role as E&LR Courts. Magistrate's Courts draw their jurisdiction in employment and labour relations matters from Section 29(3) (4) of the E&LRC Act 2011. Appeals, on decisions of Magistrate's Courts lie with the E&LRC under Section 29(5) of the E&LRC Act.
13. There is no express provision of the law, on transfer of cases from the High Court to the E&LRC, from the E&LRC to the High Court or from the Chief Magistrate's Court to the E&LRC and vice versa.
14. This is a transitional problem, repositioning of the E&LRC and its interaction with the Civil Courts, having taken place only recently.
15. Courts must however continue to exercise judicial co-operation and comity, and discharge their obligation to administer justice fairly, without undue regard to technicalities, as commanded by Article 159 of the Constitution.
16. The High Court does not have jurisdiction to transfer matters to Courts of Equal Status. But Parties know, and it is accepted, that matters are daily being transferred or forwarded to the E&LRC from the High Court on jurisdictional ground. The E&LRC has transferred matters to the High Court on jurisdictional ground. It has transferred matters to the Chief Magistrate's Court. Transfer of matters, ought to be a jurisdiction conferred even on the Chief Magistrate's Court, as it is only meant to facilitate Parties in access to justice.
17. The E&LRC has relied on Section 3 of the E&LRC Act in transfer of cases. It is the mandate of the E&LRC to facilitate the just, expeditious and proportionate resolution of employment disputes. Reliance has also been made on Section 12 (3) (viii), which enables the Court to make any other appropriate relief the Court deems fit to grant.
18. The Judicial Authorities cited by the Respondents, are all on Section 18 of the Civil Procedure Act, which has no application to this Court.
19. There is in existence a Claim in the Magistrate's Court, Cause No. 85 of 2018. It was filed, but in the wrong platform. The Claimant paid court fees upon filing. It is not helpful to argue that there is no Claim capable of being transferred. The Hon. Chief Magistrate directed Parties to apply for transfer of an existing Claim. If there was no Claim, the Trial Court would have simply declined jurisdiction, and advised Parties there is no Claim to be transferred. Instead, the Parties were advised to apply for transfer in the relevant Court.

IT IS ORDERED:-

- a) The CM's Court Mombasa E&LRC Cause No. 85 of 2018 is transferred to the E&LRC Mombasa for hearing and determination.*
- b) Parties shall move the E&LRC for pre-trial conferencing, upon the arrival of the file from the CM's Court.*
- c) No order on the costs.*

Dated and delivered at Mombasa this 13th day of March 2020.

James Rika

Judge