



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA**

**PETITION NO 11 OF 2019**

**IN THE MATTER OF ARTICLES 20(1)(2)(3)(4), 22, 23, 27, 28,**

**41(2)(b), 162 AND 165 OF THE CONSTITUTION OF KENYA**

**AND**

**IN THE MATTER OF CONSTITUTION OF KENYA (PROTECTION OF  
RIGHTS & FUNDAMENTAL FREEDOMS AND ENFORCEMENT OF  
THE CONSTITUTION) PRACTICES AND PROCEDURE RULES (2013)**

**AND**

**IN THE MATTER OF THE EMPLOYMENT ACT NO. 11 OF 2007**

**BETWEEN**

**DR. JUDY NJERI KAIRO.....PETITIONER**

**VERSUS**

**JOHN HOPKINS PROGRAM FOR INTERNATIONAL EDUCATION IN**

**GENECOLOGY AND OBSTETRICS (JHPIEGO) KENYA.....RESPONDENT**

**RULING**

1. On 4<sup>th</sup> December 2019, the Petitioner filed a Petition alleging violation of her fundamental rights by the Respondent.
2. In response to the Petition, the Respondent filed a replying affidavit sworn by its Senior Human Resources Manager, Miriam Tharao on 31<sup>st</sup> January 2020.
3. Subsequently on 6<sup>th</sup> March 2020, the Respondent filed a Notice of Motion application under certificate of urgency seeking orders to have the matter transferred to the Employment and Labour Relations Court at Nairobi for hearing and determination. This application is the subject of this ruling.
4. The application is supported by an affidavit sworn by Miriam Tharao and is based on the following grounds:
  - a) The Petitioner instituted this suit *vide* a Petition filed on 4<sup>th</sup> December 2019, in which she claims *inter alia* damages for alleged unfair termination of her employment with the Respondent. The substratum of the suit therefore is the question as to whether the termination of the Petitioner's employment with the Respondent was unlawful or unfair;
  - b) The Petitioner is a Kenyan female adult while the Respondent is non-governmental organisation engaged in the provision of transformative healthcare solutions;
  - c) The Respondent's headquarters are in Nairobi;

d) It is in the interest of justice convenience that the matter be transferred to the Employment and Labour Relations Court at Nairobi for hearing and determination;

e) Hearing the suit in the Employment and Labour Relations Court at Mombasa will subject the Respondent to injustice as procuring the attendance of witnesses will be costly and expensive;

f) The application has been made without delay;

g) No prejudice will be suffered by the Petitioner if the suit is transferred to the Employment and Labour Relations Court at Nairobi;

h) It is therefore fair, equitable, justifiable and within the overriding objective of the Court that the suit be transferred to the Employment and Labour Relations Court at Nairobi.

5. The Petitioner opposes the application by way of grounds of opposition filed in court on 13<sup>th</sup> March 2020 stating:

a) That the Respondent's application is brought under the wrong provisions of the law being the Civil Procedure Act yet the Employment and Labour Relations Court Act No 20 of 2011 and the Employment and Labour Relations Court Rules 2016 provide for both substantive and procedural law;

b) That the Respondent's basis of the application is merely to suit their personal convenience and is not geared towards legitimate pursuit of substantive justice;

c) That the issue of expenses to be incurred by the Respondent in procuring attendance of witnesses can be remedied by way of costs.

6. The issue for determination in this application is whether the Respondent has made out a case for transfer of the matter from this Court to the Employment and Labour Relations Court at Nairobi.

7. Section 3(1) of the Employment and Labour Relations Court Act provides that the principal objective of the Act is to enable the Court to facilitate the just, expeditious, efficient and proportionate resolution of disputes.

8. Section 5 of the Act states that the Court is composed of the Principal Judge and such number of judges as may be determined and recruited by the Judicial Service Commission and appointed in accordance with Article 166(1) of the Constitution of Kenya.

9. Section 12(1) sets out the jurisdiction of the Court in the following terms:

***(1) The Court shall have exclusive original and appellate jurisdiction to hear and determine all disputes referred to it in accordance with Article 162(2) of the Constitution and the provisions of this Act or any other written law which extends jurisdiction to the Court relating to employment and labour relations.***

10. Rule 3 of the Employment and Labour Relations Court (Procedure) Rules provides that the Court may sit in any station established by the Chief Justice in consultation with the Principal Judge.

11. Pursuant to the foregoing provisions, five (5) stations namely; Nairobi, Mombasa, Nakuru, Nyeri and Eldoret have been established to hear and determine cases within the respective geographical areas.

12. Mombasa station, where this Petition has been filed handles disputes arising from the Coast Region made up of Mombasa, Kwale, Kilifi, Tana River, Lamu and Taita-Taveta.

13. According to the pleadings filed by the parties, the cause of action in this case arose in Kilifi, which falls within the geographical jurisdiction of this Court.

14. The transfer of a case from one station to another cannot be determined merely on the basis of balance of convenience (see ***Kithita Ngeana v Mwaniki Kisume [2018] eKLR*** and ***Grohe Dawn Watertech Pty Ltd v Ideal Ceramics [2018] eKLR.***)

15. In the current application, all the Respondent states is that it will be expensive to bring its witnesses to Mombasa. Admittedly, litigation is not a cheap undertaking and that is why there is provision for costs. Costs alone, cannot therefore be the basis for transfer of a case from one court to another.

16. A party seeking the transfer of a case bears the burden of demonstrating special circumstances that would trigger such a move. The Respondent has failed to discharge this burden and the application dated 3<sup>rd</sup> March 2020 is disallowed with costs to the Petitioner.

**DATED SIGNED AND DELIVERED AT MOMBASA THIS 8<sup>TH</sup> DAY OCTOBER 2020**

**LINNET NDOLO**

**JUDGE**

**ORDER**

In view of restrictions in physical court operations occasioned by the COVID-19 Pandemic, this ruling has been delivered via Microsoft Teams Online Platform. A signed copy will be availed to each party upon payment of court fees.

**LINNET NDOLO**

**JUDGE**

Appearance:

Mr. Kihang'a for the Petitioner

Mr. Kyalo for the Respondent