



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAIROBI

MISC. NO.79 OF 2020

[FORMERLY MACHAKOS HIGH COURT MISC.E018 OF 2020]

RUTH MUTHONI MWANGIAPPLICANT

VERSUS

KENYA MEAT COMMISSION.....RESPONDENT

RULING

The applicant filed application and Notice of Motion dated 19th October, 2020 before the Machakos High Court and which matter was transferred to this court.

The applicant is seeking for orders that suit ELR Cause No.6 of 2020 – Ruth Muthoni Mwangi v Kenya Meat Commission be transferred from Machakos Chief Magistrate’s court to Mavoko Law Court.

The application is supported by the affidavit of Philip Wambugu Advocate for the applicant and on the grounds that the applicant was employed by the respondent as an Accounts Assistant on a fixed term contract of employment on 13th December, 2017.

In May, 2015 the applicant was charged in CM ACC No.9 of 2015 at the Anti-Corruption Court at Nairobi – Republic v Ruth Muthoni Mwangi and 5 others where she was accused of the offence of conspiracy to commit an economic crime among other charges.

By letter dated 26th June, 2015 the applicant was interdicted from her employment by the respondent until she was cleared of the charges. She was discharged vide ruling dated 9th April, 2018 but the interdiction was not lifted.

The applicant filed ELRC JR No.21 of 2019 seeking payment of her salary during the period of interdiction and the respondent submitted that the applicant was still its employee and the application was dismissed in judgement delivered on 6th March, 2020.

On 10th June, 2020 the claimant was issued with a backdated letter of summary dismissal from 26th June, 2015 which was the date of interdiction and hence illegal and unfair and the matter is scheduled for hearing on 21st October, 2020 but the respondent has raised objections with regard to territorial jurisdiction of the court. The counsel on record for the applicant then did not know that Machakos court lacked geographical jurisdiction in the matter and should have been filed at Mavoko Law Courts. The applicant has been advised by the registry at Machakos Law Court that the suit should be transferred to Mavoko Law Court and which has not been done hence this application.

In his affidavit Philip Wambugu avers that he is counsel for the applicant in support of the application.

In reply, the respondent filed Grounds of Objection that no reasons are given as to why the suit was filed in the wrong court and it is hence conceded that the suit is filed before a court without jurisdiction. The applicant has acceded that the Preliminary Objections raised by the respondent are with merit thus rendering the low court suit incompetent and fatally defective.

The applicant is engaging in forum shopping is in abuse of court process and wasting judicial time and by filing a suit before a court without jurisdiction there is nothing to transfer and the same is a nullity and application herein should be dismissed with costs.

Parties filed written submission.

The court has analysed the pleadings and the written submissions and the single issue for determination is whether the court should issue an order to transfer ELC Cause No.6 of 2020 from Machakos Chief Magistrate’s Court to Mavoko Law Courts.

Determination

It is common cause that the applicant was an employee of the respondent until letter dated 26th June, 2015 dismissing her from her employment and which notice and termination of employment is challenged as being illegal and unfair.

It is also common cause that the applicant filed ELR Cause No.6 of 2020 at Machakos Chief Magistrates Court.

The respondent has since filed Notice of Preliminary Objections challenging dated 28th September, 2020 on the grounds that the cause of action arose at Arthi River where the respondent is based and the court at Machakos lacks geographical jurisdiction and the court with jurisdiction is Mavoko Law Courts and the cause is defective and incompetent contrary to section 90 of the Employment Act.

Vide Legal Notice No.6024 of 10th June, 2018 the Chief Justice appointed Magistrates of the rank of Senior Resident Magistrates and above as Special Magistrates designated to hear and determine employment and labour relations cases within their respective areas of jurisdiction. This was to ensure access to justice and the filing of suit within the geographical coverage of each magistrate's court.

Despite these practice directions, the applicant filed ELR Cause No.6 of 2020 at Machakos Chief Magistrates Court instead of Mavoko Law Courts where the cause of action arose.

There are preliminary objections filed before Machakos Magistrates Court challenging the geographical jurisdiction of the court. The applicant cannot circumvent such procedure by filing the instant application seeking to have the matter transferred to Mavoko Law Court upon the advice of *staff at the Registry* as to do so would be subverting the rule of law. Mr Philip Wambugu in his Supporting Affidavit dated 19th October, 2020 avers at paragraph 6 that;

We have been advised at the registry that we can have the file transferred to the correct court by an order of this court.

The court at Machakos Chief Magistrates Court must be allowed to address the objections filed on the merits and make own independent ruling thereof. To move as the applicant has done will not achieve the ends of justice.

More fundamentally, the objections filed by the respondent are two-pronged. It challenges the geographical jurisdiction of the Machakos Magistrates Court and also the provisions of section 90 of the Employment Act, 2007.

Even where the court were to allow the transfer of the matter to another court, which is not the case in this instance, the applicant would still be required to address the application of section 90 of the Employment Act, 2007 and allow the court to give its ruling.

In the case of **Boniface Waweru Mbiyu versus Mary Njeri & another [2005] eKLR** the court held that;

*I will, in agreement with the decision in **Kagenyi v. Musiramo**, state here that the High Court will decline to assume jurisdiction in relation to any matter which has been filed before a Court or tribunal lacking jurisdiction. Whenever a matter is filed before a Court lacking jurisdiction, the professional error there committed is a fundamental one, which cannot be excused as an ordinary mistake by counsel and which should not be held to prejudice the client. As between the advocate and his or her client, such a professional error could very well lead to claims in tort. As for the Court, the matter thus filed is so defective as to be a nullity. It is incompetent and void in law; and therefore it is not a motion or suit that can be transferred to any other Court. It is the duty of the Court or tribunal before which such matter is first brought to declare its status as a nullity; and it follows that such matter has no capacity to be transferred to any other Court.*

Consequently, the instant application is found to be filed to circumvent the matters addressed in ELR Cause No.6 of 2020 before Machakos Magistrates Court and thus in abuse of court process and should stand dismissed by the this court.

Accordingly, application dated 19th October, 2020 is found in abuse of court process and is hereby dismissed. Costs to the respondent.

Delivered at Nairobi this 22nd day of December, 2020.

M. MBARU

JUDGE