



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA

AT KERICHO

CAUSE NO.60 OF 2018

(Before D. K. N. Marete)

JOHN KIMUNYI MUTUNGA.....CLAIMANT

VERSUS

MIND QUEST LIMITED.....1ST RESPONDENT

UMBRO KENYA LIMITED.....2ND RESPONDENT

RULING

This is an application dated 18th July, 2018 and seeks the following orders of court;

- 1. THAT this Honourable Court be pleased to order the transfer of this suit from this Honourable court to the Employment and Labour Relations Court in Nairobi for final hearing and determination.*
- 2. THAT the costs of this application be provided for.*
- 3. THAT such other and/or further relief be granted as this Honourable Court may deem fit and just to grant in the circumstances of this matter.*

It is grounded as follows;

- a) The cause as filed and presented raised an issue of territorial jurisdiction and should either be transferred to the Employment & Labour Relations Court at Nairobi or struck out altogether.*
- b) The claimant was engaged by the 1st Respondent as Head of Finance and Administration since May, 2016 in Nairobi and therefore under Section 15 of the Civil Procedure Act, this suit should have been filed where the cause of action arose.*
- c) The Applicant and the 1st Respondent herein who are body corporate in the circumstances are based in Nairobi.*
- d) This suit should have been filed where the cause of action arose.*
- e) Section 3 of the Employment and Labour Relations Court No.20 of 2011 provides for the principle objective of the Court which this suit derails and offends.*
- f) There is no justification as to why the suit was filed in Kericho save for the speculative purpose that it is forum shopping on the part of the Claimant.*
- g) The continuation of the suit in Kericho will compel the Applicant to incur unnecessary expense.*
- h) The court has unfettered jurisdiction to transfer cases in the interest of justice.*
- i) The application has been brought before this court promptly and without undue delay.*

j) *The claimant will not suffer any prejudice if the Application is allowed.*

The claimant/respondent in his Replying Affidavit sworn on 23rd July, 2018 opposes the application as follows;

3. *THAT I am advised by the Respondent's advocates on record, which advice I verily believe to be true that the instant Application is misconceived, a non-starter in law, frivolous, vexatious, hopelessly,*

defective and proper to be struck out and/or dismissed ex debito justitiae, as the same is brought in bad faith and is indeed and a delay tactic.

4. *THAT the Applicant has denied the jurisdiction of this court at Paragraph 14 of their Defence to the Memorandum of Claim and I am advised by my advocates on record which I verily believe that a court without jurisdiction to hear a matter cannot have jurisdiction to transfer or entertain a matter in whatsoever way.*

5. *THAT I am advised by my advocates on record which advice I verily believe to be true that the rules of this court and in particular The Employment and Labour Relations Court procedure rules 2016 rule 21, 25 and 27 empower this court to have matters determined based on the documents, affidavits and submissions and as such, the 2nd Respondent would not necessarily be required to attend trial.*

6. *THAT I am advised by my advocates on record which advice I verily believe to be true that this court has jurisdiction throughout the country in relation to employment matters and that the provisions of the Civil Procedure Rules are merely persuasive since this court has its own rules.*

7. *THAT the 2nd Respondent has not demonstrated how he is likely to be prejudiced, if anything, albeit listing Mr. Martin Khafafa as their witness, no statements has been filed to enable him come to testify.*

8. *THAT transfer of this matter to Nairobi will only serve the partisan interest of the Applicant who wishes that this matter should take 3 – 4 years to be decided due to the backlog in ELRC Nairobi.*

9. *THAT the transfer the Applicant seeks can only be granted if all parties agree and show cause. Transfer from a court with competent jurisdiction cannot be effected on flimsy grounds as in the Application.*

During these court proceedings on 9th October, 2018, the parties agreed on a determination by way of pleadings and documents adduced and filed in court. The respondent submitted that she was not opposed to the application and would go with the application and submissions for a transfer of the matter to the ELRC –Nairobi.

Overall, this application comes out in favour of the claimant/respondent. I agree with his submission and averment that no tangible reason has been offered for a transfer of this matter to the ELRC – Nairobi. The respondent rationale for so doing is scanty and wanting in law.

This court has jurisdiction to hear and determine the issues in dispute. There is a likelihood that this court is better equipped to hear and determine this matter with better expedition than the Nairobi court. The submission of a case of mischief and intended delay by the respondent in requisitioning a transfer to Nairobi is therefore not farfetched.

I am therefore inclined to dismiss the application with costs to the claimant/applicant.

Delivered, dated and signed this 1st day of February, 2019.

D.K.Njagi Marete

JUDGE

Appearances

1. Miss Willby holding brief for Momanyi instructed by Ongori Auta & Company Advocates for the claimant/respondent.

2. Mr. Lemayan instructed by Kamau Langat & Company Advocates for the 1st respondent and also holding brief for Chesoo for the 2nd respondent.