



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT MOMBASA
CAUSE NUMBER 22 OF 2019

BETWEEN

LABAN OWINO OCHIENG.....CLAIMANT

VERSUS

- 1. AWANAD ENTERPRISES LIMITED**
- 2. PILI MANAGEMENT CONSULTANTS LIMITED**
- 3. HEZRON AWITI BOLO.....RESPONDENTS**

Rika J

Court Assistant: Benjamin Kombe

F.K. Omenya Advocates, for the Claimant

Amuga & Company, Advocates for the Respondent

RULING

1. The file history in this Claim comes close to what Sir Winston Churchill, in a wartime radio broadcast in October 1939, described as a riddle, wrapped in a mystery, inside an enigma.
2. The Claim bears multiple registration numbers. It is indicated as E&LRC Cause Number 22 of 2019. It is also shown as E&LRC Cause Number 24 of 2019, and Chief Magistrate's Court Civil Cause Number 24 of 2019. The year of registration under Cause Number 24, is variously cancelled by hand, with the year 2018 replaced by 2019. The folder containing the E&LRC file shows the Cause Number to be 2 of 2019. Initially it was indicated as Number 22, with Number 2 ultimately cancelled by hand, to show Number 2 of 2019. The Numbers are repeatedly deleted and amended by hand.
3. The Claimant states that he was employed by the 3rd Respondent as an Engineer / General Manager, with effect from 15th August 2011. He was employed on behalf of the 1st Respondent. He was to be paid a salary of Kshs. 76,080 monthly, and a commission of 3% from profits made in every project successfully completed. The contract describes the 1st Respondent, or any other company associated with Habo Group of Companies, as the Employer; the 2nd Respondent is an associate of the 1st Respondent. Habo group of Companies is not a party to the Claim.
4. It is claimed that the Claimant was involved in a successful project whose value was Kshs. 793,267,451. He was not paid 3% commission. He was compelled to resign on 30th April 2012 in line with clause 7 of the contract.
5. He prays for Kshs. 27,605,707 as commission; general damages and compensation; costs; and interest.
6. The Claimant filed Request for Judgment, on 26th February 2019. Request was made under the file variously indicated to be E&LRC and Chief Magistrate's Court Cause Number 24 of 2019.
7. On 24th April 2019, the Respondent filed Notice of Preliminary Objection, based on the following Grounds:-

- a) The Chief Magistrate's Court lacks statutory jurisdiction to hear and determine this Suit.
- b) The Chief Magistrate's Court lacks pecuniary jurisdiction to hear and determine this Suit.
- c) The Suit is incompetent and/or incurably defective for having been filed in a Court without jurisdiction.
- d) The Claimant has no cause of action against the 1st Respondent.

8. The Objection was argued on 18th July 2019. The Respondents submit that the Claim was initiated at the Chief Magistrate's Court Mombasa on 14th January 2019. It was assigned Civil Claim Number 24 of 2019 in that Court.

9. On 26th February 2019, the Claimant filed Request for Judgment in Chief Magistrate's Court.

10. On 30th April 2019, the Deputy Registrar of the E&LRC wrote to the Executive Officer of the Chief Magistrate's Court, confirming receipt of File Number 24 of 2019. It was assigned new Number, 22 of 2019 at the E&LRC. According to the Respondents, it is not clear how the file was moved from the Chief Magistrate's Court, to the E&LRC. Whether done legally or administratively, the movement did not cure lack of jurisdiction. The Claim is simply a nullity. The only solution is to strike out the Claim.

11. The Claimant's reply is that the E&LRC is created by the Constitution. The Pleadings filed by the Claimant show this is an E&LRC matter, not Chief Magistrate's.

12. According to the Claimant, he initiated the Claim at the E&LRC registry on 14th January 2019. Pleadings were assessed and assigned Cause Number 2 of 2019. The registry was uncertain whether to accept the Claim here, because the Claimant earned a salary of Kshs. 76,000 monthly.

13. Subsequently the Claimant's Advocate was unable to trace the file at the E&LRC registry. He was advised that the file was at the Chief Magistrate's Court. The Executive Officer of the Chief Magistrate's Court wrote to the Deputy Registrar of the E&LRC, on 17th April 2019 forwarding the file to the E&LRC.

14. In the circumstances, the Claimant submits he deserves an opportunity to be heard. The mix-up is purely administrative. The Claimant urges the Court to exercise its jurisdiction under Section 3 and 12 of the E&LRC Act, and hear him.

15. Parties were, at the end of their Submissions allowed to inspect the Court File Register. It was confirmed by the respective Advocates, that Cause Number 2 of 2019 filed at the E&LRC, does not relate to the Parties herein.

The Court Finds:-

16. There is no evidence that the Claim was initiated at the E&LRC Mombasa, before transfer in clouded circumstances, to the Chief Magistrate's Court.

17. Parties confirmed at the hearing of the Preliminary Objection, that E&LRC Cause Number 2 of 2019 does not relate to them.

18. The letter from the Executive Officer of the Chief Magistrate's Court, to the Deputy Registrar E&LRC dated 17th April 2019, states that the Claim was presented to the Chief Magistrate's Court for registration and filing. Presentation thereat cannot have been done by any other Person, other than the Claimant.

19. The allegation by the Executive Officer in his letter, that the Claim had been filed at the E&LRC registry earlier as Cause Number 2 of 2019, is not borne out in the register of files at the E&LRC, which was inspected by the Parties at the hearing of the Objection. The Executive Officer does not indicate in his letter, from what source, he obtained his information about the filing in the E&LRC registry. The Memorandum of Claim, List of Witnesses, and Claimant's List of Documents are all stamped as received on 14th January 2019, at the Chief Magistrate's Court, Mombasa. There is no Pleading bearing the stamp of the E&LRC showing receipt on 14th January 2019. Where is the Statement of Claim stamped as received by the E&LRC on this date or any other date?

20. The Executive Officer purports to de-register the Cause at the Chief Magistrate's Court, and transfer the same to the E&LRC.

21. Once a matter is filed in a Court of Law, it falls within the jurisdiction of the particular Court, and cannot be taken out of that jurisdiction, without an order made by a competent Judicial Authority.

22. There is no such thing as deregistration or administrative transfer of a Claim.

23. The Claim, having been filed at the Chief Magistrate's Court, could not be moved to another jurisdiction, without an Order made on the file by a competent Judicial Authority, in this case, a Magistrate or Judge. Similarly, if there was any Claim filed at the E&LRC, it could not be moved from that Court without an Order of the Judge.

24. There is a general problem which has been created recently by mediation. Files are being moved, from forum to forum, without the knowledge of responsible Judicial Authorities. The files are also being moved haphazardly, due to ever changing perceptions and

interpretations on which Court has jurisdiction over which matters. Whatever the justification, movement of files, from one forum to another, must be based on an Order of a competent Judicial Authority. There is no such thing as administrative transfer or deregistration of Claims, by Officers who are not Judges or Magistrates.

25. The Court finds there is considerable merit, in particular under Ground Number 3 of the Notice of Preliminary Objection. The Claim as presented in the E&LRC is incompetent. The Claimant was not able to say why his Claim was assigned Cause Number 22 of 2019 at the E&LRC, if indeed it was filed as Cause Number 2 of 2019. The Pleadings filed by the Claimant in various Courts, make it considerably difficult for the Respondents to reply to the Claim. They for instance submit that the Chief Magistrate's Court does not have jurisdiction for various reasons, an Objection which, on the face of the Notice, should ideally have been taken up at the Chief Magistrate's Court. The Respondents however, were not privy to administrative transfer and deregistration, and stood to have default Judgment entered against them, in the wrong jurisdiction. The Claimant cannot say he did not know who presented his Claim at the Chief Magistrate's Court. The Executive Officer states the Claim was filed in that Court by error. It cannot have been filed by any other Party other than the Claimant.

26. Lastly, the Claim is based on a contract of employment dated 15th August 2011. It was executed by the Parties. The cause of action arose when the Claimant resigned, on 30th April 2012, as stated at paragraph 14 of the Statement of Claim. He prays for commissions, damages and compensation under the contract. The Cause was filed either at the E&LRC or the Chief Magistrate's Court, in early 2019. This is close to 7 years, after the Claimant resigned. Neither the Chief Magistrate's Court, nor the E&LRC, has jurisdiction to hear and determine this Claim, under Section 90 of the Employment Act.

IT IS ORDERED: -

a) The Claim is improperly before the Court and is dismissed for want of jurisdiction.

a) Costs to the Respondents.

Dated and delivered at Mombasa this 27th day of September 2019.

James Rika

Judge