

REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS

COURT OF KENYA AT NYERI

CAUSE NO. 334 OF 2017

JUDITH ANYANGO IRUKAN.....CLAIMANT

VERSUS

MUTHAIGA GOLF CLUB.....RESPONDENT/APPLICANT

RULING

1. The Respondent raised a preliminary objection on the basis of the assertion that the court lacks territorial jurisdiction. The Notice of Preliminary Objection dated 18th December 2017 is to the effect that the court lacks territorial jurisdiction to hear the matter between the Claimant and the Respondent. The Respondent asserts that its place of business is Nairobi and the parties executed a contract of employment at the Respondent's place of business which is Nairobi City County and not Nyeri County and that it would be administratively convenient and save costs for the parties to the suit if the matter is withdrawn from the Employment and Labour Relations Court at Nyeri and transferred to the Employment and Labour Relations Court at Nairobi.

2. The parties proposed to dispose of the Preliminary Objection by way of written submissions and the Respondent filed its submissions on 7th February 2018. The Claimant filed her submissions on 16th February 2018. In its submissions, the Respondent stated that the Claimant was employed as a human resource manager vide an appointment letter dated 22nd November 2016 effective 1st December 2016 and that the letter of appointment was executed in Muthaiga, Nairobi County. The Respondent asserts that it resides and its advocates reside and practice in Nairobi. It was submitted that the Employment and Labour Relations Court at Nyeri lacks territorial jurisdiction to entertain the suit while the Employment and Labour Relations Court at Nairobi is seized of territorial jurisdiction to entertain the suit. The Respondent submits that a suit is heard where the subject matter of the dispute accrues, where the contract was entered into, where the contract was performed or where it is alleged to have been breached. The Respondent relies on the Civil Procedure Act, Cap 21 Laws of Kenya and cites Section 1B and states that the Respondent's counsel have to commute to and from Nyeri and that the distance and time involved in such travel is likely to impede the just determination of proceedings and substantially burdens the Respondent financially. The Respondent relied on the case of **Samuel M. W'Njuguna v Benjamin Achode & 8 Others [2014] eKLR** where Havelock J. held that the High Court *can invoke its inherent jurisdiction or the power donated to it by Order 47 Rule 6(2) of the Civil Procedure Rules 2010 to transfer a case from one High Court Registry to another*. The Respondent submits that Order 47, Rule 6(2) of the Civil Procedure Rules 2010 applies to the Employment and Labour Relations Court since it enjoys the same status as the High Court. The Respondent cited Article 162(2) of the Constitution for emphasis and clarity. The Respondent also relied on the case of **Daniel Moseka v Japheth Arthur Mwangi Kiurire [2012] eKLR** where Ngugi J. held that the High Court *can invoke its inherent jurisdiction or the powers donated in Order 47 Rule 6 of the Civil Procedure Rules, 2010 to transfer a case from one registry to another even if those registries are manned by different judges*. The Respondent argued that the Court should be persuaded by the Supreme Court India decision in the case of **Anita Kushwaha v Pushpap Sudan Transfer Petition No. 1343 of 2008** where the court held that the power to transfer a suit is inherent in the court and is so fundamental to the administration of justice and that it can never be impeached, not even by statute. The Respondent submitted that the Court should exercise its inherent power and order a transfer to reduce the necessity of the parties traversing counties in order to attend court when one's county of ordinary domicile has a registry of the same court is an unnecessary hindrance to the litigant's right to access justice hence the prayer that the suit be transferred to Nairobi. Article 20(3)(b) of the Constitution of Kenya 2010 was cited in aid in that in applying the bill of rights, a court shall adopt the interpretation that most favours the enforcement of a right or fundamental freedom. The Respondent submits that the Claimant will not suffer prejudice by the transfer and that in any case she worked in Nairobi County at the Respondent's place of business.

3. The Claimant's submissions were to the effect that the Court was established courtesy of Article 162(2). It was argued that the court is established under Section 4 of the Employment and Labour Relations Court and that Section 12 of the Act gives the jurisdiction of the Court as follows:-

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 including

(a) disputes relating to or arising out of employment between an employer and an employee.

The Claimant submits that the territorial jurisdiction of the court is not fettered and that relying on the cases of **Peter Ochola Omburoi v Inter Diocesan Properties Limited [2016] eKLR**, **Kenya Plantation and Agricultural Workers Union v Kakuzi Limited [2014] eKLR** and **Trusted Society of Human Rights Alliance v Nakuru Water Sewerage and Sanitation Services Company & Attorney General [2013] eKLR** the court had territorial jurisdiction that is countrywide. The Claimant called in aid Section 3 of the Employment and Labour Relations Act regarding the overriding objective to facilitate a just, expeditious, efficient and proportionate resolution of disputes governed by the Act. Citing the case of **Mukisa Biscuits v West End Distributors [1969] EA 696** the Claimant asks whether the preliminary objection is well taken. The Claimant was of the view that the court should disallow the preliminary objection.

4. The court is established under Article 162(2) and is a specialized court with the status of the High Court. It is not the High Court and the

Civil Procedure Rules do not apply here. That said, the issue of transfer of cases is an inherent power this court enjoys. The Employment and Labour Relations Court is stationed in various counties and has a number of gazetted sub-registries. There are even circuit courts but the territorial jurisdiction of the court is countrywide. The only regard the court will have to a matter is the convenience of parties and for the good order in the administration of justice. The suit before me was filed in Nyeri which is in order though for convenience of parties the place of suing could have been Nairobi. Granted that the parties will have a quicker resolution of the dispute that is currently before me, the Court will decline to exercise the discretion to transfer the case to Nairobi. This is not to mean that the suit is not fit for transfer but applying the principles enunciated in Section 3 of the Employment and Labour Relations Act to facilitate a just, expeditious, efficient and proportionate resolution of this dispute. I dismiss the objection with no order as to costs.

It is so ordered.

Dated and delivered at Nyeri this 1st day of March 2018

Nzioki wa Makau

PJUDGE