

REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS

COURT OF KENYA AT NYERI

CAUSE NO. 431 & 432 OF 2017

WAWERU KAGWE GITHAE & OTHERS.....CLAIMANTS

VERSUS

LLOITA HILLS SPRINGS LIMITED.....1ST RESPONDENT

LETAN LIMITED.....2ND RESPONDENT

LEDEMA OLE MESOPIR.....3RD RESPONDENT

RULING

1. The Respondents preliminary objection is to the effect that the 3rd Respondent is wrongly enjoined to the suit and that the Court lacks the geographical jurisdiction to handle the matter therefore the matter should be transferred to Narok where the cause of action arose or Nairobi where the Respondents are based. The Respondents asserted that the claim as bought out (sic) and files (sic) is frivolous, fatally defective and lacks merit. The submissions by the Respondent filed on 17th March 2018 were to the effect that there was no employer employee relationship between the Claimants and the Respondents and that the Respondents had been wrongly enjoined as respondents to the suit and that the court lacks territorial jurisdiction to hear matter from Narok.

2. The Claimant in 431 of 2017 was opposed to the objection and filed a replying affidavit sworn on 12th January 2018. In it, he depones on information by his counsel which information he verily believes to be true that the court has national unlimited jurisdiction in adjudication of labour & employment matters and that with respect to place of suing this court is not guided by the provisions of the Civil Procedure Act or the Civil Procedure Rules thereunder. He stated that there is no provision in the Rules of this court that a dispute must be filed in the geographical jurisdiction where the disputes are deemed to arise and that he was informed by his counsel which information he verily believes to be true that the Employment & Labour Relations Court at Nairobi is extremely congested and it would take extremely long before this matter can be heard and determined at Nairobi. He stated that he hailed from Nyandarua and asserted that Nyeri was the most convenient station for him in the matter. In his skeleton submissions filed on 9th March 2018, the Claimant submitted that the objection taken by the Respondent did not amount to a preliminary objection as held in the **Mukisa Biscuits** case and cited the case of **Peter Ocholla Omburo v Inter-Diocesan Properties Ltd ELRC Kericho Cause No. 2011 of 2015** (unreported) in support of the proposition that objection should not be raised except where there is a pure point of law.

3. The parties herein are stated to have had transactions in Narok. This 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. It has presence at Nyeri, Nakuru, Mombasa, Kisumu and Kericho in addition to Nairobi. There are even circuit courts to Malindi, Meru and other towns but the territorial jurisdiction of the court is countrywide. I therefore possess the jurisdiction to hear the claim. However, in view of the proximity of Nyandarua and Narok to Nakuru as opposed to Nyeri, I will order the transfer of the two suits to Nakuru ELRC for disposal.

It is so ordered.

Dated and delivered at Nyeri this 14th day of May 2018

Nzioki wa Makau

JUDGE