

REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS COURT OF KENYA

AT NYERI

SUIT NO. 139 OF 2018

JULIET TAABU OJOMA.....CLAIMANT/RESPONDENT

VERSUS

APPLE GREEN RESTAURANT LIMITED.....RESPONDENT/APPLICANT

RULING

1. The Respondent/Applicant's Notice of Motion application dated 16th May 2018 seeks transfer of this suit from Nyeri to Nairobi. It is premised on Article 40,48 and 50 of the Constitution and Sections 3, 12, 20 and 29(a) of the Employment and Labour Relations Court and Rules 13, 14, 17, 33 and 38 of the Employment and Labour Relations Court (Procedure) Rules 2016 and all enabling provisions of the law. The Respondent's position is that suits should be filed where the cause of action arose in this case Nairobi where the Respondent's business is located and where all the advocates for the parties have business and where the witnesses of the parties reside. It is supported by the affidavit of Anne Wangari Gitonga a director of the Respondent who depones that the cause of action arose at Nairobi, that the restaurant is based in Nairobi and that there is a court established at Nairobi where this dispute should have been filed.

2. The Claimant/Respondent is opposed and filed grounds of opposition to the motion. It is asserted that this court is clothed with jurisdiction to hear the claim and that the rules of the Court do not have a requirement that the employment and labour disputes be filed within the geographical jurisdiction where they are deemed to arise. It was stated that the transfer sought is a disguised attempt at delaying the matter further from being heard and determined. It was asserted that the filing was an afterthought and brought in bad faith.

3. In matters jurisdiction the law is settled. In the case of the **Owners and Masters of the Motor Vessel "Joey" v Owners and Masters of the Motor Tugs "Barbara" and "Steve B" [2007] eKLR** per Omolo, Tunoi and Githinji JJA on 27th April 2007 the learned judges of the Court of Appeal held that *the question of jurisdiction, raised in the circumstances such as those existing in the present appeal, is a threshold issue and must be determined by a judge at the threshold stage, using such evidence as may be placed before him by the parties.* Nyarangi, J.A graphically put it thus:-

"..... I think it is reasonably plain that a question of jurisdiction ought to be raised at the earliest opportunity and the court seized of the matter is then obliged to decide the issue right away on the material before it. Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law down (sic) tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction."

The learned Judge of Appeal then referred to certain passages in the text "Words & Phrases Legally Defined." – Vol. 3: I – N at pg. 113 and then continued:-

"It is for that reason that a question of jurisdiction once raised by a party or by a court on its own motion must be decided forthwith on the evidence before the court. It is immaterial whether the evidence is scanty or limited. Scanty or limited facts constitute the evidence before the court. A party who fails to question the jurisdiction of a court may not be heard to raise the issue after the matter is heard and determined. I can see no grounds why a question of jurisdiction could not be raised during the proceedings. As soon as that is done, the court should hear and dispose of that issue without further ado."

And in concluding his judgment, Masime, J.A, said at pg. 26 of the Report:-**"The evidence placed before the court in support of the claim as well as the motion has been analyzed above and I have also, as I said before, had the advantage of reading in draft the comments of my brothers, Nyarangi and Kwach, JJA on it with which I respectfully agree that evidence so far as it was adduced by the respondent fell foul of the requirements of rule 5 of Order 75; it failed to establish that the appellant was "the relevant person." The upshot of that is that the High Court did not have the admiralty jurisdiction and that the respondent was not entitled to invoke that jurisdiction."**

4. The court is ably guided. The issue of jurisdiction has been raised and the court has to decide on the matter with the material before it. The jurisdiction of the Employment and Labour Relations Court is country wide. The previous sittings of the court when it was named the Industrial Court were mainly in Nairobi but the court would go on circuit to Mombasa, Kisumu and Nakuru and when Judges were appointed to the newly established superior court to handle employment and labour matters, the sittings of the court were confined to Nairobi at the onset. In 2013 and 2014 other court stations of the Employment & Labour Relations Court (ELRC) were established in the towns of Nyeri, Kisumu, Nakuru, Mombasa and the recently at Kericho. Nyeri was one of the stations set up. The Nyeri ELRC covers the following areas Nyeri, Marsabit, Samburu, Meru, Tharaka Nithi, Embu, Kirinyaga, Murang'a, Laikipia, Nyandarua and Samburu. As a Judge of the ELRC, I am clothed with jurisdiction countrywide. The claim herein can be competently heard by me here in Nyeri but the interests of justice will be best served if the suit is heard and determined in Nairobi as that is where the cause of action accrued and where parties reside per their pleadings. I therefore will order a transfer of the suit for hearing and disposal at Nairobi mindful that parties may have to abide the hearing

before the court there. Upon transfer directions will be taken on the matter to enable it get traction and conclusion.

It is so ordered.

Dated and delivered at Nyeri this 26th day of September 2018

Nzioki wa Makau

JUDGE