

REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS

COURT OF KENYA AT NYERI

CAUSE NO. 240 OF 2018

JANET MURIUNGI.....CLAIMANT

VERSUS

CHIEF OFFICER DEPARTMENT OF EDUCATION.....RESPONDENT

RULING

1. The Respondent objects to the jurisdiction of the court asserting that the Gazette Notice No. 6024 published in the Kenya Gazette dated 22nd June 2018 conferred jurisdiction on Senior Resident Magistrates and above as special magistrates to hear and determine disputes arising from labour matters excluding trade disputes under the Labour Relations Act 2007 where the employee's gross monthly pay does not exceed Kshs. 80,000/-. The Respondent argues therefore that there is no jurisdiction to handle the claim as appropriate forum is the Senior Resident Magistrates Court. The Respondent also seeks leave to file documents out of time having failed to do so upon grant of leave. The Claimant is opposed and in the Replying Affidavit filed deposes that the objection is misplaced and that there is no jurisdiction to handle labour matters reposed in Magistrates. The Claimant asserts that the court has residual jurisdiction to handle the disputes before court. The Claimant asserts that the matter before this court is a trade dispute and therefore rightly before the Court. The Claimant urges the dismissal of the Respondent's objection.

2. The Respondent submitted that based on the authority of **Owners of Motor Vessel Lilian 'S' v Caltex Oil Kenya Ltd [1989] KLR 1** the court lacked jurisdiction. The Respondent submitted that the finding by the Court of Appeal in **Attorney General v LSK & Another [2017] eKLR** removing matters of Work Injury Benefit from Magistrates did not remove jurisdiction of the Magistrates Court to hear labour matters as per the Gazette Notice. The Respondent also submits that the matter did not come to court after undergoing the dispute resolution process for trade disputes and therefore the same is prematurely before the Court. The Respondent submitted that the Claimant had sued the wrong person and cited the case of **Apex International Ltd & Anglo Leasing & Finance International Ltd v Kenya Anti-Corruption Commission [2012] eKLR** which cited with approval the case of **Goodwill & Trust Investments Ltd & Another v Will & Bush Ltd (Supreme Court of Nigeria)** for the proposition that proper parties must be identified before the action can succeed and that the parties to the suit must be shown to be proper parties whom rights and obligations arising from the cause of action attach. The Respondent also cited the case of **Trusted Society of Human Rights Alliance v Mumo Matemu & 5 Others [2014] eKLR** where the court held that a suit can be struck out of a wrong party is enjoined in it. The Respondent submits that the Claimant was bound by her pleadings and relied on the case of **Nyabicha v Kenya Tea Development Authority & Others [2010] eKLR**. The Respondent then goes off and assails the Registry for declining to accept the documents presented out of time.

3. The Claimant in her submissions is opposed and asserts that the case of **Attorney General v LSK & Another [2017] eKLR** was applicable to the extent that it barred the hearing of labour matters relating to injuries. The Claimant asserts that the Gazette Notice itself was unlawful and unconstitutional as it cites a different article of the Constitution and therefore is null and void. The Claimant asserts the dispute is a labour matter and therefore correctly before the court.

4. The Respondent's research and application in the matter is to some degree wanting. The submissions filed do not have the authorities cited and none were presented to court in any event. Such shoddy legal practice is deprecated. The Respondent's counsel has been consistent in missing deadlines set by the Rules of the Court and directives issued by the court on filing of documents in the Practice Directions issued from time to time. To turn around and blame the Registry for massive incompetence on part of counsel is not the way to make a good name for oneself. Though counsel has been indolent, the Respondent makes a good point in regard to one aspect of the objection taken. The Respondent's counsel is urged to read the Gazette Notice No. 6024. The Gazette Notice did not oust the jurisdiction of the court granted to it by the Constitution of Kenya 2010 per Article 162 as well as the Labour Relations Act, the Employment & Labour Relations Court Act 2011 and the Employment Act 2007 *inter alia*. Any matter that was already pending for determination before the superior court would continue to be handled by the superior court except for exceptional circumstances such as hardship necessitating the transfer to the Magistrates Court.

5. The only objection that was rightly taken is regarding the parties enjoined in the suit. The Respondent asserts that the party who is sued is not the appropriate party. The Claimant has sued the Chief Officer Department of Education and from the memorandum of claim filed it is clear the correct party to be sued is not the Respondent herein. For that reason the suit is struck out as incompetent. It was not a trade dispute per se as the matter was not referred to conciliation as contemplated in the Labour Relations Act 2007. Each party to bear their own costs.

It is so ordered.

Dated and delivered at Nyeri this 5th day of December 2018

Nzioki wa Makau

JUDGE