



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR
RELATIONS COURT AT MOMBASA

CAUSE NUMBER 635 OF 2016

BETWEEN

GOLD CROWN BEVERAGES [KENYA] LTD CLAIMANT

VERSUS

MAINA NGUGI..... RESPONDENT

Rika J

Court Assistant: Benjamin Kombe

J.O. Magolo & Company Advocates for the Claimant

A.S. Kuloba & Wangila Advocates for the Respondent

RULING

1. The Claimant Company employed the Respondent as its General Manager, on 6th January 2016. He resigned on 4th June 2016. The Claimant filed this Claim against the Respondent on 1st September 2016, seeking orders for payment of a total sum of Kshs. 2,117,047, in notice pay and salary advances, among others.
2. The Respondent filed an Application on 6th February 2017, asking the Court to strike out the Claim, or transfer the Claim to the Court in Nairobi. The Application is made ostensibly on the ground that the Claimant violated rules of procedure on the place of filing.
3. The Application is supported by the Affidavit sworn by the Respondent on 2nd February 2017.
4. He states his contract was to be performed at Nairobi. He resides in Nairobi. It would be difficult for him to travel to Mombasa for hearing. It is only fair the matter is heard in Nairobi.
5. Claimant's Managing Director Fatim Ahmed filed a Replying Affidavit for the Claimant, sworn on 14th March 2017. He depones that the Claimant is based at Mombasa. Its Head Office is at Mombasa. The Respondent worked in Nairobi, but was directed by the Claimant's Management from Mombasa. His resignation letter was delivered to the Office at Mombasa. His employment required him to move

throughout the country. Accounting is done at Mombasa.

6. Parties were heard on 16th June 2017. The Claimant made oral submissions, while the Respondent adopted his written submissions, filed on 23rd March 2017.

The Court Finds:-

7. The Application is based on Section 3A and 15 of the Civil Procedure Act. This law does not govern the proceedings of the Employment and Labour Relations Court (E&LRC)

8. The E&LRC, has its own rules of procedure. The Respondent has not shown which rule, governing the proceedings of this Court, would require this Claim is heard in Nairobi.

9. The Claimant Company is based in Mombasa. Its Head Office is in Mombasa. The Respondent worked as General Manager for a Company with operations throughout Kenya. The employment records are at the Head Office. The Respondent's resignation letter was directed to Mombasa.

10. The Court is not able to find any factor that bars the Court from hearing the Parties at Mombasa. There are no factors establishing the Court in Nairobi, as the sole legal and proper place of trial. The Respondent's residence at Nairobi, his Advocates' residence at Nairobi, and his having been stationed at Nairobi as General Manager are no more persuasive factors, than the Claimant's residence at Mombasa, its Advocates' residence at Mombasa, and the Respondent having been controlled and directed by the Claimant from the Head Office in Mombasa. He resigned at Mombasa.

11. In short, the Respondent has not shown that Nairobi has the closest connecting factors with the dispute, and that there are no factors connecting the dispute to Mombasa.

12. The main prayer in the Application is to strike out the Claim. Even assuming the rules of procedure invoked by the Respondent apply to the proceedings herein, there would be no basis to strike out a Claim, only on the ground that the Claim has been presented before the wrong geographical jurisdiction.

IT IS ORDERED:-

a) The Application by the Respondent dated 2nd February 2017 is dismissed with no order on the costs.

Dated and delivered at Mombasa this 14th day of July 2017.

James Rika

Judge