



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

CAUSE NO. 149 OF 2017

(Originally Nakuru Cause No. 424 of 2016)

JOHN LENZI.....CLAIMANT

v

SMEP DEPOSIT TAKING MICROFINANCE LTD.....RESPONDENT

RULING

1. For ruling is an application dated 31 October 2017 seeking

1.

2. **THAT** the Court be pleased to direct that this suit be transferred to the Employment and Labour Relations Court in Nairobi.

3. **THAT** costs of this application be in the cause.

2. The Claimant filed Grounds of Opposition to the application on 8 November 2017 and submissions were taken on 20 November 2017 (Respondent also filed written submissions).

3. The Respondent, in seeking the transfer of the Cause to Nairobi for hearing and determination contended that the cause(s) of action presented by the Claimant arose in Nairobi and that all the witnesses it intends to call are based in Nairobi and therefore it will be occasioned great hardship in bringing them to Eldoret.

4. The Respondent also contended that the Claimant was forum shopping.

5. While opposing the application, the Claimant urged that this Court had unlimited geographical jurisdiction and that the contract of employment, the subject of the litigation was performed in Eldoret.

6. The establishing statute of this Court has not provided for any geographical or territorial jurisdictional limitation for the Court.

7. The Employment and Labour Relations Court (Procedure) Rules, 2016 have also not limited the geographical jurisdiction of the Court, unlike the limitations outlined in sections 11 to 15 of the Civil Procedure Act.

8. Although, legally this Court's geographical jurisdiction has not been expressly limited, it would only be logical that the cost implications, subject matter, residential considerations of the parties and the place

of accrual of action would be material factors when an objection is raised against the geographical jurisdiction.

9. However, in my view the territorial and geographical limitations must have at the core the need to ensure *access to justice*, a constitutional imperative. *Access to justice* should be the paramount consideration.

10. And some of the determinants the Court ought to keep in mind while ensuring there is *access to justice*, are the considerations of expeditious, simple and proportionate determination of disputes.

11. In the instant case, being an employment relationship, the stronger power usually turns out to be the employer. As regards the costs implications, an employer generally will be the more capable party (circumstances may vary considerably). Proportionality therefore favours the Claimant herein.

12. On the *situ* of the contract, it is not disputed by the Respondent that the Claimant's contract alleged to have been breached was being performed substantially in Eldoret, and not Nairobi where the Respondent's head office is located.

13. In my view, the *access to justice* factor tilts in having the Cause heard and determined in Eldoret where the Claimant ordinarily performed the contract and where he asserts he is currently based, albeit unemployed.

14. The Court therefore declines the invitation by the Respondent and orders that the motion dated 31 October 2017 be dismissed with no order as to costs.

Delivered, dated and signed in Eldoret on this 21st day of November 2017.

Radido Stephen

Judge

Appearances

For Claimant Mr. Suter instructed by Mwakio, Kirwa & Co. Advocates

For Respondent Mr. Kimathi instructed by Gitonga Kamiti, Kairaria & Co. Advocates

Court Assistants Martin/Etyang