



REPUBLIC OF KENYA

EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA

AT KERICHO

CAUSE NO.128 OF 2015

(Before D. K. N. Marete)

KENYA PLANTATION &

AGRICULTURE WORKERS UNION.....CLAIMANT

VERSUS

SIRET TEA COMPANY LIMITED

KAKUZI LIMITED (KABOSWA ESTATE)

EASTERN PRODUCE KENYA LIMITED.....RESPONDENTS

RULING

This is an application by way of Notice of Motion dated 9th December, 2015. It seeks the following orders of court;

- i) That this application be certified as urgent.*
- ii) That this claim be heard and determined at the employment and Labour relations Court at Nairobi.*
- iii) That the Claimant bears the costs of this application.*

The application is grounded as follows;

- 1. The Respondents' head office and principal place of business is in Nairobi.*
- 2. The Civil Procedure Act provides that claims can be filed inter alia where the Respondents/Defendants has its principal office. Consequently the Employment and Labour Relations Court in Nairobi has jurisdiction to hear and determine this suit.*
- 3. The Respondents' witnesses reside and work in Nairobi.*
- 4. The hearing of this Claim in the Employment and Labour Relations Court in Kericho will subject the Respondents to injustice by reason of prohibitive expense and undue hardship in procuring and maintaining the attendance of witnesses.*

5. *No prejudice will be suffered by the Claimant if the claim herein is heard in Nairobi.*

6. *It is in the interests of justice therefore that the claim herein be heard at the Employment and Labour Relations court at Nairobi.*

The claimant/respondent vide a Replying Affidavit sworn on 3rd February, 2016 faults the application and opposes it *in toto*.

The application came and was introduced in court on 10th December, 2015 when the claimant/respondent was awarded time to file a reply. The parties also agreed to dispose of the matter by way of written submissions.

This is a fairly simple application. It is premised on the basis that this suit ought to have been filed at the Employment & Labour Relations Court in Nairobi as this is the seat of the respondent/applicant. She also argues and submits that her witnesses reside at Nairobi. It is the respondent's further case that the hearing of this matter at Kericho shall subject the respondent to injustice by way of prohibitive expense and undue hardship in procuring and maintaining the attendance of witnesses. Again, the claimant is not likely to suffer any prejudice in the event of a hearing in Nairobi.

The claimant/respondent opposes the application on grounds that this court is clothed with jurisdiction under Article 162 (2) of the Constitution of Kenya, 2010. The court is vested with exclusive, original and appellate jurisdiction to hear and determine all disputes referred to it in accordance with the Constitution and any other provision of law on employment and labour relations. It is the claimant/respondent further submission that the dispute before court is rightly so and on the ambit of Section 12 (d) (I) of the Industrial Court Act, 2011. It is their further averment that the respondent is a tea growing company whose physical address is Plantation House, Lessos road, P. O. Box 22 – 30301, Nandi Hills where all dealings with the respondent have been held in the past. These include CBA negotiations *et al*.

In her written submissions dated 19th February, 2015 the respondent/applicant argues and submits that this court has inherent jurisdiction to transfer the suit from Kericho to Nairobi. This would be in furtherance of Article 50 of the Constitution of Kenya, 2010 which enshrines the right to a fair hearing and also in pursuance of the principle objective of the court under Section 3 of the Employment & Labour Relations Act. The applicant submits that the court has discretion to make orders to meet the ends of justice and pray that this is exercised in her favour.

The applicant further seeks to rely on the authority of **Kenya National Private Security workers Union VS NSSF & 2 Others (2014) eKLR** where my sister Mbaru, J emphasized the use of the Civil Procedure Act and rules in matter of this court not adequately catered for by the Industrial Court Act and the rules thereto. The applicant therefore submits an application of order 47 rule 6 (2).

“The court may of its own motion or on the application of any party to a suit and for cause shown order that a case be tried in a particular place to be appointed by the court.

Provided always that in appointing such particular place for trial the court shall have regard to the convenience of the parties and of their witnesses and to the date on which such trial is to take place, and all other circumstances of the case.”

Again, in **Samuel M W'Njuguna v Benjamin Achode & Others (2013) eKLR** the court stated;

“as a result of the forging authorities, I have little or no doubt that this Court can, in an appropriate case, invoke its inherent jurisdiction or the power as donated to it by order 47 Rule 62 (2) to transfer a case from one High Court Registry to another.”

It is the respondent/applicant's case that for reasons adduced in the application, this cause should be transferred to Nairobi for hearing and determination.

The claimant/respondent in her written submissions reiterates her case in opposition to the application. It raises three issues for determination in this application as follows;

a. Whether this Court has jurisdiction to hear and determine this suit?

b. Whether the Respondent will suffer undue hardship and expense in procuring and maintaining the attendance of Prof Japheth Awiti?

(c) What remedy is available to the Respondent?

In answer to issue No.1 above the claimant/respondent overwhelmingly submits on the issue of the jurisdiction of this court in dealing with the suit. This jurisdiction is national wide.

The claimant/respondent further submits that the respondent is indeed not likely to suffer undue hardship in doing her case and can after all rely on sworn evidence by her star and expert witness in the circumstances.

It would appear that overall, one issue comes out very clearly from the cases and submissions of the parties: that the issue of jurisdiction of this court in dealing with the subject matter of the application is not in dispute. However, the parties argue and submit that this power should be expended in favour of their positions on the application before court.

On the above premises, the respondent/applicant besides making a claim to a right of the application being decided on her favour implores the court to exercise its jurisdiction to award the application. She adduces various reasons in support

of this position. The claimant/respondent on the other hand opposes this and rubbishes the grounds forming the basis of the applicant's submissions.

With all other factors remaining constant, this court is attracted to the submissions of exercising its jurisdiction in a determination of this application. Having traversed the cases and submissions of the parties, I am inclined to dismiss the claim. This is because the issue of expense and other conveniences submitted in support of the application by the respondent are not entirely convincing. These would in themselves not persuade or compel this court to exercise its discretion in that direction.

I therefore dismiss the claim with orders that each party bears their own costs of the same.

Delivered, dated and signed this 17th day of May 2016.

D.K.Njagi Marete

JUDGE

Appearances

1. Mrs. Opiyo instructed by Kaplan & Stratton for the respondent/applicant.
2. Mr. Khisa for the Union.