

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NYERI

CAUSE NO. 196 OF 2016

TIMOTHY SAMSON AYUO..... CLAIMANT

VERSUS

MOUNT KENYA UNIVERSITY.....RESPONDENT

(Before Hon. Justice Byram Ongaya on Friday 9th December, 2016)

RULING

The respondent filed on 05.10.2016 an application by way of a notice of motion through Okoth & Company Advocates. The application invoked Article 48 of the Constitution, Sections 3 and 29 of the Employment and Labour Relations Court Act, general principles of law and any other enabling powers and provisions and powers of the court. The applicant prayed for orders that:

- a. The claim herein be transferred to the Employment and Labour Relations Court at Nairobi for hearing and disposal.
- b. Costs be provided for.

The application was based on the attached supporting affidavit of Jacob Auma Okoth Advocate and the following grounds:

- a. The cause of action arose within Nairobi City where the claimant was employed to work at the respondent's city campus and the witnesses will be readily available at Nairobi.
- b. It is in the interests of justice, reasonable, proportionate, and just that the matter is heard and determined by the court sitting at Nairobi.

The claimant filed grounds of opposition on 01.11.2016. The claimant urged that the court had jurisdiction to handle the matter and the jurisdiction spread throughout Kenya per Article 162(2) of the Constitution and section 12 of the Employment and Labour Relations Court Act. It was urged that the respondent had offices and operated in Nyeri. Further, it was said that the claimant currently worked in Nyeri town at the Dedan Kimathi University and it was convenient to hear the case at Nyeri.

In **Kenyatta Maita Mwawashe –Versus- Plan International Kenya, ELRC Cause No. 5 of 2014 at Mombasa**, Rika J held that sections 15 and 18 of the Civil Procedure Act were completely irrelevant and this Court traditionally determined the geographical place of trial on the basis of the convenience to the employee. In the present case there is no doubt that the respondent has offices in Nyeri and the claimant will be more convenience in Nyeri. Taking into account that principle that favours the employee and in absence of a compelling reason to transfer the suit to Nairobi, the application will fail.

In conclusion the application filed for the respondent on 05.10.2016 is hereby dismissed with orders as follows:

- a. The costs of the application to abide the outcome of the main suit.
- b. Parties to take directions on the hearing of the suit and fixing the earliest hearing date.

Signed, dated and delivered in court at **Nyeri** this **Friday, 9th December, 2016.**

BYRAM ONGAYA

JUDGE