



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT AT NAIROBI

MISC. APPL NO. 90 OF 2014

(Before Hon. Justice Maureen Onyango on 13.3.2015)

VINCENT KATHIARI KAGO & 88 OTHERS PLAINTIFF/APPLICANTS

-VERSUS-

THE KENYA POWER & LIGHTING COMPANY LTDDEFENDANT/RESPONDENTS

R U L I N G

This application is filed by Vincent Kathiari Kago and 88 others who are plaintiffs in Eldoret HCC No. 21 of 2013 against the Kenya Power & Lighting Company Limited the respondents herein. The applicants seek the following orders:-

1. Eldoret High Court Suit No. 21 of 2013, Robert Sukya Nzioki & 88 Others Vs. The Kenya Power & Lighting Company Limited be and is hereby transferred from the Eldoret High Court Civil Division, to the Industrial Court at Milimani Commercial Courts at Nairobi for hearing and final determination.
2. Costs of this application be provided for.

The application is grounded on the affidavit of Robert Sukya Nzioki, one of the plaintiff's in Eldoret HCC No. 21 of 2013 and on the following grounds:-

1. The suit referred is that of employer employee dispute which ought to be heard in this honourable court but was however filed in the Civil Division of the High Court in Eldoret.
2. The former advocate for the plaintiff in his wisdom or lack thereof and/or deliberately instituted and filed the aforesaid suit in a court short of jurisdiction.
3. Applicants have high conviction that their former advocate may have been compromised to technically jeopardize the matter or otherwise.
4. The said advocate is further acting for another group of former employees of the defendant/respondent in Eldoret HCCC No. 74 of 2003 which todate the matter has never been set down for hearing in over ten years' time.
5. No irreparable loss that may occur if and when the matter is transferred to this Honourable court.

6. There is an application by way of Notice of Motion dated 23rd October, 2013 filed by the defendant seeking to strike out the suit and one of the grounds being that of jurisdiction.

7. The aforesaid application is better determined by a court of competent jurisdiction as it touches on the substantive issues of the main suit.

8. It is in the interests of justice that this suit be heard in the High Court.

The matters deponed to in the affidavit of Robert Sukya Nzioki are the same as those in the grounds in support of the application.

The application was filed through Muriithi Kireria & Associates Advocates.

The respondent opposed the application by way of grounds of objection. There is no copy of the grounds of objection on the file. The respondent however filed written submissions in response to submissions filed on behalf of the claimants following a consent order to that effect. From the submissions of the respondent filed on 4th November 2014, I gather that the objections were two fold, that a case filed before a court that has no jurisdiction is a nullity and cannot be transferred. The second ground of objection is that under Section 18(1) of the Civil Procedure Act the power to transfer such a case is in the court in which the case was filed and not this court.

The respondent relied on **Precious Gems Ltd V Motempa Suakei Setiyia [2010]** eKLR for ground 1 of the objection and on **Rob De Jong & Another V Charles Mureithi Wachira [2012]** eKLR for ground 2. The respondent further relied on the case of **Keterman V Hansel Properties Ltd [1988] 1 ALLER 38**.

I do not agree with the 1st ground of objection. Striking out cases should be resorted to only where the error cannot be cured. Substantive justice as envisaged in Article 10(1)(a) and 159(2)(d) militate against declaration of the suit filed by the applicants in Eldoret HCCC No. 21 of 2013 a nullity. The authorities **Precious Gems Limited** and **Keterman** both belong to the era before the advent of our current Constitution which enjoins this court to administer justice without undue regard to procedural technicalities.

I however agree with the 2nd ground of objection. This court has no jurisdiction to make an order directing another court of the same status to transfer a case before it to this court. Section 18 of the Civil Procedure Act is however not applicable as it relates to transfer of suits from a subordinate court. The High Court however has inherent power to transfer the suit to this court upon application by either party.

For these reasons I dismiss the application by the applicants as I have no power to grant the orders sought. The applicants are advised to make the application at the court which is currently seized of the matter, that is the High Court in Eldoret.

There shall be no orders for costs.

Dated and delivered in Nairobi this 13th day of March, 2015.

MAUREEN ONYANGO

JUDGE

In the presence of:

..... for claimant(s)

..... for respondent(s)