



REPUBLIC OF KENYA

EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA

CAUSE NO. MISC 111 OF 2014

MASIMIANO NJERU MBITI.....CLAIMANT

VERSUS

MRS JOYCE BOSWELL & ANOTHER.....RESPONDENT

Mr. Njuguna for the Claimant

RULING

1. The preliminary objection was filed by the Respondents in this suit on the grounds that the Misc. Application is fatally defective and same be dismissed.
2. The Application seeks to have this court reinstate Milimani CMCC No. 1022 of 2004 and transfer it to this court for hearing and determination.
3. The application is founded on the following grounds set out on the face of the Notice of Motion;
 - a) CMCC No 1022 of 2004 was filed in the Chief Magistrate court at Milimani prior to the passage of the Industrial Court Act 2011, the Constitution of Kenya 2010 and establishment of this court.
 - b) The case falls outside the ambit of the Chief Magistrate court's jurisdiction.
 - c) That no prejudice will be occasioned by the Respondents
4. The application is further buttressed by a supporting affidavit of M/s Sylvia Malembe Kitonga, Advocate for the Claimant.
5. According to the Advocate, the suit was dismissed on 3rd September, 2008 by the Chief Magistrate for none attendance. An Application for reinstatement was filed and same was granted on 22nd January, 2009. Another application dated 25th July, 2012 was filed seeking to dismiss the suit for want of prosecution.
6. The Claimant filed a replying affidavit on 17th August 2012 opposing the application for dismissal for want of prosecution and challenging the jurisdiction of the Magistrate's Court to entertain the matter.
7. The Magistrate directed the matter be fixed for hearing within 60 days. An exparte date

was granted on 28th February, 2013 and the Matter was not listed on that day.

8. On 7th May 2013, the Magistrate Court directed that the claimant apply for extension of time. The application was set for hearing on 31st July, 2013.

9. A notice of preliminary objection was filed on 31st July 2013 by the Respondent and served on the Claimants on 6th August, 2013.

10. On 7th August, 2013 the set mention date, the claimant sought time to file a replying affidavit which was filed on 23rd August, 2013 together with grounds of opposition. The matter was to be mentioned on 5th September, 2013.

11. On 26th September, 2013 parties were directed to file written submission which was done on 16th October, 2013.

12. A ruling was delivered on 28th March, 2014 in which the Senior Principal Magistrate upheld the preliminary objection by the Respondents with the effect that the suit stood dismissed effective 28th March, 2013.

13. This being the undisputed course of events, the Application to this court dated 9th December, 2014, seeking for orders to have Milimani CMCC No 1022 of 2004 transferred to the Employment and Labour Relations Court (ELRC) is fatally defective for the simple reason that this cause ceased to exist the day it was dismissed.

14. A ruling dismissing the suit was delivered on 28th March, 2014 by the Senior Principal Magistrate.

15. The only action available to the claimant/applicant was to either seek the same Magistrate to review his ruling and consequential orders or file an appeal against the ruling of the Magistrate Court.

16. This application is therefore dismissed with costs for the aforesaid reasons.

Dated and Delivered at Nairobi this 22nd day of May, 2015.

MATHEWS N. NDUMA

PRINCIPAL JUDGE