



REPUBLIC OF KENYA

EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO. 609 OF 2014

(BEFORE HON. JUSTICE HELLEN S. WASILWA ON 16TH DECEMBER, 2015)

MARY MWEU.....CLAIMANT

VERSUS

THE CHAIRMAN B.O.G. MISYANI GIRLS SECONDARY SCHOOL.....1ST RESPONDENT

THE SECRETARY B.O.G. MISYANI GIRLS SECONDARY SCHOOL.....2ND RESPONDENT

MISYANI GIRLS SECONDARY SCHOOL3RD RESPONDENT

RULING

1. The Notice of Preliminary objection before Court is dated 10th November, 2015, where the Respondent seeks for the suit to be struck on the grounds that:-

1. ***The suit was initially filed before a Magistrate's Court on 6/5/2008 which had no jurisdiction to handle the matter contrary to mandatory provisions of both the Employment Act and the Labour Institutions Act 2007. The Magistrates Court made a finding that it had no jurisdiction to handle the matter on 20.6.2013.***
2. ***The Suit before the Magistrates Court was invalid at its inception.***
3. ***A subsequent order by the High Court tin Machakos High Court Misc. Civil Application No. 242 of 2013 transferring the invalid suit from the Magistrate's Court to this Honourable Court did not validate the invalid suit.***
4. ***The suit transferred to this Honourable Court remains invalid and cannot be entertained by this Honourable Court. The suit ought to be struck off with costs to the Defendants.***

2. The Respondent alleges that the suit was first filed in Machakos Chief Magistrates Court on 6.5.2008 as Civil Suit NO. 457 of 2008. The Defendants in the said suit filed a defence on 19.6.2008 where they gave notice of the Preliminary objection by reason of the suit contravening statute. Pursuant to an objection by the Defendant/Respondent on 20.6.2013, the Chief Magistrates Court made a ruling stating that it had no jurisdiction to handle the matter. On 26.9.2013, the Claimant herein filed an application in the High Court at Machakos (**High Court Civil Misc Application No. 242 of 2013**) seeking to transfer the matter to this Honourable Court which prayers were allowed.

3. The Respondent herein is of the view that when the suit was initially filed in the Chief Magistrates

Court it was incompetent for being filed in a Court without jurisdiction and that an incompetent suit cannot be transferred to this Court.

4. The Respondent relies on Section 87 (1) and (2) of the Employment Act:

Section 87(1)

“Subject to the Provisions of this Act whenever:-

- a. ***An employer or employee neglects or refuses to fulfill a contract of service; or***
- b. ***Any question, difference or dispute arises as to the rights or liabilities of either party, or***
- c. ***Touching any misconduct, neglect or ill treatment of either party..., the aggrieved party may complain to the Labour Officer or lodge a complaint or suit in the industrial Court.”***

Section 87 (2)

“ No Court other than the Industrial Court shall determine any complaint or suit referred to in subsection (1).”

5. The Respondent/Applicant also relies on Section 12(1) of the Labour Institutions Act 2007 which provides:-

“The Industrial Court shall have exclusive jurisdiction to hear, determine, and grant any appropriate relief in respect of an application, claim or complain or infringement of any of the provisions of this Act or any other legislation which extends jurisdiction to the Industrial Court...”

6. The Claimant in opposing the Preliminary objection states that the Suit Machakos CMCC No. 457 of 2008 was filed on 6.5.2009 vide a plaint dated the same date. This according to the Claimant was before the commencement of the Statutes establishing the Industrial Court that is the Employment Act and Labour Institutions Act which commenced on 2.6.2008 a month after the Suit was filed and as such the suit could not have been filed in a Court that was not operational. After the said statutes came into force, the Claimant alleges that she did the needful by applying for transfer of the matter to the Labour Court.
7. Finally the Claimant concludes her submissions by stating that the Suit is properly before the Court and the Respondent’s Preliminary Objection should be dismissed with costs.
8. I have considered the submissions before Court and I note that this claim was 1st filed in 2008 as CMCC No. 457/2007. This was before the current Employment & Labour Relations Court was established. It was however not prudent to have an application filed before High Court in Machakos given that the Employment and Labour Relations Court had already been established in 2012 July.
9. However the order by the High Court in Machakos transferring this suit to this Court is not incompetent only by reason of this technicality as this court has a duty to ensure that just is done irrespective for undue technicalities. I therefore exercise my discretion and allow the suit admitted having already been admitted. The preliminary objection therefore had no merit and I dismiss it accordingly. The suit be set down for hearing.

Costs in the course.

Dated and delivered in open Court this 16th day of December, 2015.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

Mr. Augustine Marete holding brief for Mung'ata for the Claimant

No appearance for the Respondent