



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KERUGOYA

HIGH COURT CIVIL APPEAL NO: 311 OF 2013

MADRINE NJERI GITHINJI & 7 OTHERS.....APPELLANTS

VERSUS

MUNUNGA TEA FACTORY CO. LIMITED.....RESPONDENT

(Being an Appeal from the Ruling/ Orders of Mrs Wachira Chief Magistrate

delivered on 28th May, 2013 in Embu Chief Magistrate's court Civil suit no. 258 of 2008)

JUDGMENT

1. The Appeal arises out of the decision in the Principal Magistrate's court at Kerugoya Civil case no. 341 of 2003. The Court gave a Ruling dated 28th of May, 2013 arising from a Preliminary objection raised by the respondent to the effect that the Court lacked jurisdiction to deal with employment disputes. The Preliminary objection was raised Under **Section 2 of the Companies Act.**

2. The objection was that upon establishment of Industrial Court under **Article 162 (2) (a) of The Constitution** matters of Employment, Industrial disputes, and labour issues lie within the exclusive jurisdiction of that court.

3. The Court upheld the Preliminary objection and stated that the defendant was a limited liability company and even if the plaintiff would argue the Labour Laws of 2008 could not operate retrogressively.

4. That **Section 2 of The Companies Act** is clear that the Lower court lacks jurisdiction in matters relating to Legal proceedings involving Companies and the Trial Magistrate struck out the Appellant's suit.

5. The Appellant were dissatisfied with the decision of The trial magistrate in upholding the respondents Preliminary objection dated 24th April, 2012 and filed this Appeal which is premised on the following grounds;

1. The Learned Chief Magistrate erred in law and in fact in failing to make a conclusive finding on whether the Industrial Court Act No. 20 of 2011 and the Labour Institutions Act, 2007 which gave the Industrial court exclusive jurisdiction to deal with labour disputes applied retrospectively to the case before her which was originally filed at Kerugoya as Kerugoya Principal Magistrate's Court Civil Suit No. 341 of 2003 so as to deny her jurisdiction to hear and determine the same.

2. The Learned Chief Magistrate erred in Law and in fact by upholding the Respondent's contention by way of Preliminary objection to the effect that a sub-ordinate court has no jurisdiction to tray a civil suit in which a company is sued by virtue of Section 2 of the Companies Act. Cap 486.

3. The ruling/orders of the Learned Chief Magistrate are Contrary to Law and Justice.

6. The parties agreed to canvass the Appeal by way of written submissions.

7. The applicant submits that by the plaint dated 11th September, 2003 the appellant sued the respondent their former employer for the relief of the prayers in the plaint. One of the causes of action pleaded by the appellant is wrongful dismissal and the other cause of action which they pleaded was defamation by the defendant.

8. The matter was first filed in Kerugoya Principal Magistrate's court as courts civil case number 341 of 2003 at the time of

filing the court had jurisdiction to hear the complains and make determination under the then applicable statutory law namely The Employment Act Cap 226 whose commencement date was 3rd May, 1976 and was revised in 1997 and in particular **Section 40 of The Revised Edition of the said Law.**

9. The suit was later transferred to the Chief Magistrate's Court - EMBU on application by the Respondent on the ground that Kerugoya Court did not have Pecuniary Jurisdiction to deal with the matter where it became **EMBU CMCC : 258 of 2008.** During the pendency of the suit The Employment Act Cap 226 was repealed and replaced with **Employment Act(Act No. 11) of 2007.** The Act under **Section 87 (2)** provided that no Court other than the Industrial court had jurisdiction to determine any complain or suit referred to in **Sub-section 1** in that Section.

10. The Act in its Transitional Provision namely Section 93 did not say what would happen to the matters that had been filed in the sub-ordinate courts and were pending hearing and determination before its enactment and whether they would be heard in those Courts or would be transferred to the Industrial courts created under it, for trial and disposal.

11. Later the **Industrial Court Act No. 20 of 2011 under Article 162 (2) of The Constitution of Kenya (2010)** and vide **Section 4 (1)** established the Industrial court and vested Jurisdiction of settling employment disputes and industrial relations disputes in it.

12. The **Industrial Court Act Cap 234** was repealed and replaced by the Employment and Labour Relations court Act whose jurisdiction is set under **Section 12.**

13. The Respondent filed a Preliminary objection dated 24th April, 2012 seeking to strike out the appellants entire suit on the ground that only the Industrial had jurisdiction to hear an employment dispute and that the court lacked jurisdiction to hear the matter by virtue of **Section 2 of The Companies Act.**

I have considered the Appeal and the submissions.

The issue which arises for determination in this appeal is;

- Whether Magistrate erred by holding that the Court lacked jurisdiction to entertain the dispute between employees and their employers.

14. It is Trite that Jurisdiction is everything and without it The Court cannot take one more step and in case it does the proceedings will be a nullity. In the case of; **Owners of the Motor-vessel Lilian (s) -vs- Caltex Oil Kenya Limited (1989) 1 KLR which is a Locus Classica** on the Issue of Jurisdiction Nyarangi J.A stated:-

“Jurisdiction is everything, without it a court has no power to make more step, a court of law downs tools in respect of the matter before it, the moment it holds the opinion that it is without jurisdiction.

Jurisdiction is donated by statues, and parties in a suit cannot purport to confer jurisdiction on a court when it has no jurisdiction.

This has been stated in the matter of advisory opinion of the Supreme court under Article 163 (3) of The Constitution, Constitutional Application No. 2 of 2011.

The court stated;

The Lilian (s) case (1989) KLR establishes that Jurisdiction flows from the Law and the recipient court is to apply the same with any limitation embodied therein, and such a court may not arrogate to itself jurisdiction through the craft of interpretation or by way of endeavors to discern or interpret the intentions of Parliament where the wording of Legislation is clear and there is no ambiguity.”

15. In determining whether the court had jurisdiction the court has to consider the effects of the repealed Legislation on matters which are pending in Court before the Law was repealed.

16. The Court of Appeal stated In case of; **National Social Security Fund Board Trustees & Others -vs- Central Organization of Trade Union (K) (2015) eKLR,** we have no hesitation in addition in upholding that once an Act of Parliament is repealed it ceases to exist completely unless the Repealing Act provides otherwise and that the repealed law cannot form an order of Mandamus. The Court cited in The **Punjab - Haryana Indian Case in The High court of India National Planners Limited -vs- Contributories ETC Air (1958) PH 230 Bhandari CJ** stated as follows;

“ The effect of repealing a statue is to obliterate it as completely from the records of Parliament as it had never been passed, and it must be considered as a Law that never existed, except for the purpose of those actions which were commenced, prosecuted and concluded whilst it was an existing law.”

17. The court also cited The case of; **REPUBLIC -VS- ATTORNEY GENERAL & 2 OTHERS Ex-parte Peter Mungai Kimani & Another. H.C. J.R.C. No. 415 of 2013** where Odunga J stated as follows regarding a repealed statute.

“ in my view by repealed of The Land dispute Tribunal Act No. 18 of 1990 no Court could purport to exercise any powers thereunder. In adopting the award on 14th August, 2014 the Learned Magistrate was invoking the Provisions of Section 7 & 8 of the said repealed Act. Accordingly the learned magistrate could not purport to exercise a Jurisdiction which had ceased to exist by operation of The LAW.”

Article 162 (2) (a) of The Constitution provides that Parliament shall establish Courts with status of The High Court to hear and determine disputes relating to;

(a) Employment and Labour relations.

18. That Parliament enacted **the Industrial Court Act. No. 20 of 2011** which **Under Section 4 (1)** established the Industrial Court and Later the Industrial Court. Industrial Court Act was enacted but was repealed and was replaced by the **Employment and Labour relations Act No. 20 of 2012**.

Section 12 of The Act makes Provision for the Jurisdiction of The Employment and Labour Relations Act which provides that the Court shall have exclusive, original and appellate jurisdiction to hear and determine all disputes referred to in accordance with **Article 162(2) of The Constitution** and the provisions of This Act or any other written law which extends jurisdiction to the court relating to Employment and Labour relations - including disputes relating to or arising out of employment between an employer and an employee.....

19. The Act defines Court **“ To mean the Employment and Labour Relations Court established Under Section 4.” This Act came into force on 30th August, 2011.”** The impugned Ruling was made on 28th of May, 2013.

This means that at the time the Trial Magistrate gave her Ruling the **Industrial Court Act of 2011** had been repealed.

20. The Ruling of the Trial Magistrate was that she had no jurisdiction, The repealed Act was obliterated. It is Trite that once the Law is enacted it operates as Law from the date of enactment.

21. On the issue of retrospective application of The Law this issue was settled by the Supreme Court in the case of; **Samuel Kamau Macharia and Another -vs- K.C.B & 2 Others (2012) eKLR** where it was held -

“For Non-Criminal legislation the General Rule is that all statutes other than those which are merely declaratory or which relate only to matters of procedure or evidence are prima facie prospective, and retrospective effect is not to be given them unless by Express words or necessary implications if it appears that this was the Intention of the legislature.”

22. Failure by the trial Magistrate to state whether or not the **Industrial Court Act of 2011 and Labour Relations Act of 2007** to deal with Labour disputes applied retrospectively is of no consequence in view of the general rule cited above. It is also true that repealed Acts are obliterated and no dispute can be sustained under a repealed Act of Parliament. That ground of Appeal is without merit.

23. On the Issue of Jurisdiction to try a Civil suit in which a Company is involved by virtue of **Section 2 of The Companies Act Cap 486 Laws of Kenya**. The Appellants are submitting that the Trial Magistrate erred by upholding the respondents contention by way of Preliminary objection to the effect that a sub-ordinate court has no jurisdiction to try a Civil suit in which a Company is sued by virtue of **Section 2 of The Companies Act**.

24. **Section 2** defines court as the High Court. There is no reference made to Sub-ordinates court in the definition of a Court. I have considered the Authorities cited by; **PETER MAKANGA -VS- G.W. GICHUHI & THUMAITA TEA FACTORY CO. LTD** where it was opined that;

“ In Section 2 of The Companies Act a Court is defined as the High Court so that Sub-ordinate courts have no jurisdiction to try Civil suits involving Companies. “

25. It is Trite Law that Jurisdiction is conferred by statute, and in the Case of Companies Act Jurisdiction to deal with matters involving companies the statutes give that jurisdiction to the High Court.

26. The Trial Magistrate lacked pre-requisite jurisdiction to hear and determine a suit involving the Respondent which is described in paragraph 2 of the plaint as;

“ As a Company formed and registered under the Companies Act Cap 486 Laws of Kenya and the trial magistrate was right to hold that she had no jurisdiction to entertain the matter.”

27. It is not true as submitted by the Applicant that the phrase court merely defines the court. The definition given under The Act, that is High Court means the court which the statute has given jurisdiction to deal with matters, or to try Civil suits involving Companies.

28. I find that the Ruling of the Trial Magistrate was proper, and this court would have no reason to interfere with it and as

held in the case of; **Rob Dejong & Another -vs- Charles Muriithi Wachira (2012) eKLR**, which the Trial Magistrate relied on. Justice Mwera stated;

“Jurisdiction means everything to the court, without it a Court cannot take one step, and in case it does the whole proceeding will be a nullity.”

29. The Trial Magistrate stated that the claim for General damages was not affected by want of Jurisdiction as the Court had jurisdiction to order payment of General damages for defamation.

30. I find that the Court was right to hold that **Section 2 of The Companies Act** the Court lacks jurisdiction to determine matters related to Employment disputes between the plaintiff and the defendant.

31. The Appeal is without merit and is dismissed.

Dated, signed at Kerugoya this 29th day of May 2020

L. W. GITARI

JUDGE