



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**JUDICIAL REVIEW NO. 664 OF 2017**

**IN THE MATTER OF AN APPLICATION BY BEATRICE NYAMBUNE MOSIRIA FOR LEAVE TO APPLY FOR JUDICIAL REVIEW ORDER OF CERTIORARI**

**AND**

**IN THE MATTER OF ARTICLE 47 OF THE CONSTITUTION OF KENYA 2010**

**AND**

**IN THE MATTER OF THE JUDICIAL SERVICE ACT NO. 1 OF 2011**

**AND**

**IN THE MATTER OF THE FAIR ADMINISTRATIVE ACTIONS ACT NO. 4 OF 2015**

**BETWEEN**

**BEATRICE NYAMBUNE MOSIRIA.....APPLICANT**

**AND**

**THE JUDICIAL SERVICE COMMISSION.....RESPONDENT**

**RULING ON JURISDICTION**

1. This matter was filed in this court on 23<sup>rd</sup> November 2017 and the court directed the applicant to serve the respondents for interpartes consideration. Today, the parties are before court and the respondent has filed a preliminary objection to the jurisdiction of the court contending that the court that has jurisdiction to hear and determine this matter is the Employment and Labour Relations Court, established under the Employment and Labour Relations Court Act as contemplated in Article 162(2) (a) of the Constitution.
2. The applicant while conceding that this is an employment and labour relations matter nonetheless urges the court to exercise its discretion to transfer the matter to Employment and Labour Relations Court, as this court equally has jurisdiction in Judicial Review matters.
3. Mr Kopere counsel for the exparte applicant further submitted that there are no rules under the Employment and Labour Relations Court Act for application of fair administrative action and Judicial Review matters .
4. However, Section 12 of the Employment and Labour Relations Court Act is clear on the jurisdiction of the Employment and Labour and Relations Court and under Section 12(7) thereof the court may grant orders including Judicial Review orders.
5. In addition, Rule 7 of the Rules made under the Act imports the application of the Civil Procedure Rules and therefore Order 53 of the Civil Procedure Rule which is the procedural Rule for Judicial Review proceedings.
6. The law is clear that jurisdiction is everything without which a court of law must down its tools and say no more. Article 162(2) (a) of the Constitution contemplates the establishment of a specialized court to hear and determine disputes relating to Employment and Labour Relations.
7. Under Article 162(3) of the Constitution, Parliament is given power to enact legislation conferring jurisdiction on the courts contemplated

in Article 162(2) of the Constitution.

8. Under Article 165(5) (b) of the Constitution, the High Court is expressly barred from hearing and determining disputes which are preserved for the courts contemplated in Article 162(2) of the Constitution.

9. The issue of jurisdiction of the High Court vis a vis the court of equal status has since been settled by the Supreme court vide the case of **Karisa Chengo & 2 Others vs Republic**, upholding the Court of Appeal decision in **CA 44,45,76/2014** between the same parties.

10. The High Court no longer has unlimited jurisdiction in matters which fall within the jurisdiction of the courts of equal status.

11. This matter is coming to court long after the transitional period as contemplated in Section 22 Part 5 of the Transitional and Consequential provisions of the Constitution.

12. In other words, no party can be excused for filing their case in a court that has absolutely no jurisdiction to hear and determine the dispute, seven years after the promulgation of the Constitution and long after the establishment and operationalisation of the court of competent jurisdiction to hear and determine the relevant dispute.

13. It is for that reason that I find and hold that I would have no jurisdiction to hear and determine this matter as the jurisdiction of this court is expressly ousted by Article 165(5) (b) of the Constitution. And as the matter is filed before a court that lacks jurisdiction, I can only down my tools and say no more than strike it out with no order costs as to costs.

14. Although the applicant's counsel pleaded with the court to consider time factor, this court's hands are tied by the constitutional provisions.

I so order.

**Dated, signed, delivered in open court at Nairobi this 22<sup>nd</sup> January 2018**

**R.E. ABURILI**

**JUDGE**

**In the presence of:**

Mr Kopere counsel for the applicant

Mr Malenya for the Respondent

CA: Kombo