



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KISII**

**CIVIL APPEAL NO. 93 OF 2015**

**BOOM A. BOSIRE.....APPELLANT**

**VERSUS**

**GUSII MWALIMU CO-OPERATIVE**

**SAVINGS AND CREDIT SOCIETY LTD.....RESPONDENT**

*(An appeal from the judgment and decree of Hon. A.C.A ONGINJO (Chief Magistrate) delivered on the 11<sup>th</sup> day of June 2015 in the Original KISII CMCC NO. 812 OF 2006.)*

**JUDGMENT**

**Background**

1. Through a plaint lodged before the lower court on 14<sup>th</sup> November 2006, the appellant herein sought orders against the respondent for salary arrears, loss of salary, general damages and costs. The appellant's case was that he was on 24<sup>th</sup> June 1996 employed by the respondent as a book keeper upon terms and conditions of service of the society but that the respondent acted wrongfully by repudiating the terms of the said employment and retrenching him on 20<sup>th</sup> September 2004.
2. The respondent denied the appellant's claim through its defence filed on 23<sup>rd</sup> November 2006, and a trial thereafter ensued that culminated in the dismissal of the appellant's suit thereby precipitating the instant appeal in which the appellant faulted the trial magistrate for failing to award him quantifiable damages based on the deprived salary of Kshs. 49,930/= per month from January, 2005 to the date of the judgment and for failing to hold that the termination of his employment was null and void.
3. Parties agreed to canvass the appeal by way of written submissions which were subsequently filed and which I have perused. I note that the main bone of contention in this appeal is the question of whether or not this court has jurisdiction to entertain the appeal.

**Appellant's submissions**

4. The appellant's case is that while the cause of action in this appeal is an employment contract between the appellant and the respondent, Section 12 (5) of the Employment and Labour Relations Court Act (hereinafter 'the Act'), specifically provides that the Employment and Labour Relations Court (hereinafter "ELRC") only has jurisdiction to hear and determine appeals arising from the decision of the Registrar of Trade Unions and any other local tribunal or commissions. According to the appellant, the Act does not make any reference to appeals emanating from the magistrates court even though **Section 9 of the Magistrates Court Act** confers jurisdiction on the Magistrates Court to hear and determine disputes relating to employment.
5. The appellant maintained that the Act does not specifically provide that appeals from decisions of Magistrates Court in employment cases be filed in the Labour Relations Court and as such, the appeal is properly before the High Court.

**Respondent's submissions**

6. The respondent's case, on the other hand, is that this court lacks jurisdiction to hear and determine the appeal as it relates to a matter that falls squarely within the exclusive jurisdiction of the ELRC. The respondent argued that jurisdiction flows from the law and therefore, this court cannot arrogate to itself jurisdiction through the craft of interpretation or by way of endeavors to discern the intentions of Parliament where the wordings of the legislature is clear and there is no ambiguity.

**Analysis and determination**

7. I have carefully considered the record of appeal and the parties' respective submissions together with the law and the authorities that they cited. It is clear to me that the main issue for determination is not the merits of the appeal, *per se*, but the jurisdiction of this court to hear and determine the appeal. Parties opted to submit only on the issue of the jurisdiction of this court to handle the appeal and for that reason, my judgment will be confined only to the issue of jurisdiction.

8. It was not in dispute that the cause of action before the trial court was an employment and labour relations dispute which the trial court, was by dint of the provisions of Section 9(b) of the Magistrate's Court Act No. 26 of 2015, clothed with jurisdiction to hear and determine. The said section stipulates as follows:

**"9. A magistrate's court shall—**

**(b) in the exercise of the jurisdiction conferred upon it under section 29 of the Industrial Court Act, 2011 and subject to the pecuniary limits under section 7(1), hear and determine claims relating to employment and labour relations."**

9. Section 12 (5) of the ELRC Act provides.

**"(5) The Court shall have jurisdiction to hear and determine appeals arising from—**

**(a) decisions of the Registrar of Trade Unions; and**

**(b) decisions of any other local tribunal or commission as may be prescribed under any written law."**

10. Section 25 of the Magistrates Court Act stipulates:

**"25. Section 26 of the Environment and Land Court Act is amended by inserting the following subsections immediately after subsection (2)—**

**(3) The Chief Justice may, by notice in the *Gazette*, appoint certain magistrates to preside over cases involving environment and land matters of any area of the country.**

**(4) Appeals on matters from the designated magistrate's courts shall lie with the Environment and Land Court."**

11. It is in view of the provisions of section 25 of the Magistrates Court Act that expressly grant the Environment and Land Court the jurisdiction to hear appeals from the designated Magistrate's courts that the appellant argued that a similar provision ought to have existed in respect to the Employment and Labour Relations Court regarding appeals from the magistrates court and that the absence of such a provision meant that the instant appeal could only be heard in the High Court. The question which then arises is whether the appellant's argument presents the correct legal position.

12. The starting point and indeed the most fundamental principle is that court only exercises jurisdiction which has been given to it by law. A Court must have jurisdiction to enter a valid, enforceable judgment on a claim. In other words, a Court can only assume power over a claim that the laws authorize it to hear. The Supreme Court restated this principle in **Application No. 2 of 2011 involving Samuel Kamau Macharia v. KCB and Others [2012] eKLR** *thus*:

***"A Court's jurisdiction flows from either the Constitution or Legislation or both. Thus a Court can only exercise jurisdiction as conferred by the Constitution or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law.....the Court must operate within the constitutional limits. It cannot expand jurisdiction through judicial craft or innovation."***

13. The Constitution of Kenya establishes the ELRC and clothes it with jurisdiction in Articles 162(2) and 165(5). The former reads:

**"Parliament shall establish courts with the status of the High Court to hear and determine disputes relating to employment and labour relations."**

14. **Article 165(5)**, on the other hand, provides that the High Court shall not have jurisdiction in respect of matters falling within the jurisdiction of the courts contemplated in Article 162(2).

15. The Employment and Labour Relations Court Act was enacted pursuant to Article 162 [2] of the Constitution **"to establish the Industrial Court as a Superior Court of Record; to confer jurisdiction on the Court with respect to employment and Labour Relations and for connected purposes."**

16. Section 4 of the ELRC Act states,

***"In pursuant to Article 162[2] of the Constitution, there is established the Industrial Court for the purpose of settling employment and industrial relations disputes, and the furtherance, securing and maintenance of good employment and labour relations in Kenya."***

17. Section 12 of the ELRC Act defines the jurisdiction of the ELRC. The Court has ***“exclusive original and appellate jurisdiction to hear and determine all disputes referred to it 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.”***

18. From the above provision of section 12 of the ELRC Act is clear that the ELRC has exclusive original and appellate jurisdiction to hear and determine disputes referred to it in line with Article 162[2] of the Constitution. Clearly therefore, the appellant’s argument that there is no statutory provision donating appellate jurisdiction to the ELRC is erroneous and does not hold any water.

19. Having found that it was not in dispute that the instant appeal relates to employment, I cannot hesitate in holding that the appeal ought to have been filed before the ELRC which is clothed with the exclusive jurisdiction to hear and determine it. In a nutshell, I find that this court lacks jurisdiction to handle the instant appeal and the order that commends itself to me is to direct that it be placed before the ELRC at Kisumu for hearing and determination.

**Dated, signed and delivered in open court this 27<sup>th</sup> day of February, 2018**

**HON. W. A. OKWANY**

**JUDGE**

**In the presence of:**

- N/A for the Appellant
- N/A for the Respondent
- Omwoyo court clerk