



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KITALE

JUDICIAL REVIEW APPLICATION NO. 8 OF 2016

**IN THE MATTER OF AN APPLCIATION BY GODFREY K. LUKORITO FOR ORDERS OF
CERTIORARI AND PROHIBITION**

AND

IN THE MATTER OF THE LAW REFORM ACT; CAP 21 OF THE LAWS OF KENYA

AND

IN THE MATTER OF FAIR ADMINSTRATION ACTIONS ACT 2015

AND

IN THE MATTER OF THE CODE OF REGULATIONS FOR TEACHERS 2005

AND

IN THE MATTER OF THE CONSTITUTION OF THE REPUBLIC OF KENYA

BETWEEN

REPUBLIC.....APPLICANT

VERSUS

THE TEACHERS SERVICE COMMISSION.....1ST RESPONDENT

IBRAHIM H. ADAN2ND RESPONDENT

THE HON. ATTORNEY GENERAL3RD RESPONDENT

EXPARTE: GODFREY K. LUKORITO

RULING

In his application dated 29/11/2016 the applicant prays for orders that;

- 1) This Honourable court be pleased to issue an order of Certiorari to remove into this court and quash the decision of 8/11/2016 by the Teachers Service Commission through Ibrahim H. Adan, the Teachers Service Commission County Director Trans Nzoia interdicting the Exparte applicant herein with effect from 7/11/16,**

2) That a prohibition order be issued to prohibit the Teachers Service Commission from enforcing its decision of 8/11/2016 interdicting the exparte applicant herein with effect from 7/11/2016. The same is supported by the affidavit of the applicant together with the statements thereof.

On 2nd December 2016 the 1st respondent did raise a preliminary objection on a point of Law that this court lacked jurisdiction to entertain the said application as the same was commenced contrary to the law.

Although when the matter came up for hearing the parties were advised to submit on both the preliminary objection and the main application, after perusing the said objection together with the related submissions and facts, I felt that it would be imperative to determine the preliminary objection as of first instance.

It must be noted that the learned counsel for the 3rd respondent associated himself with the 1st and 2nd respondents sentiments.

The basic argument by the respondents is that by dint of Article 165 (5) (b) of the Constitution this court does not have jurisdiction to deal with this matter as it relates to employee/employer relationship. That the applicant was the head teacher of Boma High School and thus an employee of the 1st defendant.

Consequently any dispute between them is properly adjudicated by the Labour Relations Court under Chapter 234 B of the Laws of Kenya.

The applicant on his part has argued that this court has exclusive jurisdiction by virtue of Article 165 (3) of the Constitution and specifically from Clause 5 thereof which states that the high Court shall have

- a) Unlimited original jurisdiction in Criminal and Civil matters.**
- b) Any other jurisdiction original or appellate conferred on it by Legislation.**

He argued that the examples of such statutes are the Judicature Act Cap 8 and the Law Reform Act Section 8(2) of Cap 26.

Analysis and Determination

There is no doubt that the relationship between the Applicant and the 1st Respondent is that of employee and employer.

This is buttressed by the interdiction letter which is a subject of this application . It is also clear that the 2010 Constitution created two levels of High Court, of equal jurisdiction but different mandates.

Article 165 created the High Court which Clause 5 thereof states, that the High Court shall have:-

- a) Unlimited original jurisdiction in Criminal and Civil matters;**
- b) Jurisdiction to determine the question whether a right or fundamental freedom in the Bill of Rights has been denied, violated, infringed or threatened.**
- c) Jurisdiction to hear an appeal from a decision of a tribunal**

Article 162 (2) (a) of the Constitution creates the Labour Relations Court with equal status to determine issues of employment and labour relations. The same was actualised by the enactment of the Labour Relation Court Act Cap 234 B of the Laws of Kenya in which Section 12(1) hereof provides that;

“ The Court shall have 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 including dispute relating to or arising out of employment between an employer and an employee.”

From the above quotation I am persuaded that the said court has equal jurisdiction to determine inter alia judicial review application. In any case, and contrary to the applicants perspective there is nothing impeding the said court from making decision pursuant to the provisions of the Judicature Act as well as the Law Reform Act as the guiding parent statute is the Constitution which is supreme.

Conclusion

In the premises this court lacks the jurisdiction to entertain this application. However, pursuant to the provisions of Article 159 of the Constitution, and the quest for substantial Justice and taking into consideration the fact that the two courts are of equal Constitutional status it would be unfair to dismiss this application as prayed by the respondent. The best option is to transfer the same to the Labour Relations Court which the parties shall find it appropriate.

Let the costs of this preliminary objection be held in abeyance and to be determined by the Labour Relations Court.

Delivered this 31st day of January 2017.

H.K. CHEMITEI

JUDGE

In the presence of:

Kiarie for the Applicant

Pokea for the Respondent

Court Assistant - Kirong