

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MIGORI

CIVIL APPEAL NO. 13 OF 2016

ALLIANCE ONE TOBACCO CO. LTD..... APPELLANT

-VERSUS-

JUDITH AKOTH AUMA..... RESPONDENT

(Being an appeal from the judgment and decree by Hon. E. Muriuki Nyagah. Senior Resident Magistrate in Migori Chief Magistrate's Civil Suit No. 324 of 2015 delivered on 28/01/2016).

FURTHER DIRECTIONS

1. Initial directions were taken to the effect that the appeal was to be disposed of by way of written submissions. Parties filed their respective submissions but did not highlight the same. The appeal was then set for judgment.
2. When the Court retired to write the judgment, it realized that one of the main issues in controversy is whether or not the Respondent was an employee of the Appellant. The issue was brought up in the Memorandum of Appeal and canvassed in the submissions as well.
3. In view of the clear provisions of **Articles 162(2) and 165(5) of the Constitution, Section 12 of the Industrial Court Act**, Chapter 234 of the Laws of Kenya and on the strength of the binding holding of the Supreme Court in the case of **Re: The matter of the Interim Independent Electoral Commission, Constitutional Application No. 2 of 2011** on assumption of jurisdiction by Courts in Kenya, I am of the very considered position that the High Court is not legally seized of the jurisdiction in this appeal.
4. Having so said and on the guidance of the Court of Appeal decision in the case of **Owners of Motor Vessel "Lilian S" vs. Caltex Oil (Kenya) Limited (1989) KLR 1**, this Court makes the following orders: -

(a) The High Court has no jurisdiction in this appeal;

(b) The Deputy Registrar shall cause this file to be transferred to the Employment and Labour Relations Court at Kisumu;

(c) This matter shall be fixed for a Mention before the Honourable Judge at Kisumu on 14/02/2017 for further orders and/or directions;

(d) Costs be in cause.

DELIVERED, DATED and SIGNED at MIGORI this 30th day of January 2017

A. C. MRIMA.

JUDGE