



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAKURU
CIVIL CASE NUMBER 6 OF 2007

DR. JOSEPH G. NAITULI.....PLAINTIFF

VERSUS

EGERTON UNIVERSITY.....1ST DEFENDANT

PROFESSOR JAMES K. TUITOEK.....2ND DEFENDANT

RULING

1. The plaintiff instituted this suit vide a Complaint dated 13th December 2006 and filed on the 11th December 2007 against the defendants who filed their statements of defence dated the 6th February 2007 amended on the 31st July 2009.

On the 5th February 2007 the plaintiff sought orders of injunction against the defendants and upon hearing of the said application inter partes, the court dismissed the application by its ruling dated the 11th May 2007.

On the 22nd May 2007, a notice of appeal was filed against the ruling dated 11th May 2007. The plaintiff filed his bundle of documents on the 28th October 2009 while the defendants filed their bundle and list of documents on the 21st May 2010. Since then, no more action is seen to have taken place.

2. On the 23rd July 2015, the Defendants by their application dated 30th March 2015 sought an order that the suit be dismissed for want of prosecution pursuant to the provisions of **Order 17 Rule 2(1) and (3) and Order 51 Rule 1 of the Civil Procedure Rules**.

Before the application could be listed down for hearing, the plaintiff moved to court by his motion dated 29th June 2015, filed on the 13th July 2015 seeking an order that the suit be transferred for hearing and determination to the Employment and Labour Relations Court, on the grounds that the subject dispute in the suit relates to an employment dispute. The matter came before me on the 23rd July 2015 for hearing of the application dated 30th March 2015 for dismissal of the suit for want of prosecution.

Mr. Kisila Advocate for the applicants/defendants and Mr. Ndungu Advocate for the respondent/plaintiff argued the application. The court has considered the application.

3. **Article 162(2) (a) of the Constitution** established courts with the status of the High Court to hear and determine disputes relating to employment and labour relations.

Article 165(5) of the Constitution takes away jurisdiction of the High Court on matters contemplated in **Article 162(2)**, the Employment and Labour Relations and the Environment and Land matters.

To that extent, this court has no jurisdiction to entertain labour and employment disputes and to do so would be in contravention of the clear constitutional provisions donated by the constitution and such proceedings would be a nullity as anything done without jurisdiction is a nullity. The dispute in the suit concerns Employment and Labour Relations. The suit was filed before the establishment of the specialised court and that it is the said court that is seized with jurisdiction to hear and determine labour and employment disputes.

4. The court has considered Court of Appeal decision in **Owners of Motor Vessel “Lilian” -vs- Caltex Oil (Kenya) Limited (1989) KLR1** and the recent Court of Appeal decision in Malindi in **Karisa Chengo and Others -vs- R (2015) KLR** which courts reaffirmed the constitutional provisions that it is only the specialised courts that are seized with the necessary jurisdiction to handle matters in respect thereof.

As stated in **Samuel Kamau Macharia & Another -vs- KCB & 2 Others (2012) KLR** this court cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law. The High Court is therefore not the right court to hear a dispute on employment and labour relations.

Having said so, this court on its own motion recalls the proceedings of the 23rd July 2015 and sets them aside. In doing so, the court is minded that the case is not part heard before High Court save for the interlocutory application filed on the 5th February 2007 and determined on the 11th March 2007. consequently, the court makes the following orders:

1. The suit is hereby transferred to the Nakuru Employment and Labour Relations Court for hearing and determination.
2. That the two applications dated 30th March 2015 by the defendants, and the plaintiff's application dated 29th June 2015 shall be heard and determined by the ELR Court.
3. That the case shall be placed before the ELR Court on a mention for directions on the hearing of the two applications and the case generally on a date to be taken at the registry.

Dated, signed and delivered in open court this 28th day of January 2016

JANET MULWA

JUDGE