

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CIVIL CASE NO. 949 OF 2003

ABUNGAANA KHAHUU KHASIANIPLAINTIFF

VERSUS

BARCLAYS BANK OF KENYA LTD.....1ST DEFENDANT

RELI CO-OPERATIVE SAVINGS AND CREDIT SOCIETY LTD.....2ND DEFENDANT

RULING

This is a fairly old suit instituted on 11th September 2003. It is now 12.5 years since its institution in this court and it remains unheard for one reason or another. Nonetheless, it now appears that the plaintiff is ready to have the matter heard and determined by complying with the provisions of Order 11 of the Civil Procedure Rules on pre-trial requirements. However, my perusal of plaint dated 11th September 2003 shows that the plaintiff's claim against the defendants is for general damages for defamation and or malicious and negligent misrepresentation as well as general damages for breach of contract and benefits of the remainder of the employment contract period. The subject contract is a contract of employment which the plaintiff alleges was breached when he was wrongfully and unlawfully dismissed from his employment.

The above being the case, then it is my humble view that this court is devoid of jurisdiction to hear and determine the dispute which substantially relates to Employment and Labour Relations. Such disputes can only be heard and determined by Employment and Labour Relations Court established under Section 4 of the Employment and Labour Relations Act, as contemplated in Article 162(2) (a) of the Constitution.

Furthermore, Article 165(5) (b) of the Constitution expressly ousts the jurisdiction of this court from hearing and determining disputes reserved for courts contemplated in Article 162(2) of the Constitution.

Albeit this suit was instituted before the effective date of the Constitution on 27th August 2010 and therefore the transitional and consequential provisions of part 5 Section 22 of the Constitution on administration of justice would be applicable, nonetheless, this matter is not part heard and therefore this court would not 'continue' to hear it.

In the premises, and for want of jurisdiction and as Section 12(1) of the Employment and Labour Relations Act clearly vests the jurisdiction both original and appellate jurisdiction in the Employment and Labour Relations Court to hear and determine such disputes as contemplated in Article 162(2) (a) of the Constitution, I have no option at this stage but to down my tools as commanded by Article 165(5) (b) of the Constitution and direct that this file be and is hereby placed before the Employment and Labour Relations Court at Nairobi for directions and further consideration as to its disposal.

Orders accordingly.

R.E. ABURILI

JUDGE

19.4.2016