



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CONSTITUTIONAL AND HUMAN RIGHTS DIVISION
PETITION NO.140 OF 2016

BETWEEN

KENYA PLANTATION & AGRICULTURAL WORKERS UNION.....PETITIONER

AND

THE ATTORNEY GENERAL.....RESPONDENT

RULING

1. The matter relates to the question whether **Section 7(b)** of the **Magistrate's Court Act No.26 of 2015** is unconstitutional for being in conflict with **Article 162(2)** of the **Constitution**.
2. All Advocates before me agree that the said issue raises a substantial question of law necessitating the Constitution of a bench of Judges under **Article 165(4)** of the **Constitution**. Does it?
3. It is now settled that for a matter to be referred to the Chief Justice under the said Article, the following authorities give direction to a Court confronted by that question:
 - i. **Sir Chunilal & Sons Ltd vs Century Spinning and Manufacturing Co. Lt. 1962 SC 1314.**
 - ii. **County Government of Meru vs EACC [2014] e KLR.**
4. The principles that emerge from the above decisions is that a substantial question would arise where;
 - a. The matter is complex.
 - b. The matter raises a novel point of law.
 - c. The matter by itself requires a substantial amount of time to be disposed of.
 - d. The effect of the prayers sought in the Petition are substantial.
 - e. The level of public interest generated by the Petition is high.
5. It is also the position of this Court that each case ought to be looked at in its own circumstances noting the issues raised therein but the bottomline must be that a substantial question of law must be disclosed by the pleadings filed.
6. In applying those principles to the present case, I note firstly that, in **H.C. Malindi Constitutional Petition No.3 of 2016 Malindi Law Society vs AG & Anor**, Chitembwe J. found that a near similar question in relation to **Section 7(3), 8(d)** and **24(4) (b)** of the **Environment and Land Court Act** necessitated such a bench of Judges. The Chief Justice in agreement constituted such a

bench.

7. Secondly, the issue whether Magistrates should have any jurisdiction in respect of matters of employment and labour relations is a novel, contested and weighty issue.
8. Thirdly, the question of jurisdiction, while otherwise easy to grapple with requires more than one mind where the issues raised affect the larger public and the attainment of their right to access to justice.
9. Lastly, as each case must be looked at in its own circumstances and since there may be need to consolidate this Petition with **Petition No.3 of 2016** at Malindi, it is best that this matter be referred to the Chief Justice to constitute a bench of an uneven number of Judges under **Article 165(4)** of the **Constitution**.
10. It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 25TH DAY OF MAY, 2016.

ISAAC LENAOLA

JUDGE

In the presence of:

Muriuki – Court clerk

Mr. Achiando for Petitioner

Mr. Kamunya holding brief for Miss Mbilo for Respondent

Mr. Mwendwa for Interested Party

Order

Ruling duly delivered.

ISAAC LENAOLA

JUDGE