

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISII

CIVIL CASE NO.17 OF 2007

FRED OGINGA IGONYI & 62 OTHERS...PLAINTIFFS

VERSUS

OGEMBO TEA FACTORY..... DEFENDANT

RULING

1. The plaintiffs' suit was on 22nd July, 2015 dismissed under order 17 Rule 2 (1) of the Civil Procedure Rules in the absence of both the plaintiffs and the defendant.
2. In their application dated 7th October, 2015, the plaintiffs now seek a setting aside of the orders of 22nd July, 2015 and a reinstatement of the suit for further hearing and disposal.
3. I have perused the pleadings in this case and I note that the cause of action relates to a labour dispute between the plaintiffs and the defendant, their employer in which the plaintiffs claim that they were unlawfully declared redundant and claim the payment of their terminal dues together with interests and costs of the suit.
4. In the case of **Prof. Daniel N. Mugendi vs Kenyatta University, Benson I. Wairegi, Eliud Mathiu and Prof. Olive Mugenda CA. No. 6 of 2012, at page 11**, the Court of Appeal held as follows:

“Believing as we do that the approach taken by Majanja J is the correct one, and in endeavouring to meet the ends of justice untrammelled by procedural technicalities, we set aside the order striking out the appellant’s petition and direct that the High Court do transfer it to the Industrial Court which also has jurisdiction and authority to consider the claims of breach of fundamental rights as pertains to Industrial and Labour Relations matters. It is only just and proper that the Industrial Court do exclusively entertain those matters in the context and with regard to Article 165 (5) (b). And in order to do justice, in the event where the High Court or the Environment and Land Court comes across a matter that ought to be litigated in any of the other courts, It should be prudent to have the matter transferred to that court for hearing and determination. These three courts with similar/equal status should in the spirit of harmonization, effect necessary transfers among themselves until such time as the citizenry is well acquainted with the appropriate form for each kind of claim. However, parties should not file “mixed grill” causes in any court they fancy. This will only delay dispensation of justice.”

5. In view of the nature of the subject matter at hand and the dictum in the above cited case, I am of the opinion that this court lacks jurisdiction to entertain this matter and direct it be placed before the Employment and Labour Relations court for hearing and determination.
6. Consequently, I hereby direct that this matter be referred to the Employment and Labour court at Kisumu for hearing and determination. Mention in Kisumu on 24/10/2016.

Dated, signed and delivered in open court this 18th day of August, 2016

HON. W.A OKWANY

JUDGE

In the presence of:

- Mr. Odera for Ondabu for Applicant
- Mr. Nyangwencha for Nyachiro for Defendant
- Omwoyo court clerk