



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KITUI
CIVIL MISC. APPLICATION NO. 1 OF 2015
IN THE MATTER OF ORDER 53 RULE 1 OF THE CIVIL PROCEDURE ACT
AND
IN THE MATTER OF AN APPLICATION FOR LEAVE TO APPLY
FOR JUDICIAL REVIEW ORDER OF PROHIBITION
EDWIN MUSYOKA SYENGO.....APPLICANT
VERSUS
THE ATTORNEY GENERAL.....1ST RESPONDENT
THE COUNTY GOVERNMENT OF KITUI.....2ND RESPONDENT

RULING

1. **Edwin Musyoka Syengo**, the Exparte Applicant, approached this court pursuant to the provisions of **Order 53 Rules 1(1), (2) and (4)** of the **Civil Procedure Rules**, the **Law Reform Act** and all enabling provisions of the Law seeking leave to apply for Judicial Review Order of Prohibition to restrain the 2nd Respondent, **the County Government of Kitui** from unprocedurally implementing the deployment decision regarding him and taking disciplinary action against him.
2. The basis of the application as set out in the statutory statement is that the Ministry of Health and Sanitation required the Applicant to be transferred from **Mwingi Sub-county Hospital** to **Kitui County Hospital**, a deployment that was in respect of a completely different person. He sought his reinstatement as Laboratory Technician at **Mwingi Sub-county Hospital** and an order prohibiting the 2nd Respondent from evicting him from his work station.
3. The 2nd Respondent filed a Notice of Preliminary Objection on a Point of Law challenging the court's jurisdiction to hear and determine the dispute in view of express provisions of **Articles 162(2) and 165(5) (b)** of the **Constitution of Kenya, 2010** and **Section 12** of the **Employment and Labour Relations Act**.
4. Both parties consented to the Preliminary Objection being canvassed by way of written submissions. However only the 2nd Respondent filed submissions.

5. It was the 2nd Respondent's contention that the relationship between the Applicant and 2nd Respondent is that of employee and employer and the court seized of jurisdiction to deal with the matter is the **Employment and Labour Relations Court**.

6. **Article 165(5)** of the **Constitution of Kenya, 2010** provides thus:

“(5) The High Court shall not have jurisdiction in respect of matters—

(a) reserved for the exclusive jurisdiction of the Supreme Court under this Constitution; or

(b) falling within the jurisdiction of the courts contemplated in Article 162(2).”

Looking at the preamble to the **Employment and Labour Relations Court Act, (Act)** the Statute was enacted for purposes of the court hearing and determining disputes relating to **Employment and Labour Relations** and Connected purposes.

7. **Section 12** of the **Act** in particular provides thus:

“(1) The Court shall have exclusive original and appellate jurisdiction to hear and determine all disputes referred to it in accordance with Article 162(2) of the Constitution and the provisions of this Act or any other written law which extends jurisdiction to the Court relating to employment and labour relations including—

(a) disputes relating to or arising out of employment between an employer and an employee;

(b) disputes between an employer and a trade union;

(c) disputes between an employers' organisation and a trade union's organisation;

(d) disputes between trade unions;

(e) disputes between employer organisations;

(f) disputes between an employers' organisation and a trade union;

(g) disputes between a trade union and a member thereof;

(h) disputes between an employer's organisation or a federation and a member thereof;

(i) disputes concerning the registration and election of trade union officials; and

(j) disputes relating to the registration and enforcement of collective agreements.

(2) An application, claim or complaint may be lodged with the Court by or against an employee, an employer, a trade union, an employer's organisation, a federation, the Registrar of Trade Unions, the Cabinet Secretary or any office established under any written law for such purpose.

(3) In exercise of its jurisdiction under this Act, the Court shall have power to make any of the following orders—

(i) interim preservation orders including injunctions in cases of urgency;

(ii) a prohibitory order;

(iii) an order for specific performance;

(iv) a declaratory order;

(v) an award of compensation in any circumstances contemplated under this Act or any written law;

(vi) an award of damages in any circumstances contemplated under this Act or any written law;

(vii) an order for reinstatement of any employee within three years of dismissal, subject to such conditions as the Court thinks fit to impose under circumstances contemplated under any written law; or

(viii) any other appropriate relief as the Court may deem fit to grant.

(4) In proceedings under this Act, the Court may, subject to the rules, make such orders as to costs as the Court considers just.

(5) The Court shall have jurisdiction to hear and determine appeals arising from—

(a) decisions of the Registrar of Trade Unions; and

(b) decisions of any other local tribunal or commission as may be prescribed under any written law.”

8. In the case of **Abdikadir Suleiman vs. County Government of Isiolo and Another (2015) eKLR** the court stated thus:

“.....the original and unlimited jurisdiction to make a finding on legitimacy or lawfulness of decisions in disputes between employers and employees rests with this court as vested with the appropriate jurisdiction under Article 159(1), 162(2) as read with Article 165(5) and (6) of the Constitution; Articles 22(1) and 258(1) of the Constitution, and the provisions of the Employment and Labour Relations Act, 2011. The court holds that the jurisdiction spreads to all issues in the employment relationship and related matters including enforcement of the fundamental rights and freedoms under Article 22 of the Constitution and enforcement of the Constitution under Article 258 as far as the issues in dispute are, evolve, revolve or relate to employment and labour relations. The court holds that the compass or golden test for the court’s jurisdiction is the subject matter in the dispute namely disputes relating to employment and labour relations as provided for in Article 162(a) of the Constitution as amplified in the Employment and Labour Relations Act, 2011 and not the remedies sought or the procedure of moving the court or the situ of the applicable law or any other extraneous considerations as may be advanced by or for a litigant.”

9. On the issue of jurisdiction as succinctly stated above, the jurisdiction of this court is excluded when it comes to hearing and determining employment issues between an employer and employee. The court seized of the jurisdiction is the **Employment and Labour Relations Court**. In the premises the Preliminary Objection raised which is meritorious succeeds. Consequently the Notice of Motion filed herein is struck out with costs to the 2nd Respondent.

10. It is so ordered.

Dated, Signed and Delivered at Kitui this 11th day of October, 2016.

L. N. MUTENDE

JUDGE