



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MOMBASA**  
**HIGH COURT CIVIL CASE NO 445 OF 2001**

**HUSSEIN MOHAMED AWADH.....PLAINTIFF**

**VERSUS**

**FIRST AMERICAN BANK OF KENYA ..... DEFENDANT**

**R U L I N G**

1. The plaintiff Hussein Mohamed Awadh filed this case in the year 2001 against the defendant, First American Bank. I have perused the court file and I am unable to trace the plaint. That as it may be, the plaintiff's case commenced for hearing before Justice Sergon on 3<sup>rd</sup> April 2008. The judge on being transferred out of the Mombasa Law court the case proceeded for hearing before Justice Ojwang (as he then was, now Supreme Court Judge). On the said judge being elevated to the Supreme Court the case was concluded before Justice Mwere. This matter was thereafter placed before me for judgment writing. It is while I was in that process of writing the judgment that I realized that the plaintiff's claim is for compensation for what he alleges to be unfair termination of his employment with the defendant.

2. The above being the dispute herein and by virtue of Article 162 (2) (a) as read with Article 165 (5) (b) of the Constitution of Kenya the High Court does not have jurisdiction to determine the matter. Article 162 (2) (a) provides:

***“Parliament shall establish courts with the status of the High court to hear and determine disputes relating to –***

***(a) employment and labour relations; and***

Article 165 (5) (b) provides that:

***(5) The High court shall not have jurisdiction in respect of matters-***

***(a) falling within the jurisdiction of the courts contemplated in Article 162 (2)***

3. The court of Appeal in the case **DANIEL N MUGENDI –V- KENYATTA UNIVERSITY & 3 OTHERS ( 2013) eKLR** considered jurisdiction of the Employment and Labour relations court and in so doing referred to a High Court decision in the case **UNITED STATES INTERNATIONAL UNIVERSITY (USIU) –V- ATTORNEY GENERAL & OTHERS** where the High court stated:

***“A correspondent Court to the High Court, that is the Industrial Court, has now been established to deal with employment and labour matters. It follows that all employment and labour relations matters pending in the High Court shall now be heard by the Industrial Court which is now a court of the status of the High Court. The High Court therefore lacks***

*jurisdiction to deal with matters of employment and labour matters whether filed in the High Court before or after the establishment of the Industrial court.” (Undertaking supplied).*

The court of Appeal proceeded to further state:

*“And in order to do justice, in the event where the High Court, the Industrial Court or the Environment & 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 the Court for hearing and determination. These three courts within similar/equal status should in the spirit of harmonization, effect the necessary transfers among themselves until such time as the citizenry is well-acquainted with the appropriate forum for each kind of claim.”*

**4. In view of the above discussion I do hereby transfer this file to the Mombasa Employment and Labour Relations Court for determination.**

Dated and delivered in Mombasa this 25<sup>th</sup> day of June 2015

**MARY KASANGO**

**JUDGE**

25.6.2015

**Coram**

Before Justice Mary Kasango

C/Assistant – Kavuku

For Plaintiff:

For Defendant:

**Court**

Ruling delivered in their presence/absence in open court.

**MARY KASANGO**

**JUDGE**