



**REPUBLIC OF KENYA**  
**IN THE HIGH OF KENYA AT MOMBASA**

**CIVIL APPEAL NO. 83 OF 2015**

**KENYA POWER AND LIGHTING COMPANY ....APPELLANT**

**VERSUS**

**SAMUEL KIMANI CHEGE.....RESPONDENT**

**R U L I N G**

1 . When I began to consider the application by Notice of Motion dated 9<sup>th</sup> June 2015 and the preliminary objection dated 17<sup>th</sup> June 2015 for purpose of writing a Ruling I realized that this is a matter that should be before the Labour relations Court.

2 .The appellant’s application is for stay pending intended appeal of the decision in CMCC No. 3684 of 1999 delivered by Honourable J Kituku Senior Principal Magistrate on 16<sup>th</sup> April 2015.

3 .The plaint in CMCC No 3684 OF 1999 shows that the respondent was an employee of the appellant. That on 17<sup>th</sup> December 1997 whilst in the course of his employment suffered electric shock causing him injuries. Respondent was awarded Ksh 3,200,000 which is now the subject of the application before court.

4 . In my view this is a matter going by the provisions of Article 162 (2) (a) of the Constitution should be heard by the labour relations court. That Article provides:

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

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

5 .Parliament did as stated in that Article and that court going by the title of Labour Relations Court is guided by an Act of parliament bearing the same name. Under the definition Section of that Act “employment matter” is defined thus:

***“means a mater concerning any terms or conditions of ,or affecting employment.”***

6 .The respondent’s claim in my view falls within the ambits of that definition.

The court of Appeal in the case **DANIEL N MUGENDI –VS- KENYATTA UNIVERSITY & 3 OTHERS (2013) e KLR** considered the jurisdiction of the Labour court and in so doing referred to a High Court decision in the case **UNITED STATES INTERNATIONAL UNIVERSITY (USIU) –vs- ATTORNEY GENERAL & OTHERS**

where the high Court had this to say-

“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.” (Underlining mine)

### **CONCLUSION**

**7 . In view of the above discussion I hereby transfer this matter to the Mombasa Labour Relations Court. In the interest of justice I grant stay of execution of the judgment in Mombasa CMCC no. 3684 of 1999 for 30 days only. There shall be no orders as to costs.**

**Dated and delivered at Mombasa this 24<sup>th</sup> day of August 2015**

**MARY KASANGO**

**JUDGE**

24.8.2015

Coram

Before Justice Mary Kasango

C/Assistant –

For: Appellant:

For Respondent:

Court

The judgment is delivered in their presence/absence in open court.

**MARY KASANGO**

**JUDGE**