



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

CIVIL APPEAL NO. 71 OF 2012

MWANAKOMBO AMANI OMARAPPELLANT

-V E R S U S-

KENYA KNIT GARMENTS (EPZ) LTD RESPONDENT

(Being an appeal from the Judgment of the Senior Resident Magistrate's Court Kaloleni delivered by Hon. S. Wewa (SRM) in Kaloleni SRMCC No. 47 of 2011 on 27th March 2012)

RULING

1. This is an Appeal from a decision in **Kaloleni SRMCC No. 47 of 2011** of 27th March 2012. Parties fully submitted, in writing, in respect of this appeal. As I sat to consider my Judgment it became apparent that this is a case touching on employment labour relations between the parties. There is no doubt therefore this is one of the matters contemplated under Article 162(2) of the Constitution of Kenya. Under Article 165(5) the High Court does not have jurisdiction over matters contemplated in Article 162(2).
2. I have had occasion to consider the issue of transferring a matter that fell within the jurisdiction of the Industrial Court in the case **Mombasa HCCC No. 139 of 2002** where I had this to say-

The Court of Appeal in the case DANIEL N. MUGENDI –Vs- KENYATTA UNIVERSITY & 3 OTHERS (2013)eKLR considered the jurisdiction of the Industrial 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-

“49. 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 continued to refer to USIU case as follows-

“While adopting the position enunciated in the South African case of Gcaba Vs Minister

of Safety and Security & Others CCT 64/08 (2009) ZACC 26, Majanja, J proceeded:

‘44. ... I would adopt the position of the Constitutional Court of South Africa in Gcaba Vs Minister of Safety and Security (Supra). The Industrial Court is a specialist court to deal with employment and labour relations matters. By virtue of Article 162(3), Section 12 of the Industrial Court Act 2011 has set out matters within the exclusive domain of that court. Since the court is of the same status of the High Court, it must have the jurisdiction to enforce labour rights in Article 41 and the jurisdiction to interpret the Constitution and fundamental rights and freedoms, is incidental to the exercise of jurisdiction over matters within its exclusive domain. In any matter falling within the provisions of Section 12 of the Industrial Court Act, then the Industrial Court has jurisdiction to enforce, not only Article 41 rights but also all fundamental rights ancillary and incidental to the employment and labour relations including interpretation of the Constitution within the matter before it.’”

The Court of Appeal having considered that decision of the High Court amongst others then stated-

“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 that 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.”

3. In view of the above I do hereby transfer this Appeal to Mombasa Industrial Court.

Orders accordingly.

DATED and DELIVERED at MOMBASA this 25TH day of SEPTEMBER, 2014.

MARY KASANGO

JUDGE