



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CIVIL SUIT NO. 370 OF 2013**

**NATIONAL BANK OF KENYA LIMITED .....PLAINTIFF**

**-VERSUS-**

**LEONARD GETHOI KAMWETI .....DEFENDANT**

**RULING**

1. The Plaintiff filed an application against the defendant on the 5<sup>th</sup> of September 2013. This Court gave a ruling on the said application on the 16<sup>th</sup> January 2014. In the said ruling the Court granted a temporary injunction restraining the defendant from disseminating or revealing to unauthorized persons other than the plaintiff's Board of Directors, and/or using or exploiting in whatsoever manner, the plaintiff's confidential information particularly pertaining to all of the minutes of the plaintiff's Board of Directors meeting held on the 8<sup>th</sup> day of July 2013 pending the hearing and determination of the suit.

2. On the 18<sup>th</sup> March 2014, the Defendant filed a Notice of Motion seeking to set aside the ex parte proceedings of 27<sup>th</sup> November 2013 and the order granted on the 16<sup>th</sup> of January 2014. At the hearing of the said Notice of Motion Mr. Ojiambo sought to argue the issue of jurisdiction. His argued are as follows; that in the plaint filed it is pleaded that the defendant was employed by the plaintiff as a company secretary and the terms are set out at paragraph 4 and 5 of the said plaint. One such term was that the defendant was not to disclose any information acquired during his employment without the express consent of the plaintiffs. That paragraphs 5 sets out the duties of the defendants. Paragraph 6 states that the defendant came across information which he was to hold in confidence under the employment contract. Paragraphs 8 states that the defendant's employment came to an end on the 31<sup>st</sup> of July 2013, paragraphs 9 – 14 states that upon his termination the defendant engaged in misconduct that he gave information to Central Bank of Kenya and Capital Markets Authority.

3. Mr. Ojiambo submitted that though they accept all the facts pleaded, the question that arises is whether this is the proper forum to adjudicate the dispute. He cited Section 12 of the Industrial Court Act that provides for the jurisdiction of the Industrial Court and submitted that under section 12 (3) of the said Act the Industrial Court has powers to make orders interim preservative orders, prohibitory orders or an award for compensation under the act. He also relied on Article 162 of the Constitution that sets out the systems of Courts and Article 165 that sets out the composition of the High Court. He argued that Article 165 limits the Jurisdiction of the High Court such that this court jurisdiction is limited by sub article (2) of article 165.

4. He further argued that before the court is a complaint by the employer against a former employee who relied on the terms of employment to obtain an injunction against the employee. According to him the complaint is covered by section 87 of the Employment Act 2007 which addresses complaints and jurisdiction in respect of cases between employee and employer. That the matter in this suit is that the plaintiff is suffering injury due to conduct of the former employee and it has asked the court to interpret that contract and determine the issue of damages and that all these is premised on terms of contract. Counsel argued the information the defendant obtained was during his employment and to that extend if the plaintiff seek an injunction then this matter falls within the mandate of the industrial court and that section 87 (2) bars this court from entertaining the suit. He urged the court to strike out the suit on the basis that it has jurisdiction.

5. Mrs. Mc'Asila in response argued that paragraphs 1to6 of the plaint sets out how the defendant

obtained the information; that the contract of employment ceased on the 31<sup>st</sup> of July 2013 and acts complained of occurred after the contract ended and that they are not seeking for a relief under that contract of service but under a claim of thought being breach of confidence hence their claim of damages. This is a civil suit and the court has jurisdiction to determine the suit; that under section 87 (3) the matters referred to are dispute of a contract of service which is not the case in this suit; that in their plaint they are asking the court to acknowledge that the defendant obtained information and used it to the detriment of the plaintiff and the plaintiff suffered damages of which they should be compensated. She urged the court to dismiss the preliminary objection.

6. In response Mr.Ojiambo reiterated his earlier submissions and submitted that most disputes in employment matters come up after the termination of contract hence learned counsel submissions that the fact the contract ended this court has no jurisdiction cannot stand. According to him the provisions of section 87 (3) has been overtaken by Section 12 of the Industrial Court Act and Article 162 of the Constitution and that the Plaintiff has run away from their pleadings by submitting that the allegations made in the plaint do not constitute a dispute and that the claim is one of tort and not contract. He urged the Court to note that throughout the plaint it is alleged that the defendant breached the contract and therefore the issue of terms of service cannot be termed as a secondary issue and that the contract of the employment will be a close to be discussed in this matter.

7. There is no dispute that the defendant's services were terminated on the 31<sup>st</sup> of July 2013. In the plaint dated 5<sup>th</sup> September 2013, the plaintiff alleges that the defendant disclosed confidential information which was within his knowledge at the time of his employment. The particulars of the said information are particularized at paragraphs 6 and particulars of communication at paragraph 10. At paragraphs 15 the plaintiff avers the particulars of breach of confidence of the defendant. At paragraph 16 it is averred that the Defendant had threatened to use the confidential information or part it otherwise than for the actual purpose.

8. At the time the plaintiff came to Court its main concern was the conduct of the defendant that of diverging information and the risk this conduct posed to the plaintiff. In its prayers in the plaint the plaintiff has sought a permanent injunction restraining the defendant by himself, his servants workmen, agents or otherwise howsoever from disseminating, or revealing to unauthorized persons other than the Plaintiff's Board of Directors, and/or using or exploiting in whatsoever manner, the Plaintiff's confidential information particularly pertaining to all the minutes of the plaintiff's Board of Director's meeting held on the 8<sup>th</sup> of July 2013. It is evident that the terms of contract will be an issue to be considered at the hearing of the main suit. The damages the plaintiff seeks is as a result of the alleged breach of confidence the defendant was expected to keep at the time of his employment. It is therefore in order that this matter be heard by the Industrial Court. Under section 12 (3) the Industrial Court act the said Court can grant Preservatory Orders and Prohibitory Orders as an award of compensation. Though this Court has been asked to strike out the suit, in the interest of justice I order that the suit be transferred to the Industrial Court for hearing and determination. No orders as to costs. Orders accordingly.

Dated, signed and delivered this 24th **Day** of **October** 2014

**R. E. OUGO**

**JUDGE**

.....**Plaintiff**

.....**Defendant**

.....**Court Clerk**