



**REPUBLIC OF KENYA**

**High Court at Nairobi (Nairobi Law Courts)**

**Civil Case 564 of 2007**

**JOSEPH K MULI & 9 OTHERS ..... PLAINTIFFS**

**VERSUS**

**DEUTSCHE GESELISCHAFT TECHNISCHE ZUSAMMENARBEIT GmbH, GTZ  
.....DEFENDANT**

**R U L I N G**

1. The issue of the jurisdiction of this court to hear and determine this suit arose and was canvassed before me on 6<sup>th</sup> December 2012. I have considered the submissions of the learned counsels appearing. No authorities were cited.

2. It is common ground that the suits herein involve disputes over employment. Except for the transitional jurisdiction provided for in **section 22** of the **6<sup>th</sup> Schedule** to the **Constitution**, this court no longer has jurisdiction to deal with suits involving disputes relating to employment and labour relations.

3. **Article 162** of the Constitution provides as follows in **Clauses (2)(a)** and **(3)** -

**“(2) Parliament shall establish courts with the status of the High Court to hear and determine disputes relating to-**

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

**(b) .....”**

**(3) Parliament shall determine the jurisdiction and functions of the courts contemplated in clause (2).”**

And **Article 165 (5)(b)** of the Constitution provides as follows -

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

**(a) .....**

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

4. The transitional provision in section 22 of the 6<sup>th</sup> Schedule is as follows -

**“22. All judicial proceedings pending before any court shall continue to be heard and shall be**

determined by the same court or a corresponding court established under this Constitution or as directed by the Chief Justice or the Registrar of the High Court.”

5. In a recent ruling dated 30<sup>th</sup> November and delivered on 2<sup>nd</sup> December 2011 in Nairobi HCC 515 of 2003 I had this to say regarding that transnational provision -

“The term “...shall continue to be heard...” is in my view instructive. It can only mean that the “judicial proceedings pending” are those cases that are part-heard, not those whose hearing is yet to commence.

The *Industrial Court* has, since the promulgation of the new Constitution, been re-established under section 4 of the *Industrial Court Act, No. 20 of 2011* in order to bring it within the new Constitution. That section provides: -

“4. (1) *In pursuance of Article 162 (2)(a) of the Constitution, there is established the Industrial Court for the purpose of settling employment and industrial relations disputes and the furtherance, securing and maintenance of good employment and labour relations in Kenya.*

(2) *The court shall be a superior court of record with the status of the High Court.*

(3) *The court shall have and exercise jurisdiction throughout Kenya”.*

Jurisdiction of the Industrial Court is further provided for in section 12 of the said Act. Subsection (1) of that Act provides as follows in part:-

“12. (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...”*

It is clear that the Constitution intends that the Industrial Court shall have exclusive original and appellate jurisdiction to hear and determine all disputes and appeals involving employment and labour relations.

The Industrial Court is a superior court of record with the status of the High Court. The court will no doubt in due course develop its own jurisprudence in employment and labour relations disputes.

On the other hand the Constitution specifically denies the High Court jurisdiction in disputes involving employment and labour relations.

In my considered view, the transitional provisions under section 22 of the 6<sup>th</sup> Schedule to the Constitution are not intended to facilitate two parallel but different jurisdictions with regard to employment and labour relations disputes. The intention is that *where hearing of a matter filed in the High Court or in a subordinate court has already commenced*, such hearing ought to be concluded in the High Court or in the subordinate court.

On the other hand, *where actual hearing has not commenced*, then such suit ought to be transferred to the right court, that court being the Industrial Court.

In the present suit, actual hearing has not commenced. For good conduct of cases involving employment and labour relations disputes, it is best that such cases pending in the High Court or in subordinate courts *where actual hearing has not commenced* be forwarded to the Industrial Court for disposal. I so hold”.

6. Hearing of the present case has not commenced. The case must therefore be transferred to the correct

court which now has exclusive jurisdiction to hear and determine or otherwise dispose of the case. That court is the **Industrial Court**.

7. In the event this case is transferred to the Industrial Court for disposal. Costs shall be in the cause. It is so ordered.

**DATED AND SIGNED AT NAIROBI THIS 23<sup>RD</sup> DAY OF JANUARY 2013**

**H.P.G. WAWERU**  
**JUDGE**

**DELIVERED AT NAIROBI THIS 25<sup>TH</sup> DAY OF JANUARY 2013**