



**REPUBLIC OF KENYA**

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

**Civil Case 358 of 2012**

**INVESCO ASSURANCE COMPANY LIMITED.....PLAINTIFF**

**VERSUS**

**CHARLES MUTURI MWANGI.....DEFENDANT**

**RULING**

1. Before me is an appeal by way of an Originating Summons dated 31<sup>st</sup> May, 2012 against the decision of the arbitrator Evans Thiga Gaturu Esq. made on 25<sup>th</sup> April, 2012. The appeal was lodged in this court on 31<sup>st</sup> May, 2012 under Section 17 (b) of the Arbitration Act, 1995. The Originating Summons was fully heard before me on 22<sup>nd</sup> November, 2012. Although it was heard on merit, one issue raised by Mr. Kihara for the Respondent required to be first addressed before delving into the merits of the appeal.

2. Mr. Kihara raised the issue that this court lacks jurisdiction to entertain the matter. That Article 162(2) (a) and (3) of the Constitution of Kenya established the Industrial Court which has exclusive jurisdiction on matters of employment. His view was that Sections 12(3) and 33 of the Industrial Court Act, Act No. 20 of 2011 gave that court exclusive jurisdiction on matters of employment whether the said matter is before an arbitrator or before this court. Mr. Kihara urged that I should dismiss the Originating Summons.

3. Mr. Kariuki appearing for the appellant submitted that under Section 17(6) of the Arbitration Act this court has the jurisdiction to entertain the appeal. That as at the time the matter was referred to arbitration, the Arbitration Act applied and appeals from arbitrators were to this court and not the Industrial Court.

4. I have considered the rival submission and all the documents on record. The background to this dispute is that in or about 2011, the Respondent lodged a Complaint against the Appellant in the former Industrial Court claiming certain benefits. The parties thereafter referred the dispute to arbitration from where the current appeal arose. The question which arises is whether this court has the jurisdiction to entertain the matter.

5. Section 17(6) of the Arbitration Act provides:-

***“6. Where the arbitral tribunal rules as a preliminary question that it has jurisdiction, any party aggrieved by such ruling may apply to the High Court, within 30 days after having received notice of that ruling, to decide the matter.”***

It is clear from the foregoing that under that Section, the Court with jurisdiction on appeal from an arbitrator is the High Court. I hold therefore that as at the time the Appeal was lodged, this court had the jurisdiction to entertain the matter.

6. The appeal relates to a labour dispute between the Combatants. Article 165 (5) of the Constitution provides:-

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

***a) Reserved for the exclusive jurisdiction of the Supreme court under this Constitution; or***

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

The jurisdiction of the courts falling under Article 162(2) is, inter alia, employment and labour relations. That jurisdiction has now exclusively been reserved for the Industrial Court under Section 12(1) of the Industrial Court Act. In my view, since the Industrial Court under Section 4 of that Act has been operationalized the proper jurisdiction for this matter is in the Industrial court and not the High Court.

7. My view is informed by the provisions of Section 7(1) of the Sixth Schedule to the constitution which provide that:-

***“7 (1) All laws in force immediately before the effective date continues to be in force and shall be construed with the alterations adaptations, qualifications and exceptions necessary to bring it into conformity with this constitution.”***

In this regard, my view is that Section 17(6) of the Arbitration Act should be read to conform with Articles 162 (2) and 165(5) of the Constitution whereby on matters touching on employment and labour relations, appeals are to be preferred to the Industrial Court and not the High Court.

8. What then should be the orders to be made on the Originating Summons? Mr. Kihara urged me to dismiss the same for want of jurisdiction. I think I am not in agreement with him. When the Appeal was preferred to this court by the appellant, the Industrial Court had not yet been operationalized. Indeed what the High court has been doing to matters that were pending once Article 162(2) of the Constitution was operationalized by Parliament (by way of the enactment of the necessary laws and creation of the subject courts) is to refer and or transfer such matters to those courts. I am therefore minded to doing likewise.

9. Accordingly, I order that this appeal be transferred to the Industrial Court, Nairobi for the re-hearing and determination of the Originating Summons dated 31<sup>st</sup> May, 2012. The Deputy Registrar of this court to ensure that this file is placed before the Principal Judge of that court for mention and giving of directions within 14 days of today. In order to safeguard the position of the parties obtaining as of today, the interim orders now in force are extended for 14 days.

The costs are in any event awarded to the Respondent.

It is so ordered.

DATED and DELIVERED at Nairobi this **11<sup>th</sup>** day of **February**, 2013.

**A. MABEYA**

**JUDGE**