

REPUBLIC OF KENYA

High Court at Nakuru

Civil Suit 108 of 2004

TIMOTHY MANYARA & 144 OTHERS.....PLAINTIFFS

VERSUS

PYRETHRUM BOARD OF KENYA.....DEFENDANT

RULING

Coming up for hearing was the application dated 11/4/2012 in which the plaintiffs were seeking to have the cases filed by Timothy Manyara, Lucas Otieno Oguto and Joyce Wanjiru be selected as a test suit on the issue of taxation and interpretation of the Trust Deed and Regulations establishment by the Pyrethrum Board of Kenya Staff Superannuation Scheme.

Instead, Mr. Wamaasa, counsel for the applicants, made an application that this case be transferred to the Industrial Court for hearing and disposal because the plaintiffs are challenging their retrenchment and calculation of their final dues by the defendant. He relied on the provisions of **Article 162** of the **Constitution** and **Section 12** of the **Industrial Court Act, 2011** which gives jurisdiction of industrial matters to the Industrial Court. He told the court that he was ready to argue the application scheduled for hearing but the law now bestows the jurisdiction on the Industrial Court and that the transfer of the case to the Industrial Court will not prejudice the defendants in any way.

The application was vehemently opposed by Mr. Orege, counsel for the defendant/respondent who was ready to proceed with the hearing of application dated 11/4/2012. He urged that this matter is partly heard, that it was filed before the promulgation of the new Constitution; that this court has jurisdiction to hear and determine this matter and that the transfer of this matter to the Industrial Court will be prejudicial to the defendant who has always submitted to the jurisdiction of this court. He argued that this application is an afterthought and will frustrate the defendant's expectation.

This suit was filed by 145 plaintiffs who were retrenched by the defendant and they seek to challenge the said retrenchment, their terminal dues and calculation of their dues. At the time the suit was filed, through an Industrial Court existed, and was centralized in Nairobi, the plaintiffs could either go to the Industrial Court or opt to come to the ordinary civil courts for determination of their disputes. However, with the promulgation of the **Constitution** in 2010; by virtue of **Article 162(2)(a)** of the **Constitution**, Parliament was empowered to establish courts with the status of the High Court, to hear and determine disputes relating to employment and labour relations. As a result, Parliament has enacted **Section 12** of the **Industrial Court Act** which confers exclusive original and appellate jurisdiction to hear and determine all industrial disputes, relating to and arising out of employment etc, to the Industrial Court.

It is true that when this matter was filed in 2002, no Industrial Court had been established at this court but since 2011, the Industrial Court has been decentralised with such courts all over the country. This is to enhance access to justice and decongest the ordinary civil court of such claims and suits. The Industrial Court was created with the intention of creating specialized courts in industrial and employment matters.

This case has been pending since 2002. So far only one witness had partially testified because he was still undergoing cross examination. The judge who heard the matter is no longer based at this court. It means that this court will have to give directions on how the case should proceed, whether to start de novo or proceed from where J. Mugo stopped. Given that the matter is part heard, with the lengthy evidence of the plaintiff partly taken, it is most likely that the case will start de novo for the court to understand the very lengthy evidence of the plaintiff. The Industrial Court is a specialized court in employment matters and in

my view, that is the court that is best equipped to handle this matter further. It is likely that this case will be dispensed off faster at the Industrial Court than in this court. For the above reasons, I hereby direct that this matter be transferred to the Industrial Court, Nakuru. The Industrial Court registry do allocate it a new number at that Court. Given that the plaintiff had not notified the defendant that this application for transfer will be made, I direct that the plaintiffs pay the defendants costs for today. Mention before the Industrial Court on 26/4/2013.

DATED and DELIVERED this 17th day of April, 2013.

R.P.V. WENDOH
JUDGE

PRESENT:

Mr. Wamaasa for the plaintiffs/applicants

Mr. Orege for the defendant

Kennedy – Court Clerk