

**GIPSON KIPLANGAT LANGAT.....APPLICANT
VS**

KENYA KAZI SERVICES LIMITED..... RESPONDENT

RULING

1. The Applicant, Gipson Kiplangat Langat has applied to this court under Section 3A and 18 of the Civil Procedure Act and Sections 87(2) and 93 of the Employment Act 2007 seeking orders for the transfer of Chief Magistrate’s Civil Case Number 11142 of 2007 from that court to the Industrial Court for hearing and determination. The application is based on the principal ground that the Industrial Court of Kenya is now vested with exclusive jurisdiction to hear and determine cases on unfair termination of employment and labour matters. The Applicant further contends that as the suit pending in the Chief Magistrate’s Court has not been listed for hearing, it will be in the best interest of justice to have the suit transferred to the Industrial Court for disposal. It is further contended that transfer of the suit to the Industrial Court will occasion no prejudice to the Respondent.

2. The application is supported further by the affidavit of the Applicant sworn on 17th December 2010 which reiterates the above grounds in support of the application rendered above.

3. The application is opposed through a replying affidavit of Moses M. Kinyanjui, counsel for the Plaintiff sworn on 2nd February 2011. Through the affidavit, the Respondent takes the view that it is unprocedural and impractical to transfer a suit from the Chief Magistrate’s Court to the Industrial Court as the two courts have completely different rules and procedures. The suit filed in the Chief Magistrates Court cannot fit in the Industrial Court as the pleadings in the two courts completely differ. The only option for the Applicant is to withdraw the suit pending at the Chief Magistrates Court and lodge a proper claim at the Industrial Court.

4. I have considered the application and the affidavits filed for and against the application as well as the brief oral submissions made by counsel for the parties.

5. The sole issue I am required to determine is whether this Court has jurisdiction to transfer a suit filed in the Chief Magistrates Court to the Industrial Court.

6. Section 18(1)(b) (i) of the Civil Procedure Act on which the application before this court is framed provides as follows:

“On the application of any of the parties and after notice to the parties and after hearing such of them as desire to be heard, or of its own motion without such notice, the High court may at any stage –

(b) withdraw any suit, appeal or other proceedings pending in any court subordinate to it and thereafter;

(i) try or dispose off the same.

7. My understanding of Section 18 of the Civil Procedure Act is that it provides a window through which proceedings instituted in the subordinate courts and which subsequently become untenable in such courts due to emergent developments dethroning the jurisdiction of the subordinate courts can be transferred to the High Court for trial and disposal. However, the above procedure does not apply as to give the High Court jurisdiction to transfer suits from one subordinate court to another or from a subordinate court to any other dispute resolution institution as by law established.

8. In that regard, given that the Industrial Court as presently constituted is a court that is subordinate to

the High Court, I do not think that this court is bestowed with any jurisdiction under Section 18 of the Civil Procedure Act to order matters filed in the Chief Magistrates Court to be transferred to the Industrial Court for disposal notwithstanding the provisions of Section 87 of the Employment Act. Perhaps this would be possible once the employment and labour relations courts to be established under Article 162(2) (a) of the Constitution of Kenya, 2010, are finally established.

9. For the above reasons, the Applicant's Notice of Motion dated 17th December 2010 fails and is hereby dismissed with costs.

IT IS SO ORDERED.

DATED, SIGNED and DELIVERED in Nairobi this 24th day of May 2012.

J. M. MUTAVA
JUDGE