REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI (MILIMANI LAW COURTS)

CIVIL CASE 382 OF 2010

DAVY KIPROTICH KOECH ……..……. PLAINTIFF/RESPONDENT

VERSUS

KENYA MEDICAL RESEARCH INSTITUTE …….. DEFENDANT/APPLICANT

RULING

The defendant's application dated 12th September, 2011 seeks the following orders:

"1. All further proceedings in this suit be stayed pending the hearing and determination of the intended appeal against the ruling of Hon. Justice P. Kihara Kariuki of 15th July, 2011.

2. The costs of this application be provided for."

On 26th October, 2011 the advocates for the parties agreed by consent that the aforesaid application be disposed of by way of written submissions and the file was to be forwarded to the Hon. Justice P. Kihara Kariuki for purposes of drafting a ruling since the learned judge was no longer in this station. The learned judge was however unable to prepare the ruling because of various reasons and it has now fallen upon me to do the same.

The defendant's application was supported by an affidavit sworn by **Margaret Rigoro**, a Legal Officer employed by the defendant. The affidavit states that the plaintiff instituted this suit against the defendant claiming terminal dues and other damages for breach of contract amounting to **Kshs.124,897,070/=,** general damages as well as costs of the suit. The plaintiff had been employed by the defendant but his services were terminated on 18th September, 2008. The defendant contended that this court had no jurisdiction to hear and determine the issues raised by the plaintiff and on 9th July, 2010 filed an application seeking to strike out the plaintiff's suit. On 15th July, 2011 Kariuki, J., (as he then was), delivered a ruling dismissing the defendant's application.

The defendant was aggrieved by the said ruling and has filed a notice of appeal and applied for certified copies of proceedings for purposes of filing the record of appeal. The defendant verily believes that the intended appeal has good chances of success as it is based on the argument that the Industrial Court has exclusive jurisdiction to hear and determine the kind of dispute between the parties.

The plaintiff filed a replying affidavit and stated, inter alia, that the defendant's application is not merited and is only meant to delay the hearing and finalization of the case. He reiterated that his claim relates not only to damages for breach of employment contract but also for damages for tarnished reputation and defamation which cannot be heard and granted by the Industrial Court. He cited the provisions of **Section 15** of the **Labour Institutions Act, 2007** which empowers the Industrial Court to grant the following reliefs:

(i) Reinstatement of an employee

(ii) Re-engagement of an a employee in the same work he was employed before or any other suitable work.

(iii) Compensation to the employee to a maximum of 12 months' wages.

In his view therefore, the defendant has not demonstrated that it has an arguable appeal with probability of success to warrant grant of the orders sought.

Further, the plaintiff contended that:

· **Article 159 of the Constitution of Kenya requires the court to administer justice without regard to procedural technicalities.**

· **This court has jurisdiction to hear and determine this matter.**

· **The defendant will not suffer any harm if this court were to hear and determine this matter.**

· **He stands to suffer prejudice if the defendant's application is allowed as that will delay the finalization of his claim.**

· **The defendant has not provided any security and should be ordered to deposit the amount in contention in court or in a joint account in the names of the advocate for the parties if the application were to be granted.**

I have considered the submissions on record as well as the arguments raised by parties in their respective affidavits. In an application for stay of proceedings pending appeal, an applicant has to satisfy the court that the pending or intended appeal is an arguable one and that if the order of stay is not granted, the appeal when ultimately heard will be a futile exercise. See **UAP PROVINCIAL INSURANCE COMPANY LIMITED vs. MICHAEL JOHN BECKETT**, **Civil application No. 204 of 2004 at Nairobi.** The defendant's intended appeal touches on the jurisdiction of this court to grant the reliefs sought by the plaintiff. It is trite law that jurisdiction is everything and once the issue of jurisdiction has been raised the court must first determine whether it has the power to deal with the matter any further. In the ruling delivered on 15th July, 2011 the learned judge held that the court had jurisdiction to hear and determine the plaintiff's suit. However, **Section 12** of the **Labour Institutions Act, 2007** stipulates that:

"The Industrial Court shall have exclusive jurisdiction to hear, determine and grant any appropriate relief in respect of an application, claim or complaint or infringement of any of the provisions of this Act or any other legislation which extends jurisdiction to the Industrial Court, or in respect of any matter which may arise at common law between an employer and employee…"

It appears to me that the legislature intended that all disputes relating to employer/employee relationship be dealt with and determined by the Industrial Court. The jurisdiction of the Industrial Court is set out

under **Section 12 (1)** of the **Industrial Court Act, 2011.** The same states as follows:

"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 including –

(a) disputes relating to or arising out of employment between employer and an employee;

(b) disputes between an employer and a trade union;

(c) disputes between an employer's organization and a trade union's organization;

(e)

(f)

(g)

(h)

(i)

(j) ……"

Section 12 (3) of the **Act** empowers the Industrial Court to give various reliefs including an award of damages in any circumstances contemplated under the Act or any written law and any other appropriate relief as the court may deem appropriate to grant.

I am thus of the considered view that the Industrial Court has wide powers to sufficiently deal with the issues raised by the parties herein.

Black's Law Dictionary defines **"exclusive jurisdiction"** as follows:

"A court's power to adjudicate an action or class of actions to the exclusion of all other courts."

Whereas I am aware that in various High Court pronouncements it has been held that the High Court is still vested with jurisdiction to hear and determine disputes relating to employers and employees, my appreciation of **Section 12** of the **Labour Institutions Act** as well as **Section 12 (1)** of the **Industrial Court Act** is that it is only the Industrial Court that is vested with such jurisdiction. I may be wrong on the issue and that is why it is therefore necessary that the defendant be afforded an opportunity to argue the issue before the Court of Appeal so that the debate is settled once and for all.

Secondly, the plaintiff's liquidated claim of Kshs.124,879,070/= is quite substantial. If the court does not grant the defendant's application the suit may proceed to hearing and be determined even before the appeal is heard. That may render the appeal nugatory.

For these reasons, I am inclined to grant the defendant's application, which I hereby do. The costs of the application shall be in the cause.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 17TH DAY OF MAY, 2012.

D. MUSINGA
JUDGE

In the presence of:
Muriithi – Court Clerk
Mr. Gachuhi for Plaintiff
Miss Kimere for Mr. Munge for Defendant