



ROB DE JONG1ST APPELLANT

DIRECT MAINTENANCE E.A LIMITED.....2ND APPELLANT

VERSUS

CHARLES MUREITHI WACHIRA.....RESPONDENT

(Appeal from the Judgment of the Senior Resident Magistrate's Court at Mombasa of Hon. Mr. Ondieki delivered on 7th July, 2009 in CMCC NO.1868 of 2008).

JUDGMENT

The Appellants through Memorandum of Appeal dated 22nd July 2009 appeal against the decision of the Hon. Ondieki SRM in CMCC No. 1868 of 2008 dated 7th July 2009.

The Memorandum of Appeal raises only 2 grounds:-

- 1. That the learned magistrate erred in law by totaling failing to consider the cited portions of the Labour Institutions Act, 2007.**
- 2. That the Learned magistrate erred in law by finding that the Industrial Court, as by law established shares its jurisdiction with ordinary subordinate court.**

The Appellants pray that the appeal be allowed with costs; an order made to set aside the learned magistrate ruling and that the suit CMCC 1868 of 2008 be dismissed in its entirety.

I have considered the Memorandum of Appeal together with the record of appeal and submissions by counsel.

In summary this is a dispute between a former employee and the employer while 1st Appellant is the Managing Director of the employer.

The Respondent filed his claim in the Chief Magistrate Court in CMCC No. 1868 of 2008 claiming among other things release of his engineer's Operators certificates for Boeing 767 aircraft and airbus 330.

Together with the Complaint, the Respondent filed for interlocutory application for mandatory injunction orders under Order XXXIX of the Civil Procedure Act.

The appellants filed a Notice of Preliminary Objection to the suit arguing that the court lacked jurisdiction and the suit should be struck out.

The Preliminary Objection was argued before the Hon T. Nzioki who delivered his ruling on the 4th September 2008 where the court struck out part of the Complaint but stated that it had jurisdiction to entertain the interlocutory mandatory injunction application.

The appellants filed for a review of this ruling where they argued that their Preliminary Objection was to the effect that the Magistrate Court lacked any jurisdiction to entertain the suit. That the Industrial Court does have jurisdiction to grant injunctive relief and the Court should have dismissed the suit in its entirety.

This application was argued before the Hon. Ondieki SRM who dismissed the application for review on the 7th July 2009 which ruling is the subject of the appeal herein.

The appeal was argued before me on the 3rd September 2011.

Learned Counsel Mr. Muriu for Appellant gave a background of the facts of the case as I have summarized above. Counsel stated that under Section 87 of the Employment Act only the Industrial Court can handle matters relating to Industrial disputes. That the Industrial Court has power to deal with injunction applications.

Counsel further argued that under Section 12 of the Labour Institutions Act the Industrial Court is given exclusive jurisdiction to hear and determine industrial disputes.

Counsel prays that this Court allows the appeal and order that CMCC No. 1868 be dismissed.

Learned Counsel Mr. Waithera for the respondent opposed the application. Counsel argued that the court should apply the overriding objectives of the Court as provided for under Section 1A and 1B of the Civil procedure Act. He states that the Court has a duty to sustain the suit. He further argues that the suit can be transferred to a court with the right Jurisdiction, Counsel in support referred to the provisions of Section 18 of the Civil Procedure Act. He argues that no dismissal should be entertained on technicality.

In reply counsel for the Appellants that section 18 of the Civil Procedure Act presupposes that the parties are before a proper forum. He states that in this case the parties are before a court with no jurisdiction.

Having carefully considered the appeal and upon hearing the oral submissions of respective counsels the issues for determination by this court is whether the Magistrate court has jurisdiction to entertain the suit before it in anyway and whether this court can order the transfer of the suit to a court with jurisdiction as prayed for by the respondent.

I will start by saying that jurisdiction means everything to the Court. Without it the court cannot take one step and in case it does the whole proceeding will be a nullity.

The legislature has in its wisdom created a specialized court for adjudicating upon labour related disputes. The law created the Industrial Court as a specialized court to determine all labour related disputes. The Labour Institutions Act in Section 12 provides as follows:

“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 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 in the course of employment, between employee and employer’s Organization and a trade union or between a trade union, an employer’s organization, a federal and a member thereof”.

It is clear that the law gives exclusive jurisdiction to the Industrial Court to hear and determine all industrial related matters. It is therefore wrong for other courts at the instigation of litigants to take away or attempt to share jurisdiction with the Industrial Court. This in the end also serves the interest of the Industry in allowing quick and effective disposal of Industrial disputes by specialized courts.

The second issue is whether this court can direct the transfer of the suit before the Magistrate court to the Industrial Court.

I concur with the position taken by the learned counsel for the Appellants that to invoke this power the matter should be before a court with jurisdiction. If the matter was filed in a court without jurisdiction then the suit is a nullity and there is nothing capable of being transferred.

I therefore hold that the Magistrate Court does not have any jurisdiction to entertain in any way Industrial disputes.

I allow the appeal and order that all proceedings before the Magistrate Court in CMCC No. 1868 is a nullity for want of jurisdiction and the same should and is hereby dismissed with costs to the appellants.

The cost of the Appeal is awarded to the Appellant.

Dated AND Signed At Nairobi ON This 14TH Day Of AUGUST 2012.

M. K. IBRAHIM

JUDGE

DATED AND Delivered at Mombasa on this 31ST DAY OF AUGUST 2012.

J.W MWERA

JUDGE

Delivered in the presence of: