



REPUBLIC OF KENYA

High Court at Nairobi (Nairobi Law Courts)

Miscellaneous Application 150 of 2012

MAGDALENE KAMENE NZIUKO.....PLAINTIFF

VERSUS

STANDARD CHARTERED BANK LIMITED.....DEFENDANT

RULING

1. Before me is a Notice of Motion application dated **16th March 2012**. It is expressed to be brought under **Order 51 Rule 1 of the Civil Procedure Rules** and **Section 18 (1) of the Civil Procedure Act**. By this application the Plaintiff seeks for an order that Chief Magistrates Civil Suit No. 3946 of 2004 pending before the Chief Magistrate's Court at Milimani Commercial Courts be transferred to the Industrial Court in Nairobi for hearing and final determination.
2. The application is based on grounds stated on the face of the application, among them that the Chief Magistrate's Court's jurisdiction was ousted by the provisions of the Employment Act 2007 and the Labour Institutions Act 2007. The application is supported by the affidavit of **MAGDALENE KAMENE NZIUKO** sworn on 16th March 2012 which essentially buttresses the grounds of the application.
3. The application is opposed. The defendant filed a Replying Affidavit sworn by Nancy Oginge on **12th June 2012** and filed on **18th June 2012**.
4. The plaintiff's case is essentially that the Employment Act provides that an aggrieved party may lodge a complaint or suit in the Industrial Court in view of the amendments effected on the **Industrial Court Act 2011** vide the **Statute Law Misc. Amendment Act of 2012**. That **section 12** of the **Labour Institutions Act** gives exclusive jurisdiction to the aforesaid court to hear and determine any application or complaint under the provisions of the said Act or any other legislation which extends jurisdiction to the Industrial Court. The Plaintiff contends that the subordinate court has been divested of jurisdiction to hear and to determine the said suit.
5. In opposition to the application, the defendant submits that under the new constitution, the Magistrate's court still has jurisdiction to hear and determine the suit. It is the defendant's assertion that paragraph 22 of the 6th schedule of the Constitution does not envisage transferring of cases that were pending before its promulgation. The defendant contends that the plaintiff did not promptly apply for the transfer of the suit and that transferring a case pending since 2004 will obviously lead to uncalled for delay.
6. The court was referred to the case of **Kagenyi vs Musiramo and another 1968 EA 43**. In that case,

the court stated that the High Court could not exercise its discretion to transfer a suit from one court to another if the suit was filed in a court that did not have jurisdiction.

7. I have considered the application and the affidavits filed for and against the application as well as the written submissions filed by counsel for both parties.

8. The sole issue for determination is whether the suit pending before the Chief Magistrate's Court should be transferred to the Industrial court.

9. The Industrial court has finally been established as contemplated under **Article 162 (2) (a)** of the Constitution of Kenya, 2010 by the enactment of the **Industrial Court Act (Act No. 20 of 2011)**. Section 12 of the Industrial Court Act gives the Industrial Court exclusive jurisdiction to deal with disputes arising from employment and labour relations. Therefore the proceedings before the Chief Magistrate's Court have become untenable as the jurisdiction of the said court has been dethroned by the emergent developments. In my view, the Industrial court is the proper and competent court for the just determination of the present proceedings in an efficient and timely manner.

10. As regards the case of **Kagenyi vs Musiramo and another 1968 EA 43 (supra)**, that case is, in my humble view distinguishable in the sense that the issue therein was that of jurisdiction. In the present case, it is not in dispute that the Chief Magistrate's court had jurisdiction when the suit was filed. In the present case, the court is being called upon to recognise that the Constitution of Kenya, 2010 has established a special court to deal with labour matters and which court should, even for good order and sense, be the ideal forum for resolution of the present case. Indeed, the Constitution specifically ousts the jurisdiction of the High Court from dealing with such matters. While therefore the transitional provisions of the Constitution allow pending matters to continue under the pre-promulgation arrangement, courts have to be proactive in directing that matters that have not been progressed in any significant manner before them be transferred to the new labour court for disposal. That court, being new, is indeed better placed to dispose of this matter probably more timeously than the Chief Magistrates Court.

11. In view of the foregoing, the Plaintiff's Notice of Motion dated **16th March 2012** is hereby allowed with no orders as to costs.

IT IS SO ORDERED.

DATED, DELIVERED AND SIGNED THIS 18TH DAY OF OCTOBER 2012

J.M MUTAVA

JUDGE