



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (MILIMANI LAW COURTS)
CIVIL SUIT NO. 49 OF 2006

JAMES KINYUA..... PLAINTIFF

V E R S U S

UNIVERSITY OF NAIROBI..... DEFENDANT

R U L I N G

The Plaintiff's suit herein is based on alleged unlawful and wrongful termination of his employment with the Defendant. The specific reliefs sought in the amended plaint dated 10th April, 2008 are general damages, costs and interest.

The Defendant entered appearance and filed defence. It denied the Plaintiff's claim and sought dismissal of his case.

When the case came up for hearing on 5th April, 2011 both learned counsels for the parties raised the issue of jurisdiction. Both were of the considered view that this court no longer has jurisdiction to deal with the case in view of certain provisions of the new **Constitution** as well as provisions contained in some statutes.

I have now considered the matter of jurisdiction.

Article 162 of the Constitution provides as follows in the material part:-

“(1) The superior courts are the Supreme Court, the Court of Appeal, the High Court and the courts referred to in clause (2).

(2) Parliament shall establish courts with the status of the High Court to hear and determine disputes relating to-

(a) employment and labour relations; and

(b) the environment and the use and occupation of, and title to, land.

(3) Parliament shall determine the jurisdiction and functions of the courts contemplated in clause (2).

(4)

And Article 165(5) (b) provides:-

“(5) The High Court shall not have jurisdiction in respect of matters-

(a)

(b) falling within the jurisdiction of the courts contemplated in Article 162(2).”

There is already in existence the **Industrial Court** established under **section 11** of the **Labour Institutions Act, No. 12 of 2007**. This Act commenced operation on 2nd June, 2008 (Legal Notice No 62 of 2008).

The jurisdiction of the Industrial Court as conferred by the Labour Institutions Act is to be found in **section 12** of that Act. **Subsections (1), (2), (4) and (6)** of that section provide as follows:-

“12. (1) 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 in the course of employment, between an employee or employer’s organisation and a trade union, or between a trade union and employer’s organisation, a federation and a member thereof.

(2) An application, claim or complaint may be lodged with the Industrial Court by or against an employee, an employer, a trade union, an employer’s organisation, a federation, the Commissioner for Labour or the Minister.

(3) The Industrial Court may consolidate claims for the purpose of hearing witnesses as appropriate.

(4) In the discharge of its functions under this Act the Industrial Court shall have the powers to grant injunctive relief, prohibition, declaratory order, award of damages, specific performance or reinstatement of an employee.

(5)

(6) Any decision or order by the Industrial Court shall have the same force and effect as a judgment of the High Court and a certificate signed by the Registrar of the Industrial Court shall be conclusive evidence of the existence of such decision or order. ”

The Industrial Court also has jurisdiction conferred by other statutes, including the **Employment Act, No. 11 of 2007**. Under that Act, the Industrial Court has jurisdiction in cases of wrongful dismissal or unfair termination of employment. **Section 47** of the Act provides for complaints in regard to those matters. Subsection (3) of that section provides:-

“66. (3) The right of the employee to present a complaint under this section shall be in addition to his right to complain to the Industrial Court on the same issue and to the right to complain of any other infringement of his statutory rights.”

Part XII of the Act provides a disputes settlement procedure. **Section 87(1)** of the Act falling in that part provides:-

“87. (1) Subject to the provisions of this Act whenever-

- (a) an employer or employee neglects or refuses to fulfil a contract of service; or
- (b) any question, difference or dispute arises as to the rights or liabilities of either party; or
- (b) touching any misconduct, neglect or ill treatment of either party or any injury to the person or property of either party, under any contract of service,

the aggrieved party may complain to the labour officer or lodge a complaint or suit in the Industrial Court.

(2) No court other than the Industrial Court shall determine any complaint or suit referred to in subsection (1).

(3) This section shall not apply in a suit where the dispute over a contract of service or any other matter referred to in subsection (1) is similar or secondary to the main issue in dispute.”

As can be seen from the above, jurisdiction in employer/employee disputes, including summary dismissal and unfair termination of employment, has been reserved for the Industrial Court by the Employment Act, 2007. The Constitution at Article 165(5) (b) specifically and particularly denies the High Court jurisdiction in respect of matters-

“falling within the jurisdiction of the courts contemplated in Article 162(2)”.

Such courts include the Industrial Court established under the Labour Institutions Act, 2007.

In the circumstances, I respectively agree with both learned counsel appearing in this matter that this court no longer has jurisdiction to hear and determine the present suit.

The suit is therefore transferred to the Industrial Court for disposal. It is so ordered.

DATED AT NAIROBI THIS 7TH DAY OF APRIL, 2011

H.P.G. WAWERU
JUDGE

SIGNED AND DELIVERED THIS 8TH DAY OF APRIL, 2011