



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYERI

MISC. CIVIL APPLICATION NO. 23 OF 2010

JULIUS GICHERU

NJOROGE.....APPLICANT

Versus

NYERI

PLANTATIONS.....RESPONDENT

RULING

The subject matter of this ruling is the motion dated 24th February 2010 in which Julius Gicheru Njoroge, the Applicant has sought to have Nyeri C.M.C.C. no. 25 of 2005 to be withdrawn from the Chief Magistrate's and transferred to the Industrial court for hearing and determination. The motion is supported by the affidavit of Charles Wahome Gikonyo, learned advocate for the Applicant. Nyeri Plantations the Respondent herein, filed the replying affidavit of Mercy Kabethi, their learned advocate resist the motion.

It is the submission of the Applicant that under s. 87(2) of the Employment, 2007 the Industrial Court is the relevant court to hear and determine the suit. The respondent urged this court to dismiss the application on the basis that the same was filed too late in the day and only after the Respondent had raised a preliminary point of law. I have carefully looked at the material placed before this court. the suit that is before the Chief Magistrate's court is expressed in the amended plaint dated 20th January 2009 whereupon the Applicant who is the Plaintiff in the Chief Magistrate's court sought for judgment against the Respondent (defendant therein) in the following terms:

(a) **Terminal benefits in the sum of Kshs. 29,511/=**

(b) **Costs of the suit.**

(c) Interest on (a) and (b) above.

The Applicant averred that the Respondent had without notice and without adhering with the provisions of Regulation of wages (protective security services) order applicable, terminated his services. It is obvious that the dispute before the Chief Magistrate's court is that between an employee and an employer. The competent court with exclusive jurisdiction hear and determine such a dispute is the Industrial court under section 87(2) of the employment Act no. 11 of 2007. The aforesaid Act came into effect on 2nd June 2008. the suit before the Chief Magistrate's Court was filed in the year 2005. by then an aggrieved party had a right to file a complaint or suit before any magistrate's court under section 40 of the Employment Act (Cap. 226 L.O.K.) the Respondent does not dispute that the Industrial court is the competent forum to hear and determine the suit. Its main complaint is that there was inordinate delay in filing the motion. I have already stated that the relevant law conferring exclusive jurisdiction to the Industrial to hear labour disputes came into effect on 2nd June 2008. the Respondent has also complained that the Applicant was provoked to file the motion by the notice of Preliminary objection dated 12th November 2009 in which it prayed the suit to be dismissed because the Chief Magistrate's court had no jurisdiction to hear and determine the dispute. I doubt whether such a preliminary objection could have even been sustained in view of the provisions of section 4 of the Employment Act (Cap. 226 L.O.K). Though there was some delay in filing the motion, in my view the delay is not inordinate.

In the end I find the motion to be well founded. The same is allowed with costs abiding the determination of the suit at the Industrial court.

Dated and delivered this 15th day of July 2011.

J.K. SERGON

JUDGE

In open court in the presence of Mr. Maatura for Respondent and Karweru h/b Wahome for Applicant.

J.K. SERGON

JUDGE