



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI (MILIMANI COMMERCIAL COURTS)**

**Civil Case 754 of 2009**

**KENYA AIRWAYS .....PLAINTIFF**

**VERSUS**

**DONALD OSEWE OLUOCH .....DEFENDANT**

**RULING**

1. The Chamber Summons dated 14<sup>th</sup> December 2009 is brought under the provisions of Section 87(2) of the Employment Act, 2007 and Section 12(1) of the Labour Institutions Act, 2007, Order VI Rules 13(1) and 16 of the Civil Procedure Rules. The defendant seeks for an order that the plaint be struck out and dismissed with costs to the defendant. This application is premised on the grounds that the cause of action in this suit is founded on an Employment Contract between the plaintiff and the defendant as pleaded for under paragraphs 3 - 9 of the plaint. Secondly, this court lacks the jurisdiction to determine the subject matter of this suit by virtue of the express provisions of section 87(2) of the Employment Act, 2007 and Section 12(1) of the Labour Institution Action 2007 which vests exclusive jurisdiction to determine labour disputes in the Industrial court.
2. This application is supported by an affidavit of **Dolnad Osewe Oluoch** sworn on 14<sup>th</sup> December 2009. He has attached a copy of the letter of employment letter dated 23<sup>rd</sup> November 2006 and a Sponsorship Bond with the plaintiff dated the 4<sup>th</sup> December 2006. In further arguments, counsel for the defendant submitted that this court was divested of jurisdiction by law to determine any employment dispute. He urged the court to find the cause of action by the plaintiff is based on a letter of employment which provided for the signing of a Bond by the defendant.

3. The defendant was supposed to complete the period of the Bond which was part of the terms and conditions of the employment. The consideration for the bond was that the defendant was bound to work for the plaintiff and when the defendant resigned that is what triggered the present suit. The cause of action is merely founded on the fact that the defendant resigned from employment which constitutes a dispute as provided for under section 87(1) which provides as follows:-

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

**(a) An employer or employee neglects or refuses to fulfill a contract of service; or**

**(b) Any question, difference or dispute arises as to the rights or liabilities of either party; or**

**(c) . . .**

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

4. Moreover under section 12(1) of the Labour Institutions Act No.12 of 2007 it is provided 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 of the provisions of this act or any other legislation which extend 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 organization and a trade union or between a trade union, an employer’s organization, a federation and a member thereof”**

5. This application was opposed by the respondent. Counsel relied on a replying affidavit sworn by **John Rono** on 26<sup>th</sup> January 2010. Counsel submitted that the cause of action in this matter emanates from the breach of the 2<sup>nd</sup> contract by the defendant. The validity of that contract is not denied. And according to the provisions of section 12(1) of the Labor Institutions Act, the Jurisdiction of the Industrial Court is limited to the infringement of the matters contained in the Labor Act.

6. The plaintiff contends that the relationship of employee was terminated and the cause of action arose after the defendant had ceased to be an employee of the plaintiff which was a breach of the Sponsorship Bond.

The Industrial Court has jurisdiction on Employment Contract and the issues such as debt

collection 9 arising out of independent contracts cannot be dealt with by the Industrial Court. Counsel submitted that this was a commercial agreement which should be adjudicated on before a commercial court.

7. I have considered the rival submissions as summarized above. The issues for determination are two fold. Firstly, whether there was an employee employer relationship between the plaintiff and the defendant as at the time the suit was filed which could divest this court of the jurisdiction. Secondly, the issue of whether the claim is an independent commercial contract which falls within the jurisdiction of this court.
8. A careful reading of the provisions of section 12(1) of the Labor Institutions Act, it vests the jurisdiction of determining a claim of complaints of employer and employee in the cause of employment upon the Industrial Court. It is common ground in this matter that the defendant terminated his employment with the plaintiff in June 2007; therefore there was no employer employee relationship as at the time this suit was filed. On the second issue it is also a common ground that the claim is in regard to the sponsorship Bond entered into between the plaintiff and the defendant on 4<sup>th</sup> December 2006.
9. I find the letter of employment was separate from sponsorship Bond which was a separate contract with rights and obligations on each part. There is no employer/employee relationship between the plaintiff and the defendant any more after the defendant ceased to be on employment. The cause of action is a liquidated claim in respect of Bond sum as per the contract which cannot fall within the jurisdiction of the Labour Court because there is no employer employee relationship. For those reasons the application by the defendant is dismissed with costs to the plaintiff.

**RULING READ AND SIGNED ON 26<sup>TH</sup> MARCH 2010 AT NAIROBI.**

**M.K. KOOME**  
**JUDGE**