



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT ELDORET
JANE FRANCES ANGALIA PLAINTIFF

=VERSUS=

MASINDE

**MULIRO UNIVERSITY OF
SCIENCE AND TECHNOLOGY**
AND OTHERS DEFENDANT

RULING

Preliminary Objection

I. **Background:**

1. The relationship between the respondent 1st and 2nd and the exparte applicant is that of Master/Servant and or Employer/Employee respectively.
2. The exparte applicant, a female adult alleges that she was first employed by a University known as the Western University of Science and Technology and a Constituent of Moi University sometime in the year 2004. The university was later taken over by Masinde Mulilo College of Science and Technology which later became a University on 2nd January 2007.
3. The exparte applicant received a letter from the 1st Respondent on 27th November 2006 terminating her employment without the opportunity to be heard.

4. An appeal against this decision was rejected on the 20th December 2007.

5. Being dissatisfied with this, the exparte applicant filed for Judicial Review proceedings in Nairobi. Leave was granted on 3rd June 2008.

6. A Notice of Motion was thereafter filed on 18th June 2008. The file was ordered transferred to the High Court of Kenya Eldoret on 6th May 2009. The hearing was set for 11th May 2010 and later on 18th May 2010.

7. On the day called out for hearing of the Notice of Motion, a Preliminary Objection was raised by the Respondents.

II. Preliminary Objection

8. The Objection raised was on the Jurisdiction of the High Court. It appears that the Employment Act had been repealed sometime in the year 2007. **As a result a new Employment Act was enacted together with the Labour Institutions Act of 2007.**

9. Under the two new Legislation, the hearing of disputes between Master/Servant are now exclusively with the **Industrial Court of Kenya.**

10. The Respondent referred this Court to the **Employment Act 2007 part XII.** Disputes Settlement Procedure that reads;
Section 87(1)
Subject to the Provisions of this Act whenever:-
 - (a) *An employer or employee rejects 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) *Touching any misconduct, neglect or ill treatment of either part or any lying 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.*

Section 87 (2).

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

11. **Under the Labour Institutions Act of 2007.**

Section 12 (1) provides :

“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 to her 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 organization and a trade union, or between a trade union, an employers organization, a federation and a member thereof.

2). *An application claim or complaint may be lodged with the Industrial Court*

3).

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11).

12).

(a)

(b)

(c) ”

(Emphasis supplied)

**“ The high Court since the year 2007 has no Jurisdiction
to entertain disputes involving Master/Servants”**

III. **In reply**

12. The exparte applicant relied on the fact that the High Court has exclusive Jurisdiction to hear Judicial Review proceedings. The Industrial Court does not have this jurisdiction. The Court further has noted in the past the habits of raising frequent preliminary objections. He relied on the case law of

MUKISA BISCUIT MANUFACTURING CO. LTD

-versus-

WEST END DESTRIUTORS LTD

(1969) EA 696

that dealt on the issue of Preliminary Objection.

13. The matter herein is one of Judicial Review which is an alternative remedy that does not bar a litigant to pursue.

III. **Opinion**

14. Judicial Review proceedings are proceedings brought to check the excesses of an administrative or tribunal body. It deals specifically with the due process in which coming to a decision made by such body it is not injuries to that party. If it is, the Court would normally interfere.
15. Kenya has introduced a new act on employment law. It has clearly stated, as above, that the disputes arising within the relationship of Master/Servant lies exclusively with the Industrial Court.
16. The relationship between the parties in this Judicial Review proceedings is that of Master/Servant. What role thereof are these proceedings to have before Court?
17. Where the applicant can demonstrate that the Respondent has made a decision that is detrimental to her, in the process arrived at in making such decision.
18. The fact that a new legislation by way of the Labour **Institution Act No.12/2007 rule 12(1)** states that the Industrial Court shall have exclusive jurisdiction to hear a matter to Court. This therefore means that the High Court would not have jurisdiction to hear a matter that lies wholly with the Industrial Court.
19. If the Industrial Court though has the Jurisdiction to hear the cases exclusively, what happens to the High Court? The High Court must therefore give way to the Industrial Court. This being created by Statute.
20. I would therefore uphold the Preliminary Objection and declare that this Court has no Jurisdiction under the new Statutes namely, the **Labour Institutions Act 12/2007** and the Employment Act 2007 to entertain, determine any complaint referred under **Section 12(1) and Section 87 (2)** respectively of the two new Acts. This lies now exclusively with the Industrial Court.

21. The Notice of Motion 8th June 2009 therein be and is hereby struck out. There be costs to the Applicant/Respondent in the main Motion.

DATED THIS 3RD DAY OF JUNE 2010 AT ELDORET.

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**M.A. ANG'AWA,
JUDGE.**

Advocate

- (i) Gregory Ombito Advocate instructed by the firm of M/s G. Ombito & Co.
Advocates for the Applicant - Present
- (ii) Dismas Wambula Advocate instructed by the firm of M/s D. Wambula & Co.
Advocate for the Applicant/Respondent - Absent

ORDER: The above Ruling be distributed to all Magistrates in this Region and Kericho Region.

M.A. ANG'AWA
JUDGE
3/6/2010