

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (MILIMANI COMMERCIAL COURTS)
Civil Case 748 of 2008

CHRISTOPHER XALLION ONDIEKI PLAINTIFF

VERSUS

SAFARICOM LIMITED DEFENDANT

R U L I N G

Preliminary Objection dated 18/12/08 raised on the ground that Chamber Summons dated 16/2/2008 and suit ought to be heard and determined in the Industrial Property Tribunal under **Section 115** of the **Act** which provides:-

“Any party to the proceedings before the Tribunal may appeal in accordance with Rules made under this part from any order or decision of the Tribunal to the High Court.”

The Tribunal is established under **Section 113** of the **Act** for purpose of hearing and determining appeals in accordance with **Section 112** thereof. It appears that the **Act** provides for an elaborate method of resolving disputes. **Section 118** gives the Managing Director appointed under **Section 11** powers to refer matters to the Tribunal and that is where procedure starts. The Tribunal is empowered to grant the remedies as provided under **Section 106**, under **Section 113** and **114** such as injunction and other. **Section 115** provides for appellate powers to the High Court.

It is clear the matter arises from the Tribunal and if there is need on appeal to the High Court which is empowered to exercise appellate jurisdiction over the Industrial Property Tribunal. The High Court has no original jurisdiction under the **Act**.

I agree with the defendant and authorities relied on. The issue

of jurisdiction is crucial without which the court is acting in vain. I uphold the Preliminary Objection and order that this matter be filed in the Industrial Property Tribunal.

Costs of the application to be paid by plaintiff to defendant.

It is so ordered.

DATED, SIGNED and DELIVERED at Nairobi this 31st day of July, 2009.

JOYCE N. KHAMINWA

JUDGE