



JUDICIAL REVIEW

1. Industrial Court subordinate to the High Court
2. High Court cannot assume jurisdiction of a trade dispute or an award on it – s 65(1) of the Constitution
3. Where the Industrial Court has no jurisdiction High Court has a supervisory role and it can intervene notwithstanding s 17 of the Trade Disputes Act. Once a nullity always a nullity.
4. Leave to challenge an award given but stay declined for the above reasons.

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MISCELLANEOUS CIVIL APPLICATION NO. 1037 OF 2007

IN THE MATTER OF AN APPLICATION BY KARURI TOWN COUNCIL FOR LEAVE TO APPLY FOR JUDICIAL REVIEW ORDER OF CERTIORARI AND PROHIBITION

AND

IN THE MATTER OF THE TRADE DISPUTES ACT CAP 234, EMPLOYMENT ACT CAP 226 AND THE LOCAL GOVERNMENT ACT CAP 265 LAWS OF KENYA

AND

IN THE MATTER OF AN AWARD BY THE INDUSTRIAL COURT, NAIROBI IN RESPECT OF CAUSE NO. 80 OF 2006 KENYA LOCAL GOVERNMENT WORKERS UNION VS KARURI TOWN COUNCIL

BETWEEN

KARURI TOWN COUNCIL APPLICANT

AND

THE INDUSTRIAL COURT OF KENYA 1ST RESPONDENT

KENYA LOCAL GOVERNMENT WORKERS UNION 2ND RESPONDENT

RULING

While I agree that there are issues for contest I am unable to fully accept that this court has jurisdiction for the following reasons:

S 65(2) gives this court supervisory jurisdiction over subordinate courts in civil and criminal matters.

On the other hand s 65(1) of the Constitution and the Trade Disputes Act confers on the Industrial court what appears to be a special jurisdiction in industrial disputes. Going by the definition of Industrial disputes in the definition section of the Trade Disputes Act trade disputes are neither civil nor criminal.

Section 17 of the Trade Disputes Act purports to oust this court's judicial review jurisdiction but in a fitting case if the Industrial Court were to take up a matter that is outside the definition of a Trade Dispute as defined, in retrospect, I am of the view that this court if moved would be entitled to invoke its supervisory jurisdiction and section 17 of the Trade Disputes Act would not in my view, prevent the court from assuming jurisdiction because in that event the Industrial Court would be said to have had no jurisdiction ab initio.

However in this case it has not been demonstrated on a prima facie basis that the subject matter is not a trade dispute.

For the above reasons I grant leave as prayed but decline to order that leave granted operates stay for the reasons outlined above. Application for Judicial Review to be filed within the prescribed time as per the rules and served within 8 days failing which the order granted here shall automatically lapse.

DATED and delivered at Nairobi this 20th September, 2007.

J.G. NYAMU

JUDGE