



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CIVIL DIVISION**

**HIGH COURT CIVIL CASE NO. 25 OF 2017**

**CYRUS OMBUNA MACHINI.....PLAINTIFF**

**VERSUS**

**SAFARICOM LIMITED.....DEFENDANT**

**RULING**

1. The Defendant has raised the Preliminary Objection dated 5<sup>th</sup> April, 2017 on the following ground:

**“This Honourable Court lacks the jurisdiction to hear and determine this suit as the dispute herein relates or arises out of employment between an employer and employee by dint of the provisions of the Constitution of Kenya 2010, the Employment & Labour Relations Act, 2011 and the Works Injury benefits Act, 2007.”**

2. The Plaintiff filed the grounds of opposition dated 22<sup>nd</sup> December, 2017 and termed the Preliminary Objection as incompetent.

3. The Preliminary Objection was canvassed by way of written submissions which I have considered.

4. It is clear from the plaint that the dispute herein relates to an injury sustained in the course of duty. The suit is based on an employer and employee relationship. The Employment and Labour Relations Court has exclusive jurisdiction to hear the suit. The Employment and Labour Relations Court Act was enacted **“to establish the Employment and Labour Relations Court to hear and determine disputes relating to employment and labour relations and for connected purposes.”**

5. Section 12 of Employment and Labour Relations Court Act defines the jurisdiction of Employment and Labour Relations Court as follows:

**“exclusive original and appellate jurisdiction to hear and determine all disputes referred to it in accordance with Article 162(2) of the Constitution and the provisions of this Act or any other written law which extends jurisdiction to the Court relating to employment and labour relations”**

6. Section 87 of the Employment Act Cap 226 also provides for work injury disputes to be lodged before the Employment and Labour Relations Court as the only court which can determine such disputes.

7. It would serve the wider interests of justice to transfer the suit to Employment and Labour Relations Court for hearing and determination. As espoused by the Court of Appeal in the case of **David N Mugendi v Kenyatta University & 3 others [2013]eKLR** which was quoted in the case of **Ernest Kevin Luchidio v Attorney General & 2 others [2015] eKLR** which was relied on by the defence. The Court of Appeal stated as follows:

**“.....in endeavouring to meet the ends of justice untrammelled by procedural technicalities, we set aside the order striking out the appellant’s petition and direct that the High Court do transfer it to the Industrial Court which also has jurisdiction and authority to consider the claims of breach of fundamental rights as pertain to industrial and labour relations matters. It is only meet and proper that the Industrial Court do exclusively entertain those matters in that context and with regard to Article 165(5)(b). And in order to do justice, in the event where the High Court, the Industrial Court or the Environment & Land Court comes across a matter that ought to be litigated in any of the other courts, it should be prudent to have the matter transferred to that court for hearing and determination. These three courts with similar/equal status should in the spirit of harmonization, effect the necessary transfers among themselves until such time as the citizenry is well acquainted with the appropriate forum for each kind of claim. However, parties should not file “mixed grill” causes in any court they fancy. This will only delay dispensation of justice.”**

8. With the foregoing, the Preliminary Objection is sustained and the suit is hereby transferred to Employment and Labour Relations Court. Costs in cause.

**Dated, signed and delivered at Nairobi this 7<sup>th</sup> day of March, 2019**

**B. THURANIRA JADEN**

JUDGE