



**REPUBLIC OF KENYA**

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

**CIVIL CASE NO. 193 OF 1996**

**WILLIAM K. CHEMOSIT.....PLAINTIFF**

**VERSUS**

**KENYA FARMERS ASSOCIATION.....DEFENDANT**

**RULING**

1. The Constitution, 2010, at Article 162(2), establishes a special court to handle disputes that revolve around industrial and labour relations. Article 165(5), of the same Constitution, strips the High Court of jurisdiction over such matters. For avoidance of doubt, Article 162(2) states as follows:

*‘Parliament shall establish courts with the status of the High Court to hear and determine disputes relating to –*

*(a) employment and labour relations; and*

*(b) ...’*

On the other hand, Article 165(5) of the Constitution states as follows:

*‘The High Court shall not have jurisdiction in respect of matters-*

*(a) ...*

*(b) falling within the jurisdiction of the courts contemplated in Article 162(2).’*

2. In obedience to Article 162(2) of the Constitution, Parliament did, through the Employment and Labour Relations Court Act, No. 20 of 2011, establish such a court, known as the Employment and Labour Relations Court. The jurisdiction of the Employment and Labour Relations Court is set out in section 17 of the Employment and Labour Relations Court Act. The said court has exclusive original and appellate jurisdiction to hear and determine all disputes referred to it in accordance with Article 162(2) of the Constitution, relating to employment and labour relations, which include disputes relating to or arising out of employment between an employer and an employee.

3. The pleadings lodged herein, sometime in 1996, and amended in 1999, disclose that the parties hereto were in an employer and employee relationship at the time material to the dispute. The cause of action is said to have had arisen in the course of the said employment. It is alleged in the plaint that the plaintiff was wrongly dismissed from employment. The suit, therefore, turns on matters that relate to industrial or employment or labour relations.

4. I note that the matter was heard by Sitati J. in 2015 and judgment was delivered on 7<sup>th</sup> April 2016. The principal findings of the court were that the plaintiff had not been wrongfully or unlawfully dismissed, that the plaintiff was entitled to 50% salary for the first 90 days of the period that he was under suspension from employment, and that he was entitled to one month’s pay in lieu of notice. Thereafter, the court went on to work out the sums of what the plaintiff was entitled to and to order that those amounts be paid to him.

5. The matter that I am called upon to determine is a Motion that is dated 16<sup>th</sup> July 2018. It seeks review of the judgement of 7<sup>th</sup> April, 2016. It is argued that the figures worked out by the Judge relating to pension were at variance with the evidence, that the court, despite finding that the plaintiff was entitled to two months leave in lieu of notice, amongst other entitlements, did not make any orders relating thereto, among other grounds.

6. Do I have jurisdiction to determine that application, and, indeed, to handle the matter generally, in view of what I have stated above on jurisdiction? I do not think so. The issue, as to what a court ought to do where it forms an opinion that it has no jurisdiction, was settled by

the Court of Appeal in *Owners of the Motor Vessel 'Lillian S' vs. Caltex Oil (Kenya) Limited* (1989) KLR 1, where it said:

*'Jurisdiction is everything. Without it a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings ... A court of law downs its tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.'*

7. The Constitution, 2010, came into operation on 27<sup>th</sup> August 2010. In my understanding that, that is the effective date when the High Court lost jurisdiction over matters in the nature of the instant one. It follows, then, that I, sitting as Judge of the High Court, have no jurisdiction to deal with this matter. I cannot make any one more step in it, besides writing this ruling, and I should down my tools at this point. The dispute in question falls squarely within the exclusive jurisdiction of the Employment and Labour Relations Court. I shall, accordingly, direct that the matter be transferred to the Employment and Labour Relations Court at Kisumu for final disposal or for further directions.

**DATED, SIGNED and DELIVERED at KAKAMEGA this 9<sup>th</sup> DAY OF October , 2019**

**W. MUSYOKA**

**JUDGE**