



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL CASE NUMBER 2083 OF 2000

DAVID NJORGE KINUTHIA.

JOSEPH WACHIRA MWANGI.

PHILIP M. KATIA & 651 OTHERS.....PLAINTIFFS

VERSUS

GNANJIVAN SCREWS FASTENERS LTD..... 1ST DEFENDANT

GNANJIVAN WIRE GALVANISHING MILLS LTD... 2ND DEFENDANT

SPECIAL STEELMILLS LTD.....3RD DEFENDANT

NALIN NAILS WORKS LTD..... 4TH DEFENDANT

ALL COMMONLY KNOWN AS NALIM GROUP OF COMPANYS

A.D. GREGORY.....5TH DEFENDANT

A. Z. SHEIKH.....6TH DEFENDANT

R U L I N G

The plaintiffs herein were employees of the 1st, 2nd, 3rd and 4th defendants who brought this suit following termination of their employment with the defendants. In a judgment delivered by Mohamed Ibrahim J. (as he then was) the Plaintiffs were granted the orders sought in their plaint and that they were entitled to be paid terminal dues as per the agreement dated 17th January, 1999. A decree was subsequently drawn but to date no settlement has been reached.

This is a very old case going by the year it was field. That notwithstanding, there is now before an application by the Plaintiffs by way of Notice of Motion under Articles 159 and 162 of the Constitution, Sections 12, and 13 of the Employment and Labour Relations Court Act No. 18 of 2014, Sections 1A, 1B, 3, 3A, 17 and 18 of the Civil Procedure Act, seeking the substantive order that this file be transferred forthwith to the Employment and Labour Relations in Division of the High Court at Nairobi for further hearing and determination of the pending proceedings herein. That Court is not a Division of the High Court but a court of equal status.

The reasons given by the plaintiffs are essentially that, the suit herein is purely an employment and labour relations dispute and when the proceedings were filed first there were no High Court divisions as currently constituted and that it will be at the interest of justice that the orders sought should be granted.

The other reason given is that, there is urgency in the matter because the delay in determining the same is causing prejudice to the plaintiffs. There is some reference to the collective bargaining agreement which formed the basis of the claim leading to the judgment cited above.

In addition to the said grounds there is supporting affidavit sworn by Hesbon Angano Agurama.

The application is opposed. Parties have made oral submissions which I have noted together with the cited authorities.

Article 162 (2) of the Constitution mandated the Parliament to establish courts with the status of the High Court to hear and determine disputes relating to employment and labour relations in addition to a court to deal with land matters. The jurisdiction of such courts was to be

determined by Parliament. Indeed, Parliament enacted the Employment and Labour Relations Court Act No. 20 of 2011 setting out the jurisdiction of that court under Section 12 thereof.

That court is conferred with exclusive original and appellate jurisdiction to hear and determine disputes referred to in Article 162 (2) of the Constitution aforesaid.

Article 165 (5) of the Constitution directs the High Court of any jurisdiction to entertain matters reserved for the jurisdiction of the courts contemplated in Article 162(2) of the Constitution.

In Civil Application 2 of 2011 - **Samuel Kamau Macharia Vs KCB & 2 others**, the Supreme Court Stated as follows: -

“A court’s jurisdiction flows from either the constitution or legislation or both. Thus, a court of law can only exercise jurisdiction as conferred by the constitution or other written law. It cannot arrogate to itself, jurisdiction exceeding that which, is conferred upon it by law. We agree with counsel or the 1st and 2nd respondents in his submission that the issue as to whether a court of law has jurisdiction to entertain a matter before it, is not one of mere procedural technicality; it goes to the very heart of the matter for without jurisdiction, the court cannot entertain any proceedings.”

I have not come across any decision that has addressed or defined what the Constitution or statute has referred to as “**original jurisdiction**”.

Black’s Law Dictionary has defined “**original jurisdiction**” to mean “**A courts power to hear and decide a matter before any other court cannot review the matter.**” What this implies is that, such a court should be the first port of call by any litigant who approaches the same with a dispute. That is also in agreement with the definition of the word “**origin**” in the Concise Oxford English Dictionary 12th Edition where it is defined as “**the point where something begins or arises.**” The word “**original**” is defined in the same dictionary as “**existing from the beginning; first or earliest**”

Whereas, the law confers “**original jurisdiction**” upon the Employment and Labour Relations Court to hear and determine disputes of the nature as reflected in this record, it would be noted that the decree was issued by the Civil Court long before the present application. It cannot be said, therefore, that that court has original jurisdiction in this matter. The constitution makers had in mind situations whereby disputes of this nature would be addressed after its promulgation. Sixth Schedule relating to transitional and consequential provisions provided at Section 22 that: -

“All judicial proceedings pending before any court shall continue to be heard and shall be determined by the same court or a corresponding court established under this constitution or as directed by the Chief Justice or the Registrar of the High Court.”

What this means is that, this dispute which is still pending shall remain in the Court that gave the decree which is yet to be executed. I bear in mind the fact that the dispute is at its tail end, and if an order of transfer were to be issued delay is likely to occur in view of the workload, which is common knowledge, being handled by the Employment and labour Relations Court. This being an old case, the order for transfer is likely to cause injustice to the parties herein. Guided by the Constitution and Attendant Statute I find that the order sought in this case is lacking in merit and therefore, decline to issue the same. It follows the application is hereby dismissed, but each party shall bear their own costs. Parties shall approach the registry to take an early date for the pending issues in this matter.

Dated, signed and delivered at Nairobi this 14th day of November, 2019.

A.MBOGHOLI MSAGHA

JUDGE