



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL SUIT NO. 618 OF 2003

RICHARD KIOKO KIUNDI.....PLAINTIFF

VERSUS

KENYA PIPELINE COMPANY.....DEFENDANT

RULING

1. The Plaintiff filed this suit against the Defendant essentially seeking a sum of KShs. 220,359,009.00 with interest at commercial rates prevailing from time to time from April, 2003 until full payment, damages for breach of contract, a certificate of service, damages on the footing of aggregated damages, general damages for defamation and a permanent injunction restraining the defendant by itself, its servants and/or agents or otherwise from publishing or causing to be published defamatory statements of and concerning the Plaintiff.

2. The Plaintiff has now filed a motion dated 23rd April, 2015 seeking that judgment be entered against the Defendant on admission in his favour in terms of the prayers in the further amended plaint dated 6th December, 2014. He contended that he was employed as an accountant and later elevated to senior accountant. That on 13th March, 2003, the Defendant falsely alleged that he knowingly authorised a fraudulent money disbursement with a view of defrauding the company which accusations he stated were maliciously made. He stated that his dismissal was malicious for the reason that the committee which made a decision on his dismissal was improperly constituted since the director representing the ministry, the chairman board of directors, a director and company secretary were absent. He stated that during the deliberations of the disciplinary committee, Engineer John Kihara Chege and Chief Mechanical Engineer Kakai Kuteli indicated that the disbursement was made pursuant to a requisition made from the department of engineering and were approved by them as required and that this fact was admitted in court before Judge Onyancha. The Plaintiff referred this court to a ruling by Judge Onyancha dated 27th February, 2014.

3. In response to the application, the Defendant filed a preliminary objection and a replying affidavit. The preliminary objection was that this court has no jurisdiction to hear and determine this application. The Replying affidavit of Ogembo George also raised the issue of jurisdiction. It was particularly stated that the origin of this claim is the termination of employment which falls within the jurisdiction of the Industrial Court.

4. I have considered the dispositions herein together with the submissions tendered. Bearing in mind that the issue of jurisdiction has been raised, it ought to be determined at the first instance in terms of the **Owners of the Motor Vessel "Lilian S" Caltex Oil (Kenya) Ltd (1989) KLR 1** Where it was stated:-

"Jurisdiction is everything. Without it, a court has no power to make one more step. 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."

5. The Industrial Court was established under Article 162 (2) of the Constitution to hear and determine ***disputes relating to employment and labour relations***. Section 12 (1) (a) of the Industrial Court Act enunciates that the Industrial Court shall hear and determine disputes relating to or arising out of employment between an employer and an employee. Channelling my reasoning from the purpose for which the Industrial Court was established i.e. to hear and determine disputes relating to employment and labour relations.

6. From the provisions of Section 18 of the Industrial Court Act, the Industrial Court is bestowed with 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.

7. The dispute herein being a controversy between an employer and employee concerning the terms and conditions of employment, the claim falls within the ambit of claims to be heard and determined by the Industrial Court. I in the circumstances find that this court has no jurisdiction to deal with this application. The application herein is dismissed with costs. Parties to seek redress before the proper court. Consequently, this suit is withdrawn from this court and transferred to the Industrial Court for hearing and determination.

Dated, Signed and Delivered in open court this 17th day of July, 2015.

J. K. SERGON

JUDGE

In the presence of:

.....for the Plaintiff.

..... for the Defendant.