



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL DIVISION
CIVIL CASE NO 359 OF 2007

SAIDA RASHID MBONIKAPLAINTIFF

V E R S U S

- 1. GROUP 4 SECURITY SERVICES LTD**
- 2. DOMINIC OOKO.....DEFENDANTS**

R U L I N G

- 1.** This case is purely an employer/employee dispute. It was filed in this court in the year 2007. Hearing thereof has never commenced and the case is not part-heard before this court.
- 2.** By dint of **Articles 162(2) and 165(5) of the *Constitution of Kenya, 2010*** and **section 12 of the *Industrial Court Act, 2011*** the High Court no longer has jurisdiction to hear and determine employer/employee disputes, the jurisdiction therefor being reserved exclusively to the ***Industrial Court***.
- 3.** By a considered ruling dated 30th November and delivered on 2nd December 2011 (unreported) in ***Nairobi HCCC No. 515 of 2003, Benson Ndwiga Njue & Others – vs – Central Glass Industries Ltd***, I held that the transitional provisions of **section 22 of the Sixth Schedule to the *Constitution of Kenya, 2010*** have application only to those cases that were pending **part-heard** before any court at the time of promulgation of the Constitution in August 2010, not cases **where hearing had not yet commenced**. So far as I know that ruling is still in place and has not been reversed on appeal. I am aware that a learned judge of the ***Industrial Court*** subsequently differed with the ruling.
- 4.** I referred to my said ruling in another ruling dated 3rd and delivered on 5th September 2013 (unreported) in ***Nairobi HCCC No. 399 of 2007, Samuel Mutunga Thiru & Others – vs – Colgate-Palmolive (East African) Ltd*** which was relied upon by the learned counsel for the Plaintiff when presenting the **notice of motion herein dated 7th November 2011** which is the subject of this ruling. The application seeks transfer of this suit to the ***Industrial Court***.
- 5.** In opposing the application learned counsel for the Defendant relied upon a ruling of Rawal, J (as she then was) dated and delivered on 4th November 2011 (unreported) in ***Nairobi HCCC No. 4973 of 1992, B. P. Bacheta –vs- The Government of the United States of America***. The learned judge was

dealing with a similar application for transfer of a suit **Industrial Court**.

6. Rawal, J held that the High Court had jurisdiction under section 22 of the Sixth Schedule of the Constitution to continue hearing the case. But the learned judge noted that the case before her was part-heard and the issue of liability had been sorted out, the only thing remaining being assessment of damages.

7. I was not aware of this ruling of Rawal, J when I prepared my aforesaid ruling dated 30th November 2011; but the case before Rawal, J being **part-heard** before the High Court, the learned judge's decision was in consonance with my said ruling and there is no conflict. The case before Rawal, J is distinguishable from the present case in that the case was part-heard while hearing of the present case has not commenced before the High Court.

8. It is true that no provision of the **Civil Procedure Act, Cap 21** or the **Civil Procedure Rules, 2010** can found a jurisdiction of this court to transfer a matter to the **Industrial Court** as that court is not subordinate to this court. But there is nothing to fetter the inherent jurisdiction of this court, in the interests of justice, to direct such transfer.

9. In the event I will allow the application. This suit is hereby transferred to the Industrial Court for disposal. It is so ordered.

10. Costs of the application shall be in the cause.

DATED AND SIGNED AT NAIROBI THIS 13th DAY OF FEBRUARY 2014

H.P.G. WAWERU

JUDGE

DELIVERED THIS 14TH DAY OF FEBRUARY 2014.