



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT MOMBASA

CIVIL CASE NO. 139 OF 2002

NAJMA ABDALLAPLAINTIFF

-V E R S U S-

POLLMANS TOURS & SAFARIS LTD DEFENDANT

RULING/DIRECTIONS

1. There is no dispute that the Plaintiff's claim in this suit relates to her allegation of unfair dismissal from her employment with the Defendant. The case started for full hearing before Njagi, J on 7th June 2006. The Plaintiff has now closed her case.
2. Justice Njagi is no longer based in this Court and when the matter came before me I informed the parties that I would transfer it to the Mombasa Industrial Court. The Defendant objected and requested that it be given time to address the Court to show that the law does not support the transfer of this case.
3. On the date given for that submission only the Defendant's learned Counsel appeared.
4. Mr. Inamdar for the Defendant submitted that although this Court has discretion on whether to transfer this case the Judicial pronouncement have been diverse with some Courts finding that such transfer should not occur whilst others have found that such transfers can occur. Learned Counsel did not cite any authority either way.
5. In my view this matter should rightly be heard by the Industrial Court. That would be in accordance with the provisions of the Constitution. Article 162 sets out the systems of the Court. Article 162(2) provides-

“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. the environment and the use and occupation of, and title to, land.”

The Court set up under that Article is of the same status as the High Court.

6. Article 165(5) forbids the High Court from hearing matters reserved for hearing before the Courts

set up in Article 162(2). Article 165(5) is in the following terms-

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

- a. **reserved for the exclusive jurisdiction of the Supreme Court under this Constitution; or**
- b. **falling within the jurisdiction of the Courts contemplated in Article 162(2).”**

7. The Court of Appeal in the case **DANIEL N. MUGENDI –Vs- KENYATTA UNIVERSITY & 3 OTHERS (2013)eKLR** considered the jurisdiction of the Industrial Court and in so doing referred to a High Court decision in the case **UNITED STATES INTERNATIONAL UNIVERSITY (USIU) –Vs- ATTORNEY GENERAL & OTHERS** where the High Court had this to say-

“49. A correspondent Court to the High Court, that is the Industrial Court, has now been established to deal with employment and labour matters. It follows that all employment and labour relations matters pending in the High Court shall now be heard by the Industrial Court which is now a court of the status of the High Court. The High Court therefore lacks jurisdiction to deal with matters of employment and labour matters whether filed in the High Court before or after the establishment of the Industrial Court.” (undertaking supplied).

The Court of Appeal continued to refer to USIU case as follows-

“While adopting the position enunciated in the South African case of Gcaba Vs Minister of Safety and Security & Others CCT 64/08 (2009) ZACC 26, Majanja, J proceeded:

‘44. ... I would adopt the position of the Constitutional Court of South Africa in Gcaba Vs Minister of Safety and Security (Supra). The Industrial Court is a specialist court to deal with employment and labour relations matters. By virtue of Article 162(3), Section 12 of the Industrial Court Act 2011 has set out matters within the exclusive domain of that court. Since the court is of the same status of the High Court, it must have the jurisdiction to enforce labour rights in Article 41 and the jurisdiction to interpret the Constitution and fundamental rights and freedoms, is incidental to the exercise of jurisdiction over matters within its exclusive domain. In any matter falling within the provisions of Section 12 of the Industrial Court Act, then the Industrial Court has jurisdiction to enforce, not only Article 41 rights but also all fundamental rights ancillary and incidental to the employment and labour relations including interpretation of the Constitution within the matter before it.’”

8. The Court of Appeal having considered that decision of the High Court amongst others then stated-

“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 within 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.”

9. I have nothing more to add to what is stated herein before. I therefore hereby order that this case be and is hereby transferred to Mombasa Industrial Court for disposal.

DATED and DELIVERED at MOMBASA this 15TH day of MAY, 2014.

MARY KASANGO

JUDGE