



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
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IN THE HIGH COURT OF KENYA AT NAIROBI
Civil Case 294 of 2010

AMON MWANIKI NJOGU.....PLAINTIFF

- VERSUS -

WORLD VISION INTERNATIONAL.....1ST DEFENDANT

PATRICIA MULWA.....2ND DEFENDANT

CHRIS SMOOT.....3RD DEFENDANT

R U L I N G

1. Before the court is a Chamber Summons application dated **21st May 2012**. It is brought under **Sections 5 and 11 of the Civil Procedure Act, Order VII Rule (1), Order VI Rule 13 (d), of the Civil Procedure Rules,**and **Sections 87 of the Employment Act**. The application seeks three (3) orders namely:-

- 1.** That the Plaintiff’s verifying affidavit filed herein together with the Plaintiff be struck out.
- 2.** That the Plaintiff’s Plaintiff and consequently the entire suit be struck out.
- 3.** That the Plaintiff be condemned to pay the costs of the application.

2. The application is based on the grounds stated therein namely:-

- a)** That the Plaintiff is allegedly verified by an irregular, incompetent and defective Affidavit.
- b)** That the incompetence of the verifying affidavit goes into the root of the Plaintiff’s suit, accordingly, the Plaintiff as it stands, is incompetent and a nullity.
- c)** That the Plaintiff is an abuse of the process of this Honourable Court, the same having arisen from an employment contract between the parties herein and whose dispute settlement procedure is specifically addressed in the Employment Act, 2007.
- d)** That by virtue of the provisions of the Employment Act and other enabling provisions of the

law, including the Civil Procedure Act, this matter is improperly before this Honourable Court at first instance.

e) That it is in line with the law and in the interest of efficiently dispensing with justice, that the Honourable Court do allow this application, as prayed.

3. The application is supported by affidavit of **PATRICIA MULWA** dated **21st May 2010**. The affidavit mainly amplifies the above grounds.

4. The affidavit is opposed vide a replying affidavit of the Plaintiff **AMON WANJIKU NJOGU** dated **1st December 2010**.

5. The application is premised on two main grounds that is the verifying affidavit is alleged to be defective and secondly that this court has no jurisdiction to hear the suit since it is a matter which should be heard and determined at the Industrial Court and not this court. The Applicant submitted that since under Section 162 of the Constitution this court has no jurisdiction to hear the matter, this court also has no jurisdiction to transfer the matter to the Industrial Court and that the only jurisdiction that this court has is to dismiss the matter.

6. When the applications came up for hearing *inter-partes* the Respondent was not represented and so there are no submissions for the Respondent. I have considered the Respondent's replying affidavit. It only addresses the issue of the defective affidavit and is silent on jurisdiction.

On the issue of the defective verifying affidavit it is true that the same was sworn on **11th April 2010**, yet as at that date there was no Plaintiff. The Plaintiff herein is dated **22nd April** and filed in court on **7th May 2010**. It is clear that the said verifying affidavit dated **11th April 2010** could not have verified the contents of a Plaintiff dated **22nd April 2010** and filed in court on **7th May 2010**. This is a serious anomaly, which, however, on its own, can be cured by a direction that a fresh verifying affidavit be filed.

7. Of greater concern however is the submission that this matter belongs to the Industrial Court and that this court has no jurisdiction to try and determine the matter.

8. The **Labour Institutions Act 12 of 2007** and **The Employment Act 2007** came into effect in 2007 about six (6) years before this suit was filed.

Section 12 of the **Act** gives jurisdiction to the Industrial Court to hear and determine disputes emanating from Employment Contracts. An extract of the Act is in the Defendant's Supplementary List of Authorities filed on **22/6/2011**.

The Employment Act 2007 gave the labour disputes resolution mechanisms in **Section 87**. In **Section 87 (1)** it outlines the disputes that are likely to arise between the employee and employer on performance of the contract.

In **Subsection (2)** it states that:-

“No court other than the Industrial Court shall determine any complaint or suit referred to in Subsection (1).”

Section 162 of the **Constitution** states:-

“Parliament shall establish Courts with status of High Court to hear and determine disputes relating to: -

(a) employment and labour relations.”

That has sealed the fate of this case. This court has no jurisdiction to hear and determine this suit. Also, since the Industrial Court enjoys same status as the High Court, the High Court has no jurisdiction under **Section 17 and 18** of the **Civil Procedure Act** to transfer the suit to the Industrial Court as the Industrial Court is not a court subordinate to the High Court. As this suit lacks jurisdiction, it can only strike out the same.

I allow the Application dated **21st May 2012** as prayed.

It is so ordered.

DATED, READ AND DELIVERED AT NAIROBI

THIS 2ND DAY OF OCTOBER 2012

E. K. O. OGOLA

JUDGE

PRESENT:

N/A for the Plaintiff

Kimani Mungai H/B for Mrs. Mbugua for the Defendants

Teresia – Court Clerk