



Nyamai v Naivasha Rocky Eco-Lodge aka Rocky Resort; Elima Art Depot Limited (Objector) (Employment and Labour Relations Cause E003 of 2023) [2024] KEELRC 1862 (KLR) (17 July 2024) (Ruling)

Neutral citation: [2024] KEELRC 1862 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU
EMPLOYMENT AND LABOUR RELATIONS CAUSE E003 OF 2023**

**HS WASILWA, J
JULY 17, 2024**

BETWEEN

DANIEL NZIOKA NYAMAI CLAIMANT

AND

NAIVASHA ROCKY ECO-LODGE AKA ROCKY RESORT RESPONDENT

AND

ELIMA ART DEPOT LIMITED OBJECTOR

RULING

1. The Respondent Judgment Debtor has raised a Preliminary Objection before this court dated 12.6.2024 on the grounds that this court lacks jurisdiction to make further orders against the directions of the Respondent on the Notice to Show Cause issued against him under the provisions of Section 3 (1) of the *Companies Act*. Section 3 (1) of the *Companies Act* in the definition section of the Act and has a range of words being defined but the Applicant has not pointed out what word in respect of this application is in context.
2. That notwithstanding the only contentment by the Applicant is that this court lacks jurisdiction to have the NTSC by ordering the lifting of the veil of the Respondent's company being the only court that handles company matters in the High Court.
3. I wish to state that the claim as it stands is an employment claim. When it comes to execution of the judgment of this court, the law is clear in that this court has same powers to execute court's orders under the *Civil Procedure Act*.
4. Rule 32 of the *Employment and Labour Relations* rules state as follows:

“ Execution and warrants



- (1) The Registrar shall issue an order in execution of a decree.
- (2) Rules on execution of an order or decree shall be enforceable in accordance Civil Procedure Rules”.

5. Article 162 (2) of the *Constitution* is also clear that this court has the same status as the High Court and in dealing with Employment and Labour Relations cases, the Hon. J. Majanja (may his soul rest in peace) in Petition 170 of 2012 *USIU v Attorney General* (2012) eKLR stated this:

“ 44. In the final analysis, I could adopt the position of the Constitutional Court of South Africa in *Gcaba v 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 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 a matter before it.

45. In light of what I have stated, I find and hold that the Industrial Court as constituted under the *Industrial Court Act*, 2011 as court with the status of the High Court is competent to interpret the Constitution and enforce matters relating to breach of fundamental rights and freedoms in matters arising from dispute falling within the provisions of section 12 of the *Industrial Court Act*, 2011.

Status of the matters pending in the High Court

46. Having disposed of the issue of Industrial Court’s jurisdiction, I now turn to the issue raised by Mr. Ochieng’ Oduol that the Industrial Court’s jurisdiction is limited to hearing cases filed after the establishment of the Industrial Court. The issue is whether employment and labour relations matters which raise constitutional issues is whether employment and labour relations matters which raise constitutional issues filed in the High Court prior to the establishment of the Industrial Court should be handled by the Court considering that at the time the matters were filed it lacked the /status of the High Court’/

47. The answer to this question is to be found at Article 165 (5) (6) which categorically states that this court, the High Court, is not to exercise jurisdiction of the court’s established in Article 162 (2) .

Establishment of the Industrial Court is complete once Judges to that court are appointed. (See *Brookside Dairy Limited v Attorney General and the Industrial Court* (*supra*) and *James Kuria Ndirangu v Dr. Willy Mutunga and Others* Nairobi Petition No. 50 of 2012 (unreported). This would only leave the



Industrial Court as the only other forum for the exercise of the jurisdiction over cases dealing with matters described in section 12 of the *Industrial Court Act, 2011*”.

6. The submissions by the applicant that this court cannot execute its own judgment when the procedure would involve procedure the Company’s Act is my view as narrow interpretation of the law which in my view entails the independence of this court.
7. I therefore find that the Preliminary Objection lacks merit and is dismissed accordingly with costs.

RULING DELIVERED VIRTUALLY THIS 17TH DAY OF JULY, 2024.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of: -

Ndichu for Respondent – Present

Court Assistant - Fred

