

seeking leave to apply for those orders. For avoidance of doubt this application is for leave to apply for the said judicial review orders.

The jurisdiction of this court has been challenged. I should therefore decide the issue right away since jurisdiction is everything without which, I should not make one more step (See **Owners of Motor Vessel "Lillions" -Vs- Caltex Oil (Kenya) Limited (1959(KLR1))** The starting point is the Constitution. **Articles 162 and 165** are in the following terms:-

"162 (1) The superior courts are Supreme Court, the Court of Appeal, the High Court and the courts mentioned in clause (2).

(2) 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, occupation of and title to land.

(3) Parliament shall determine the jurisdiction and functions of the court contemplated in clause (2).

.....

165 (5) 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)"

A plain reading of Article **162(5) (b)**, shows that disputes relating to employment and labour relations are expressly excluded from the jurisdiction of the High Court. Those disputes can only be heard and be determined by courts established by parliament under the provisions of **Article 162(2)** of the **Constitution**.

Parliament then enacted the **Industrial Court Act No. 20 of 2011**. The said Act, in Section 12, provides as follows:-

"12(1) The court shall have 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 including -

(a) disputes relating to or arising out of employment between an employer and an employee;

(b) disputes between an employer and a trade union;

(c) disputes between an employer's organisation and a trade union organisation;

(d) disputes between trade unions

(e) disputes between employer organisations;

(f) disputes between employers' organisation and a trade union;

(g) disputes between a trade union and a member thereof.

(h) disputes between an employer's organisation or a federation and a member thereof.

(i) disputes concerning the registrar and election of trade union officials; and

(j) disputes relating to the registration and enforcement of collective agreements.”

So, by virtue of the provisions of **Section 12(1) (a)** of the said Act, the Industrial Court has exclusive jurisdiction to hear and determine all disputes relating to or arising out of employment between an employer and an employee.

There is no dispute that the relationship between the applicant and the respondent was that of an employee and employer respectively. Indeed it is the dismissal of the applicant by the respondent that has precipitated the dispute. There can therefore be no gainsaying that the dispute between the applicant and the respondent relates to or arises out of the employment between the respondent and the applicant.

The Industrial Court has been constituted and is now fully operational. That being the case, the High Court lacks jurisdiction to hear and determine the dispute between the applicant and the respondent. I am not alone in this conclusion. **Majanja J in United States International University - Vs- The Attorney General and 2 others (2012) e KLR** held as follows in a dispute over alleged breach of fundamental rights and freedoms:-

“The High Court 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.”

Having come to the conclusion that I have no jurisdiction to entertain the ex-parte applicant's application, I must down tools and take no further step in this matter. I do not therefore have to consider other arguments and authorities relied upon by the applicant as those arguments and authorities would support a substantive motion if it is to be filed.

In the premises, leave is declined.

I make no order as to costs.

It is so ordered

**DATED AND DELIVERED AT ELDORET
THIS 6TH DAY OF NOVEMBER, 2012**

**F. AZANGALALA
JUDGE**

Read in the presence of:-

Mr. Nyamweya for the Applicant and

Mr. Nyolei H/B for Nyaundi for the Respondent.

**F. AZANGALALA
JUDGE
6TH NOVEMBER, 2012**