Embassy of Sweden Nairobi v Kusewa & another (Civil Appeal 345 of 2017) [2020] KECA 954 (KLR) (24 April 2020) (Judgment)

Neutral citation: [2020] KECA 954 (KLR)

REPUBLIC OF KENYA

IN THE COURT OF APPEAL AT NAIROBI

CIVIL APPEAL 345 OF 2017

W KARANJA, HM OKWENGU & F SICHALE, JJA

APRIL 24, 2020

BETWEEN

EMBASSY OF SWEDEN NAIROBI .... APPELLANT

AND

LUCY MUINGO KUSEWA AND RENALD MBONJE MJOMBA . RESPONDENT

(Being an appeal from the ruling and order of the Employment and Labour Relations Court at Nairobi (Hellen Wasilwa, J). dated the 31st July 2017 in ELRC Cause No. 2193 of 2015 Consolidated with ELRC Cause No. 2194 of 2015)

JUDGMENT

1. This is an appeal stemming from the Ruling of the Employment and Labour Relations Court (ELRC) sitting in Nairobi where the learned Judge by a Ruling dated 31st July, 2017 dismissed the appellant's application dated 30th March, 2016.

2. Both respondents were employed by Embassy of Sweden (the appellant), which is a foreign diplomatic mission. Lucy Muingo Kusewa (1st respondent) was employed on 16th January, 2012 as the Operations Controller while Renald Mbonje Mjomba (2nd Respondent) was employed on 24th November, 2011 as the National Programmes Officer, Institutional Development, Anti-corruption and Governance. On 29th September,2014, the appellant announced its decision to restructure its operations which restructuring was to also include relocation and transfer of its regional offices to Addis Ababa and Stolckholm. This process had the effect of rendering the respondents redundant.

3. The respondents and other workers being wary of what would happen to them, sought clarification from the appellant as to their terminal dues and other benefits. The respondents, whose contracts of employment were governed by the Terms and Conditions for the locally employed personnel of the Embassy, were informed that they did not qualify for pension as they had not worked with the Embassy

for more than 5 years as required under the Terms and Conditions for locally employed staff at the Embassy.

4. Aggrieved by the employer's decision the respondents moved to the ELRC on 9th December, 2015, challenging their termination and also seeking various reliefs under the *Employment Act*, 2007 including: a declaration that they were permanent and pensionable employees, 12 months compensation for wrongful, unfair and/or unfair termination of employment, pension dues, costs and interest.

5. The appellant, by a Motion on Notice dated 9th February, 2016 moved the ELRC seeking to have the respondent's suit struck out with costs. It was the appellant's contention that as an extension of Sweden, which is a sovereign nation, it enjoys immunity from criminal, civil and administrative jurisdiction of the receiving state. It contended that the sending state had not waived the immunity nor has it consented to the jurisdiction of the receiving state, being Kenya. By reason of the foregoing, the appellant contended that the ELRC lacked jurisdiction to entertain the claim and therefore could not make any of the orders sought.

6. The respondents opposed the application by Grounds of Opposition contending that: the application was not anchored on any relevant provision of the law nor was there any law to support the orders sought by the appellant; the application was premature and totally unwarranted since the appellant had not filed a response to the claim; the objection raised was a matter that could only be resolved by the court after a full hearing hence the orders sought should essentially be canvassed in the main suit; the orders sought would amount to a violation of their rights to a fair hearing under Article 50 of *the Constitution* and grant of the said orders would be a violation of their right of access to justice under Article 48 of *the Constitution* and; the appellant had moved the court with unclean hands on account of want of material disclosure.

7. On 14th September, 2016, the court directed that the appellant's motion be canvassed by way of written submissions. The appellant filed its submissions on 29th September, 2016 while the respondent filed its submissions on 18th October, 2016. Upon consideration of all the arguments and submissions by the respective parties the court dismissed the application vide a Ruling delivered on 31st July, 2017. The court held that although the appellant enjoyed diplomatic immunity, the immunity was restrictive and did not cover employment matters as expressly outlined by the United Nations Convention on Jurisdictional Immunities of States and their property 2004. The court was of the view that Employment matters fall under the purview of private law where immunity is restricted under the *Privileges and Immunities Act* and the Vienna Convention on the Law of Treaties. It is the aforesaid decision that prompted the appeal before this Court.

8. The appeal is anchored on the Memorandum of Appeal dated 4th October, 2017 where the appellant challenges the decision of the ELRC on grounds that the learned Judge erred: in dismissing the appellant's application by holding that the appellant is subject to the jurisdiction of the Kenyan courts; by failing to consider that the appellant is an extension of a sovereign nation and had not waived immunity or submitted to the jurisdiction of the receiving state; holding that absolute immunity is no longer viable; in holding that the immunity held by the appellant is restrictive and does not cover employment matters and; in holding that employment matters fall under private law where immunity is restricted under the *Privileges and Immunities Act* and the Vienna Convention on the Law of Treaties.

9. The appeal was canvassed by way of written submissions and oral highlights where parties were represented by learned counsel.

10. Mr. Kalume, counsel for the appellant submitted that the appellant being a representative and therefore an extension of the Swedish government enjoys immunity from legal processes by virtue of the Vienna Convention on Diplomatic Relations 1961, ratified by Kenya in 1965 and having the force of law under section 4 of the *Privileges and Immunities Act*, Cap 179 Laws of Kenya which accords diplomatic missions or consular posts and embassies, immunities and privileges. Counsel further submitted that the doctrine of sovereign and diplomatic immunity is a recognized principle of International Law that applies in Kenya by virtue of Article 2(5) of *the Constitution*, 2010. To buttress this point, counsel cited various decisions including the case of Alfred Kioki Muteti v. Timothy Miheso & Another (2015) eKLR, and Unicom Limited v. Ghana High Commission (2016) eKLR which articulate the applicability of Rules of International law.

11. Citing the decisions in Samuel Macharia & Another v. KCB Limited & 2 Others (2012) eKLR and the decision in The Owner of Motor Vessel "Lilian S" v. Caltex Oil (Kenya) Limited (1989) eKLR, counsel submitted that the court lacked jurisdiction to hear and determine the dispute on account of diplomatic immunity. It was submitted that Article 31(1) of the Vienna Convention on Diplomatic Relations grants immunity to any diplomatic agent and diplomatic missions from the criminal, civil and administrative jurisdiction of the receiving state. Counsel submitted that none of the exceptions cited in Article 32 of the same convention were applicable in the circumstances of the present suit.

12. Relying on several decisions including the cases of Alfred Kioko Muteti v. Timothy Miheso & Another (2015) (supra) and The Ministry of Defence of the Government of United Kingdom v. Ndegwa (1983) eKLR counsel submitted that the appellant enjoys privileges and immunities by virtue of being the representative of the sovereign state of Sweden in Kenya and that the ELRC has no jurisdiction to entertain the respondent's claim without an express waiver of such immunity. Further, counsel extensively submitted on the legal justification of Immunity citing the decisions in Thai-Europe Tapioca Services Limited v. The government of Pakistan Ministry of Food and Agriculture Supplies (sic) Imports and Shipping Wing (1975) 3All ER.96 cited with approval in the Kenyan case of Mbugua Mukara Githuku v. Robinson Nganga Chege & Another (2015) eKLR and the Kenyan Supreme Court decision in Karen Njeri Kandie v. Alassane Ba & Another eKLR.

13. On whether the appellant's immunity can be restricted, counsel submitted that the trial Judge erred in finding that the employment matters fall under the purview of Private Law. Citing the decision in African Development Bank v. Beatrice Agnes Achola Rosemary Ambalo Ochola (Representative of the Estate of the Late Bonaventure Eric Ocholla (2015) eKLR, he posited that the appellant being an embassy in Kenya is an extension of the Swedish government and therefore the relationship between the respondent and the appellant was one between private persons and the State, and that their relationship was within the ambit of public law and not Private Law.

14. Counsel urged that the test on whether the appellant's immunity is absolute or can be restricted depends solely on whether the matter in dispute is in relation to matters that are officially and intrinsically linked to their operations as an embassy. He submitted that the termination of the respondents' employment was based on employment in an official capacity and not for commercial or private reasons. It was submitted that the respondents were employed as the Operations Controller for Development Sections within the embassy and National Programmes Officer for Institutional Development, Anticorruption and Governance respectively; that both roles go to the core of the functions carried out by the appellant in an official capacity and there was therefore no commercial or private aspects to their employment. Counsel relied on among others the cases of Edward Onkendi –Versus- International Centre for Insect Physiology and Ecology (ICIPE) eKLR (2016) and Christopher Bernard Wasike v. International Centre of Insect Physiology and Ecology (2018) eKLR.

15. Finally, counsel submitted that the learned Judge erred in invoking the United Nations Conventions on Jurisdictional Immunities of States and their Property, yet it was not in force as at the 11th July, 2019 according to the information available on the United Nations website and therefore had no legal force. He maintained that Kenya is not a signatory to the said convention which it has not ratified and that a country is not bound by a treaty which it has not ratified. Counsel submitted that for the treaty to acquire the force of law in line with Article 2(6) of *the Constitution* of Kenya 2010, the same had to be part of the Kenyan laws. The appellants cited the case of Unicom Limited v. Ghana High Commission (2016) (supra)

16. Counsel also contended that the general principle of restrictive immunity only applies to the exceptions set out under Article 31 of the Vienna Convention on Diplomatic Relations, 1961 and has been interpreted in several cases to be applicable to engagements of a commercial nature outside of the official capacity of the organization protected by the immunity. The appellant relied on the test set out in the case of Ministry of Defence of the Government of the United Kingdom v. Joel Ndegwa (supra) in determining whether the immunity enjoyed by an organization is absolute or restrictive. He submitted extensively on the application of customary International Law which provides for immunity of certain organizations including embassies which is not limited to employment disputes. Counsel placed reliance on the cases Susana Mendaro v. The World Bank 717, F.2d 610 and Broadbent v. Organization of American States 628 F.2d 27. He further cited authorities setting out the approach adopted in Europe and by the English Employment Tribunal in the case of Bertolucc v. European Bank of Reconstruction & Development & Others (1997) UKEA.

17. In conclusion counsel urged the Court to uphold the finding that the appellant enjoyed immunity and reverse the Ruling of the ELRC substituting it with an order striking out the claims with costs to the appellant.

18. On their part, the respondents were represented by learned Counsel Mr. Owino. Opposing the appeal, counsel submitted that the only applicable law in matters pertaining to immunity of sovereign states and their property is the United Nations Convention on Jurisdictional Immunity of States 2004. Placing reliance on Article 1 of the said Convention, counsel urged that the Vienna Convention on Diplomatic Relations 1961, only provides for immunity of diplomatic agents and that the treaty does not provide immunity for missions and the property of the mission which is provided for by the United Nations Convention on Jurisdictional Immunity of States 2004. Counsel submitted that the Vienna Convention provides for diplomatic immunity and not state immunity.

19. Counsel submitted that the only codified International Law that governs state immunity is the United Nations Convention on Jurisdictional Immunity of States 2004 and that before codification, state immunity was governed by customary International Law. Counsel cited the case of Sbeh El Leil v. France (Application No. 34869/05) in which the European Court of Human Rights held that;-

> "...state immunity from jurisdiction is governed by customary international law, the codification of which is enshrined in the United Nations Convention on Jurisdictional Immunities of States and their Property of 2 December 2004."

In effect counsel submitted that the Vienna Convention on Diplomatic Relations, 1961 is not relevant in a case such as the instant one.

20. On the applicability of the United Nations Convention on Jurisdictional Immunity of States 2004 counsel argued that the said treaty applies as codified customary International Law. He maintained that the United Nations Convention on Jurisdictional Immunity, being codified international law,

applies with or without codification. He cited the cases of Sabeh El Leil v. France (supra) and Cudak v. Lithuania (Application No. 15869/02).

21. On the doctrine of restrictive immunity, counsel submitted that the courts have consistently held that in modern International Law, the doctrine of absolute immunity has no place and has been replaced by the doctrine of restrictive immunity. Counsel cited the case of Ministry of Defence of the Government of the United Kingdom v. Joel Ndegwa (supra) and the case of Talaso Lepalat v Embassy of the Federal Republic of Germany & 2 Others (2015) eKLR.

22. He submitted that the courts in various jurisdictions have embraced the doctrine of restrictive immunity which has been necessitated by the extent to which application of absolute immunity has occasioned injustices and undermined internationally recognized right to access to justice. To buttress the point, counsel cited the case of Congreso Del Partidor (1981) All ER 1064 (HL), and the United Kingdom case of Rahimtoola v. NIzam of Hyderabad & Another (195) AC 379 as well as other decided cases in United States of America, Saudi Arabia all which espouse the restrictive immunity doctrine.

23. Counsel further urged that it is a rule of international law that a foreign state is immune in respect of disputes in relation to its sovereign activities otherwise known as jure imperii, and that a foreign state cannot claim immunity where the subject matter of the claim is in relation to private acts otherwise known as jure gestionis. Citing Article 31(3) of the Vienna Convention on the Law of Treaties, counsel submitted that the principles of jure imperii and jure gestionis should be taken into consideration in interpreting codified International Law. He submitted that diplomatic or state immunity can only be invoked where the subject matter is a public act i.e. jure imperii but not when it is of private nature, jure gestionis.

In drawing a distinction between the two the respondent cited the decision in the case of Bah vs Libyan Embassy 2006 (1) BLR (IC)

24. Counsel further cited the case of Dube and Another v. American Embassy & Another 2010 2 BLR 98 IC where it was held:-

> " ...a sovereign enjoys immunity from suits and legal process where the relevant act which forms the basis of the Claim is an act 'jure imperii: that is a sovereign or public act. On the other hand, the sovereign will not enjoy such immunity if the act which forms the basis of the claim is an act 'jure gestionis', that is, an act of a private law character such as a private citizen might have entered into; particularly where fundamental rights are concerned..."

26. To further buttress the said arguments, counsel cited the definition of private law from the Oxford Dictionary by submitting that employment contracts are matters of private law as per the findings in Dube and Another v. The American Embassy & Another (supra). Counsel cited numerous cases which support the same principle including the case of Cudak v. Lithuania, Sebina v. South Africa High Commission 2010 BLR 723N IC and Bah v. Libyan Embassy(supra) In the latter case, the Court made an observation that diplomatic /state immunity is waived where the subject matter is an employment contract. Counsel therefore submitted that a contract of employment is a private law issue in respect of which diplomatic/state immunity cannot be invoked and that theCKenyan Courts have jurisdiction to deal with employment cases such as is the one before the Court.

27. On the application of the doctrine of restrictive state immunity under the United Nations Convention on Jurisdictional Immunity of State 2004, counsel submitted that the International Law Commission (ILC) was given the task of codifying and gradually developing international law in the area of jurisdictional immunities of States and their property. It produced a number of drafts which were submitted to states for comment. The drafts adopted in 1991 included Article 11 on contracts of

employment. He went on to submit that in 2004, the United Nations General Assembly adopted the Convention on Jurisdictional immunities of States and their Property. It was submitted that Article 11 in particular created significant exceptions in matters of state Immunity by in principle, removing from the application of the immunity rule a State's employment contract with the staff of its diplomatic missions abroad. It was submitted that Articles 10, 11, 12, 13 and 14 of the United Nations Convention on Jurisdictional Immunity of States and their Property 2004 restricts State immunity where the subject matter of the proceedings relates to a commercial transaction, an employment contract, personal injury and material damage, ownership and use of property and intellectual property respectively. The upshot of the foregoing submission by counsel was that immunity cannot be invoked in respect of employment contracts. Counsel cited Article 11(2) which gives exceptions to the rule where the employeeC has been recruited to perform particular functions in the exercise of governmental authority or the employee is a diplomatic agent, a consular officer, a member of the diplomatic staff of a permanent mission to an international organization or any other person enjoying diplomatic immunity.

28. Counsel further submitted that the respondents were not consular agents/officers, members of staff to any international organization, and neither were they recruited as diplomatic agents nor as consular agents and therefore the applicant is not entitled to diplomatic immunity and cannot invoke the same. In respect of Article 11(2) (c) counsel posited that the respondents had come to Court to seek remedies of unfair termination and an award of pension dues. The subject matter of the claim was neither recruitment, renewal of employment nor reinstatement. In respect of Article 11(2) (d), counsel submitted that no evidence has been placed before the court to the effect that the proceedings may interfere with the security or interests of the appellant. In respect of Article 11(2) (e), counsel submitted that the respondents are Kenyan nationals and have never been nationals of Sweden.

29. Counsel submitted that there was no agreement between Kenya and Sweden to the effect that the Kenyan courts should not entertain suits brought against the Republic of Sweden or its Embassy and that it therefore follows that the Embassy of Sweden cannot invoke immunity from court proceedings instituted in Kenyan courts. Counsel cited the case of Sabeh El Leil v. France (supra) where the European Court of Human Rights refused to invoke state immunity where the claimant had not been employed to exercise governmental authority.

30. On the right of access to justice, counsel submitted that the respondents herein instituted legal proceedings to enforce their rights as enshrined in the *Employment Act*. Their rights can only be protected if the matter herein goes for trial and is determined on merit. It was submitted that in any constitutional democracy, rights of access to justice must be guaranteed in view of the fact that the Court is the ultimate place in a democratic society where justice is determined. Counsel submitted that the appellant entered into a contract of employment with the respondent, they entered into a civil relationship with the weaker parties, hence requiring legal protection. It was submitted that if employment contract cannot be enforced against foreign mission, the same would expose the foreign missions' employees to violation of their labour rights without recourse.

31. Counsel was emphatic that the right of access to justice is basic and fundamental; it underpins Kenya's domestic legal system. That it is intertwined with the right to be heard in a court of law or tribunal and it is therefore necessary for purposes of preventing perversion of justice, that courts should adjudicate upon matters even in absence of jurisdiction. Counsel submitted that the respondents could not practically institute proceedings in Sweden due to financial incapacity therefore no other jurisdiction could reasonably and practicably adjudicate upon the matter herein. Counsel submitted that this Court lacked jurisdiction to hear and determine this matter on its merits hence the trial court should be allowed to assume jurisdiction as a forum of necessity.

32. From the above submissions by the respective parties, we decipher only one issue for our determination, which is:

> Whether the principle of diplomatic immunity as urged by the appellant applies in the circumstances of this case? and if so to what extent?

33. The crux of the appellant's case is that it enjoys privileges and immunities from the local jurisdiction under the *Privileges and Immunities Act* as read together with the Vienna Convention on Diplomatic Relations, 1961. The appellant cites the provisions of section 4 of the *Privileges and Immunities Act* which domesticates the provisions of the Vienna Convention on Diplomatic Relations. According to the appellant the effect of the foregoing laws is to accord diplomatic missions or consular posts and embassies immunities and privileges. The appellant in buttressing their point on immunity cited Article 31(1) of the Vienna Convention on Diplomatic Relations 1961. The respondents on the other hand argue that the Vienna Convention on Diplomatic Relation 1961 does not apply in the circumstances of the instant case as it only covers diplomatic agents and not diplomatic missions.

34. Section 4 of the *Privileges and Immunities Act*, Cap 179 Laws of Kenya which is central to the matter at hand provides in the relevant part:-

> " 4. Application of Convention
>
> 1. Subject to section 15, the Articles set out in the First Schedule to this Act (being Articles of the Vienna Convention on Diplomatic Relations signed in 1961) shall have the force of law in Kenya and shall for that purpose be construed in accordance with the following provisions of this section.(Emphasis supplied)

35. Article 31 of the Vienna Convention on Diplomatic Relations, on the other hand cited by the appellant in support of its challenge before the court provides as follows:-

> " 1. A diplomatic agent shall enjoy immunity from the criminal jurisdiction of the receiving State. He shall also enjoy immunity from its civil and administrative jurisdiction, except in the case of: ...(Emphasis ours)

36. Article 1 of the same convention defines a "diplomatic agent" in the following terms:-

> " A 'diplomatic agent' is the head of the mission or a member of the diplomatic staff of the mission;"

We do not think we should make heavy weather out of this. It is clear from the record and particularly from the pleadings before ELRC that the appellant is actually the foreign mission and not a diplomatic agent and it was pleading diplomatic immunity as such. This does not however solve

the issue at hand. What is before us is the very important question of jurisdiction of ELRC to deal with a labour dispute involving a foreign mission like the appellant and its local employees like the respondents.

37. The appellant's position is that it enjoys immunity from civil, labour and administrative jurisdiction of the court and that the Government of Sweden had not waived immunity. In the submissions filed before the court, the appellant relied extensively on the aforementioned provisions including the provisions of the *Privileges and Immunities Act* as read together with Article 31(1) of the Vienna Convention on Diplomatic Relations, 1961.

38. Both the appellant and the respondent are in agreement that general principles of International Law form part of Kenyan law. The appellant submitted that apart from the *Privileges and Immunities Act*, the doctrine of sovereign and diplomatic immunity is a recognised general principle of International Law that applies to Kenya by virtue of Article 2 (5) of *the Constitution*. We agree with that proposition and hold the view that although the United Nations Convention on Jurisdictional Immunities of States and their Properties has not been ratified by Kenya and is not therefore part of the international treaties and conventions imported into our laws vide Article 2(6) of *the Constitution*, the principles embodied therein are accepted general principles of International Law and are applicable in this case.

39. We have considered the record before us along with the rival submissions of counsel, which we appreciate are detailed and well researched. We have also considered the list of authorities filed by the parties herein.

40. What therefore is the applicable law on immunity in cases of Diplomatic missions? We appreciate that this issue has been the subject of litigation before our courts right from the High Court through to the Supreme Court and there is therefore no paucity of both persuasive and binding precedents to refer to. In Alfred Kioko Muteti v. Timothy Miheso & Another (supra), the High Court pronounced itself as follows;-

> " My determination on the above issue of diplomatic immunity is that state immunity is a rule of customary international law under which municipal courts are prevented from exercising their jurisdiction in disputes where a foreign state is named as a defendant or where a foreign state intervenes…"

41. The foregoing position was endorsed and amplified by this Court in the case of Unicom Limited v. Ghana High Commission (supra) where it expressed as follows;-

> " Apart from the fact that the doctrine of sovereign and diplomatic immunity applies to Kenya by virtue of the *Privileges and Immunities Act*, Chapter 179 of the Laws of Kenya, the doctrine is a recognised principle of international law. It provides that as a general principle, states are immune from legal suits in other states. The effect is that the state enjoys immunity in respect of itself and its property, from the jurisdiction of the courts of another state." (emphasis added).

We have underlined some words above because they underlie the fact that there are exceptions to the said principle. The court in the above case went on to state that the issue of immunity depends on the nature of the transaction. The court proceeded to make a finding that a tenancy agreement between the appellant and the Ghana High Commission was private in nature and consequently subject to the jurisdiction of the domestic Court. In so doing, the Court applied the doctrine of restrictive immunity which is an exception to the above rule.

42. The Rule on restrictive immunity is not new and it has been applied in Kenya for decades. For Instance, in the oft cited case of Ministry of Defence of the Government of the United Kingdom v. Joel Ndegwa (supra) this Court stated thus;-

> " It is apparent that there is no absolute immunity. It is restrictive. The test is whether the foreign sovereign or government was acting in governmental or private capacity the doctrine will apply otherwise it will not afford protection to a private transaction. The nature of the act is therefore important."

43. This position was reiterated in the case of Telaso Lepalat v. Embassy of the Federal Republic of Germany & 2 Others (supra) where Justice Lenaola (as he then was) pronounced himself as follows;-

> “
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> “ 31. While absolute immunity was presupposed to be inviolable upto the 19th Century, the need to impose restriction on State immunity became imminent when at the end of the 19th Century, States became increasingly involved in commercial activities. That led to the need to establish a more realistic and pragmatic approach to
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> disputes of a purely commercial nature when one of the parties was a foreign State. A distinction in international law was thereafter created between public acts of a State (acts juri imperii) and private acts such as trading and commercial activity (acts jure gestionis).

In a more recent decision, the Supreme Court of Kenya in the case of Karen Njeri Kandie v. Alassane Ba & Another (2017) eKLR lauded the doctrine of restrictive immunity and opined as follows:

> “ .... We too agree that the doctrine of absolute immunity would be anachronistic, and has been so for some time now. What immunity there is must be restricted or qualified so that private or commercial activities cannot be immunized”.

43. The next issue for us to address is whether the doctrine of restrictive immunity is applicable to employment contracts. A look at the comparative jurisprudence we have analysed above shows that employment contracts have been held to belong to the Private Law domain and State Immunity does not therefore apply. See Cudak v. Lithuania (supra); Dube and Another vs American Embassy and another and Sebina vs South Africa High Commission (supra). Our courts have also adopted that approach as can be seen in the Karen Njeri case (supra). We also note that the respondents were locally employed and their contracts of employment were therefore subject to the jurisdiction of the Employment and Labour Court.

44. To that extent therefore, we find that the learned Judge did not err in her conclusion that ELRC had the requisite jurisdiction to entertain the labour dispute in respect of the parties herein. Accordingly, we find this appeal devoid of merit and dismiss it with costs to the respondents.

DATED AND DELIVERED AT NAIROBI THIS 24TH DAY OF APRIL, 2020.

W. KARANJA

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JUDGE OF APPEAL

HANNAH OKWENGU

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JUDGE OF APPEAL

F. SICHALE

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JUDGE OF APPEAL