



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**  
**AT NAIROBI**  
**PETITION NO 31 OF 2013**

**KENYA MEDICAL RESEARCH INSTITUTE.....PETITIONER**

**VERSUS**

**THE HON. ATTORNEY GENERAL.....1<sup>ST</sup> RESPONDENT**

**INDUSTRIAL COURT OF KENYA ( as then Constituted under**

**Section 12 of the Labour Institution Act Repeated).....2<sup>nd</sup> RESPONDENT**

**AGNES MUTHONI & 34 OTHERS.....1<sup>ST</sup> INTERESTED PARTIES**

**UNION OF NATIONAL RESEARCH AND ALLIED**

**INSTITUTES STAFF OF KENYA.....2<sup>ND</sup> INTERESTED PARTIES**

**J U D G E M E N T**

1. The writing of this judgement was prompted by the decision of the Supreme Court in **Petition No 5 of 2015 R V Karisa Chengo and 2 Others**. In that petition the Supreme Court held that the composition of the bench that heard the 1<sup>st</sup> appeal to the High Court was unconstitutional because it included Hon. Justice Oscar Angote , a Judge of Environment and Land Court.

2. In this matter before me the Bench comprising of Honourable Justices Nderi Nduma (ELRC- Presiding), Mumbi Ngugi and George Odunga heard and decided this appeal on merits. The learned Judges had earlier overruled on objection on the composition of the Bench stating that the Constitution only created different Courts but not different cadre of Judges. The learned Judges, then proceeded to hear and determine the appeal on merit and delivered their judgement on 16<sup>th</sup> day of July,2015.

3. Save for the objection on the composition of the Bench, when I asked Counsel for the parties, when they appeared before me, especially Counsel for the appellant Mr. Wetangula if save for the mixed composition of the Bench they had any issue with jurisprudential or judicial rendition of the judgement by the learned judges his answer was that he did not. But even if he did, in my opinion that would be a matter for appeal to the Court of Appeal.

4. I have myself gone through the judgement and find the same legally sound and have nothing useful to add. I would adopt it as the judgement of the Court to resolve what in my view was a technical objection in Karisa Chengo's case which did not go to the root of the jurisprudential soundness of the judgement in that case.

5. However, by a letter dated, 9<sup>th</sup> February, 2018 from the Honourable. The Chief Justice addressed to the Principal Judge ELRC wherein the Principal Judge sought reconstitution of the Bench following the Karisa Chengo judgement, the learned CJ observed that the Petition herein was heard and judgement delivered on 16<sup>th</sup> July,2015 and that the Petitioner was dissatisfied with the judgement and filed a Notice of Appeal.

6. Further the Petitioner's application for stay of execution pending appeal was granted on 9<sup>th</sup> September,2016 on condition that the Petition deposits some money in court or in a joint interest earning account within 30 days.

7. In the Hon. Chief Justice's view, it was not clear to him what purpose the proposed bench would serve in view of the fact that the matter was pending on appeal and that the ELRC may be functus officio.

8. The Court could not agree more with the sentiments of the learned Chief Justice. It would not be an economical use of judicial time for this Court to sit and hear de novo a matter which was heard by very competent judges of superior Court and a well-reasoned determination given which has not been faulted in terms of jurisprudence and legal reasoning but a mere technical issue of a mixed bench. The judges discharged their duty ably and only the Court of Appeal can overturn their decision.

9. I therefore decline jurisdiction to determine this matter a fresh on grounds that this Court became functus officio when it rendered its judgement on 16<sup>th</sup> July, 2015.

10. It is so ordered.

Dated at Nairobi this 18<sup>th</sup> day of October, 2019

**Abuodha Jorum Nelson**

**Judge**

Delivered this 18<sup>th</sup> day of October, 2019

**Abuodha Jorum Nelson**

**Judge**

**In the presence of:-**

.....for the Claimant and

.....for the Respondent.

**Abuodha J. N.**

**Judge**