



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**  
**AT KISUMU**  
**CAUSE NO. 193 OF 2013**  
**LAWRENCE M. OTABA.....CLAIMANT**  
**VERSUS**  
**KENYA FOREST SERVICE.....RESPONDENT**  
**RULING**

The claimant herein Lawrence Mukuna Otaba filed suit against the respondent Kenya Forest Service seeking the payment of Kshs.22,332,600 and seeds supplied to the respondent while the claimant was in the employment of the respondent between 15<sup>th</sup> November 2004 and 31<sup>st</sup> October 2008.

In its defence to the claim the respondent denies ever entering into an employment contract or a contract to supply seed and seedlings with the claimant. The respondent further states in the memorandum of reply that this court has no jurisdiction to determine the claim and that the claim is frivolous and fatally defective.

By a notice of preliminary objection filed on 9<sup>th</sup> March 2017 the respondent seeks the dismissal of the claimant's suit for want of jurisdiction. The respondent argues that:

- 1) The claimant's contractual claim of Kshs.22,332,600/= for his alleged supply of tree seedlings/seeds to the respondent or the Defunct Ministry of Environment & Natural Resources or the Lake Victoria Environment Programme falls outside the jurisdiction of this honourable court hence this honourable court lacks jurisdiction to entertain the claim.
- 2) This honourable court is an Employment and Labour Relations Court established under Article 162 (2) (a) of the Constitution of Kenya to deal with employment and labour related matters, thereby being specialized court with special jurisdiction and not an ordinary civil court.
- 3) The jurisdiction of this honourable court is clearly circumscribed and stated in Section 12 (1) of Industrial Court Act of 2011 as dealing with the following matters related to:
  - 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's organization;

- d) Disputes between trade unions;
- e) Disputes between employer organisations;
- f) Disputes between an employer's organisation and a trade union;
- g) Disputes between a trade union and a member thereof;
- h) Disputes between an employer's organisation or federation and a member thereof;
- i) Disputes concerning the registration and election of trade union officials; and
- j) Disputes relating to the registration and enforcement of collective agreements.

4) Where an employee is a public officer such as the claimant who was an employee of the Ministry of Environment & Natural Resources and the Kenya Forest Service as he claims, he was by sections 11 and 12 of The Public Officer Ethics Act Cap 183 Laws of Kenya prohibited from trading with or having contractual relations with or being awarded any tender or contract with the organization or entity he is working with. A public officer is defined in Section 2 of the Act to include any officer, employee or member, including an unpaid, part-time or temporary officer, employee or member, of a Government department or corporation. This definition includes persons such as the claimant. It was therefore illegal and against the law for the claimant as a public officer to have engaged in a contract of supplying tree seedlings/seeds or goods for payment, hence such a contract was illegal and void *ab initio*. The claimant has in his statement of claim stated that he was an employee of Ministry of Environment and Natural Resources and later Kenya Forest Service hence by this honourable court entertaining his court will be promoting an illegality. This claim is an attempt to enforce through the backdoor a contract that was illegal and void *ab initio* for being in violation of The Public Officer Ethics Act.

On 28<sup>th</sup> June 2017 when the case came up for hearing of the preliminary objection the respondent did not attend court to argue the same and parties were directed to dispose off the preliminary objection by way of written submissions. It would appear that none of the parties filed the submissions as there is none in the file.

I have considered the pleadings and the respondents submissions on the preliminary objection. At paragraph 4 of the memorandum of claim it is pleaded that:

*"Thereafter I supplied and/or delivered various tree seedlings/seeds to the respondent at its own behest amounting to Kshs.22,332,600/= which the respondent never paid which I now claim. Appended and marked as Appendix 6 is a bunch of local service orders. I invoiced the respondent accordingly for payment of the said amount but to no avail. Appended and marked as Appendix 7 is a bunch of invoices for the said amounts."*

Taking into account the pleadings in paragraph 4 of the claim and the prayers, it is clear that the claim is not for an employment related relief but for payment for seeds and seedlings supplied to the respondent during the course of the claimant's employment with the respondent. I thus agree with the respondent's averments in the notice of preliminary objection that this is not an employment dispute as envisaged in the Employment Act but rather a dispute arising from a contract for supply of seeds and seedlings.

Invoking the provisions of Article 159 (2) (d) of the Constitution and Section 20 (1) of the Employment and Labour Relations Court Act requiring the court to apply substantive justice without undue regard to procedural technicalities, and further taking into account the fact that the claim herein was drawn and filed by the claimant in person, I proceed to make the following findings and orders:-

- 1) That this claim relates to a contract of supply of seeds and seedlings by the claimant to the respondent and this court therefore has no jurisdiction to hear and determine the claim by virtue of

Article 162 (2) (a) of the Constitution of Kenya, 2010 and Section 12 (1) of the Employment and Labour Relations Court Act.

2) That the case is transferred to the High Court, Eldoret under whose jurisdiction the contract was entered into, for hearing and determination.

**DATED AND SIGNED ON THIS 26<sup>TH</sup> DAY OF JANUARY 2018**

**MAUREEN ONYANGO**

**JUDGE**

**DATED AND DELIVERED AT KISUMU ON THIS 8<sup>TH</sup> DAY OF FEBRUARY 2018**

**MATHEWS NDERI NDUMA**

**JUDGE**