



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU**

**APPEAL NO. 3 OF 2016**

**(AS CONSOLIDATED WITH MISC. CIVIL APPLICATION NO.19 OF 2017)**

*(Before Hon. Justice Mathews N. Nduma)*

**WILFRED OLOOKO MUROKA.....APPLICANT**

**VERSUS**

**NZOIA SUGAR COMPANY LIMITED.....DEFENDANT**

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

1. This is an appeal from a decision of Principal Magistrate Hon. S. O. Mugute in Bungoma Civil Suit No. 568 of 2009 on the grounds that:-

(i) The Magistrate's court had no jurisdiction whatsoever to hear and determine an Employment and Labour Relations dispute as provided for under section 87(2) of the Employment Act, 2007 and section 12(1) of the Employment and Labour Relations Court Act, as read with Article 162(2)(9) of the Constitution.

2. As at the time the Hon. Magistrate made his decision on 15<sup>th</sup> July 2015, the Magistrate court had no jurisdiction to entertain the suit at all by dint of section 87(2) of the Employment Act, 2007 which provides:-

*“No court other than the Industrial Court shall determine any complaint or suit referred to in sub-section (1).”*

3. Sub-section (1) provides for complaint and jurisdiction in cases of dispute between employers and employees.

4. Furthermore, as at the time, the Magistrates court Act, had not been amended to accord the Magistrate courts jurisdiction on matters specifically preserved for specialized courts under Article 162 of the Constitution.

5. Accordingly, the Magistrate Court lacked jurisdiction to hear and determine the dispute. The Magistrate acted without jurisdiction and his decision was null and void ab initio. The Appeal succeeds and the decision of the trial court set aside. See **Court of appeal, Kisumu Civil Appeal No. 13 of 2016, Kanubha Merubha Vaghela vs James Ndirangu Ng'ang'a.**

6. The suit is reinstated and transferred to E & LRC Bungoma. The parties to take directions for the hearing of the suit accordingly. Costs in the cause.

**Judgment Dated, Signed and delivered this 6th day of June, 2018**

**MATHEWS N. NDUMA**

**JUDGE**

**Appearances**

Claimant/Appellant in person

Mr. Murunga for Respondent

Chrispo – Court Clerk