



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF**

**KENYA AT NAIROBI**

**CAUSE NUMBER PET 80 OF 2016**

**MILIKI SAVINGS AND CREDIT SOCIETY LIMITED.....CLAIMANT**

**VERSUS**

**KAREN ROSES LIMITED.....RESPONDENT**

**RULING**

1. By a notice preliminary objection filed on 10<sup>th</sup> June, 2016 the respondent objected that this court lacked jurisdiction to hear and determine this dispute by virtue of article 162(a) of the Constitution and that any dispute arising from the agreement dated 14<sup>th</sup> December, 2015 should be referred to the Co-operative Tribunal.
2. In support of the submissions counsel for the respondent, Ms Mukami submitted that under article 162(2) of the Constitution Parliament has power to establish courts with status of the High Court to hear and determine disputes relating to employment and labour relations.
3. According to counsel, this court has been granted exclusive jurisdiction to hear matters that fall within the purview of the employment and labour relations. The claimant according to counsel was seeking from the court orders to direct the respondent to meet its obligation under the agreement for check off dated 14<sup>th</sup> December, 2015. Counsel argued that the court was being asked to enforce a contract between individual parties without an employment relationship.
4. According to counsel, the court has no supervisory power over the Co-operatives Tribunal whose jurisdiction the parties have invoked in their agreement. Clause 15 of the agreement stipulated that if any dispute arose out of or in connection with the agreement, the parties should endeavour at first to resolve the dispute by mutual discussion and dialogue. If such dispute shall not have been resolved within two weeks from the date of occurrence of such dispute then the dispute shall be referred to the co-operative Tribunal established by section 17 of the Co-operative Act for determination.
5. Mr Oonge for the claimant on the other hand submitted that the claimant and the respondent entered into an employee payroll check off agreement on 14<sup>th</sup> December, 2015 whereby it was to recruit employees of the respondent to join the membership of the claimant. Based on the agreement the claimant proceeded and recruited the respondent' employees into its sacco who authorized the respondent to be deducting certain amounts and forwarding the same to the claimants.
6. The respondent has however contrary to the agreement failed or refused to effect the deductions despite being authorized by the claimant's members. Counsel argued that the dispute herein is between two

employer organizations as stipulated in section 12(1)(e) of the Employment and Labour Relations Act hence the court has jurisdiction.

7. The court has carefully considered this matter in its entirety in the light of the objection raised and is in concurrence with the respondent that indeed the court does not have jurisdiction to entertain this claim. The agreement dated 14<sup>th</sup> December, 2015 attached to the motion is clearly between two corporate bodies and has nothing to do with the employees of the respondent.

8. As between the claimant and respondent, there is a commercial contract which has nothing to do with employment and labour relations. This court would have been seized of jurisdiction if the respondent's employees or one of them were to be the one who brought the current action against the respondent seeking to compel the respondent to deduct and remit the deductions to the sacco.

9. The court therefore upholds the objection and strikes out the suit with costs.

10. It is so ordered.

**Dated at Nairobi this 10<sup>th</sup> day of November 2017**

**Abuodha J. N.**

**Judge**

**Delivered this 10<sup>th</sup> day of November 2017**

**Abuodha J. N.**

**Judge**