



REPUBLIC OF KENYA
EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO. 1866 OF 2014

(Before Hon. Justice Hellen S. Wasilwa on 27th January, 2016)

JOSEPH MAKANGA ONG'AYO.....CLAIMANT

VERSUS

JAPETH WALUTILA.....RESPONDENT

RULING

1. The Respondents have raised a Preliminary Objection in this matter to the effect that this Court lacks jurisdiction to entertain this suit.
2. The Claimants filed their grounds of opposition and stated this Court has jurisdiction to entertain this matter as donated by the Constitution and Industrial Court Act 2011. They also aver that the claim is not time barred as Claimant was dismissed on 10th April 2013 and case was filed in Court on 22nd October 2014. They want application dismissed for being frivolous vexations and otherwise as abuse of Court process.
3. The Claimant filed his claim on 22.10.2014 claiming unlawful/unfair dismissal from employment, underpayment of salary and non-payment of terminal dues.
4. The Claimant states that he had been employed by Respondent from April 2004 as caretaker and security guard at Respondents construction site at Sabaki near Mlolongo and was summarily dismissed on 10th April 2013.
5. Article 162(2) of Constitution provides for establishment of this Court to hear employment and labour relations matters. Pursuant to this Article, the Industrial Court Act 2011 was enacted by Parliament and the jurisdiction is provided for under Section 12(1) of Industrial Act 2011 which states as follows:

“(1) The Court shall have exclusive original and appellate jurisdiction to hear and determine all disputes referred to it in accordance with Article 162(2) of the Constitution and the provisions of this Act or any other written law which extends jurisdiction to the Court relating to employment and labour relations including:-

(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 employers' organisation and a trade unions organisation;*
- (d) disputes between trade unions;*
- (e) disputes between employer organizations;*
- (f) disputes between an employers' organisation and a trade union;*
- (g) disputes between a trade union and a member thereof;*
- (h) disputes between an employer's organisation or a 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.*

6. I find that the case before Court relates to a dispute relating and arising out of employment between an employer and an employee and therefore this Court has jurisdiction to entertain it. I find the Preliminary Objection without merit and I dismiss it accordingly.

Read in open Court this 27th day of January, 2016.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

Wathome for Claimant - Present

No appearance for Respondent