



**REPUBLIC OF KENYA**  
**EMPLOYMENT & LABOUR RELATIONS COURT**  
**AT NAIROBI**  
**CAUSE NO. 2120 OF 2014**

**ROSELYN SISIALI WEKESA.....CLAIMANT**

**VERSUS**

**KONRAD ADENAUER FOUNDATION.....1<sup>ST</sup> RESPONDENT**

**DIRECTOR OF IMMIGRATION.....2<sup>ND</sup> RESPONDENT**

**KENYA REVENUE AUTHORITY.....3<sup>RD</sup> RESPONDENT**

**ETHICS & ANTI CORRUPTION COMMISSION.....4<sup>TH</sup> RESPONDENT**

**DIRECTOR OF PUBLIC PROSECUTIONS.....5<sup>TH</sup> RESPONDENT**

**BARBARA ISCHEBECK.....INTERESTED PARTY**

**RULING**

1. The application before me is the Interested Party's Notice of Motion dated 16<sup>th</sup> February 2015. The application was filed contemporaneously with a preliminary objection. The application is stated to be premised on Section 3, 12(1),(2) and (3)(viii) of the Industrial Court Act 2011 and Rule 16 of the Industrial Court (Procedure) Rules. It seeks that the Claimant's Memorandum of Claim dated 1<sup>st</sup> December 2014 be struck out with costs and the interested party be struck out from these proceedings in any event. The grounds on the face of the motion are that the proceedings are an abuse of the process of the Court and that the Claimant is using the Court in bad faith in an attempt to harass and intimidate the 1<sup>st</sup> Respondent and the interested party, that the Court has no jurisdiction to entertain the claims alleged and asserted to relate to immigration, taxation and corruption. The application is supported by the affidavit of Andrea Ostheimer de Sosa. In her affidavit she deponed that the Claimant was declared redundant following a restructuring exercise. She deponed that the jurisdiction of the court is over disputes arising from an employment relationship and the reliefs the Court can give relate to the determination of the rights between an employee and the employer and that there was no employment relationship between the Claimant and the 2<sup>nd</sup> to 5<sup>th</sup> Respondents and the Interested Party.

2. The application was opposed by the Claimant who filed Grounds in Opposition to the Preliminary Objection and a Replying Affidavit on 7<sup>th</sup> April 2015. In the grounds of opposition to the preliminary objection, the Claimant stated that an interested party is one who has a stake in the proceedings, though he or she was not party to the cause *ab initio* and is the one who will be affected by the decision of the Court when it is made either way. The Claimant stated that the Court has jurisdiction to deal with the issues as they arose in an employment arena. In her affidavit the Claimant deponed that she application should be expunged as the 1<sup>st</sup> Respondent and Interested Party failed to respond to the Statement of Claim within 14 days contrary to the mandatory provisions of Rule 13(1) of the Industrial Court Rules. She also deponed that the cause of action comprised of every fact which it would be necessary for the plaintiff to prove to support the right to the judgment of the court. She deponed that all persons may be joined in a suit where any relief is sought in respect of or arising out of the same act or transaction and where a common question of law or fact would arise.
3. The application before me therefore seeks a determination of one key issue. Does this Court have jurisdiction to handle the claim formulated by the Claimant?
4. The *locus classicus* on jurisdiction is the celebrated case of **Owners of the Motor Vessel “Lillian S” v Caltex Oil (Kenya) Ltd [1989] KLR 1** where Nyarangi JA held as follows:

*'I think that it is reasonably plain that a question of jurisdiction ought to be raised at the earliest opportunity and the court seized of the matter is then obliged to decide the issue right away on the material before it. Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law downs tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.'*

5. The authority for this holding by the learned Judge of Appeal is to be found in the writings of John Beecroft Saunders in a treatise headed **Words and Phrases Legally defined – Volume 3: I – N** and it states at page 113 the following about jurisdiction:-

*“By jurisdiction is meant the authority which a court has to decide matters that are litigated before it or to take cognisance of matters presented in a formal way for its decision. The limits of this authority are imposed by the statute, charter, or commission under which the court is constituted, and may be extended or restricted by the like means. If no restriction or limit is imposed the jurisdiction is said to be unlimited. A limitation may be either as to the kind and nature of the actions and matters of which the particular court has cognisance, or as to the area over which the jurisdiction shall extend, or it may partake of both these characteristics. If the jurisdiction of an inferior court or tribunal (including an arbitrator) depends on the existence of a particular state of facts, the court or tribunal must inquire into the existence of the facts in order to decide whether it has jurisdiction; but, except where the court or tribunal has been given power to determine conclusively whether the facts exist. Where a court takes it upon itself to exercise a jurisdiction which it does not possess, its decision amounts to nothing. Jurisdiction must be acquired before judgment is given”*

6. Clearly, if I lack jurisdiction I have no option but to down my tools and take no further step. The Claimant has a claim that incorporates aspects of other legislations such as the Ethics and Anti Corruption Commission Act, Income Tax Act, Penal Code, the Immigration Act, the Employment Act and the Constitution and a slew of legislations alleged to have been infringed or not called into play. The Claimant seems to hide under the guise of the unfair termination to launch an attack on the employer and other parties for infractions of various other laws. There is no employer-employee relationship between the Claimant and the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup> Respondents or the Interested Party. The suit is a collateral attack on her employer. I cannot assume jurisdiction in the first instance where statute has created competent bodies and authorities to deal with the issues before

me. In my considered view, this is a suit competent for the High Court in the Constitutional and Human Rights division. The only aspect of the Claim that could be reserved for the Employment and Labour Relations Court is the issue of her redundancy which is a microscopic part of the claim before me. In the premises I will allow the objection to the extent that I order a transfer of the suit to the High Court Constitutional and Human Rights Division. I further direct that the suit be placed for directions on 21<sup>st</sup> July 2015 before the Presiding Judge of the Division. Should the Claimant wish to pursue claims on the issue of employment she could move the Employment & Labour Relations Court for determination of that dispute. I make no order as to costs.

Orders accordingly.

**Dated and delivered at Nairobi this 14<sup>th</sup> day of July 2015**

**Nzioki wa Makau**

**Judge**