



**REPUBLIC OF KENYA**

**IN THE INDUSTRIAL COURT OF KENYA AT NAKURU**

**CAUSE NO. 71 OF 2014**

**KENYA PLANTATION AND AGRICULTURAL WORKERS  
UNION.....RESPONDENT (CLAIMANT)**

**- VERSUS -**

**KAKUZI LIMITED.....APPLICANT (RESPONDENT)**

(Before Hon. Justice Byram Ongaya on Wednesday 30<sup>th</sup> April, 2014)

**RULING**

The applicant **Kakuzi Limited** filed the notice of motion on 27.03.2014 through Kaplan & Stratton Advocates. The motion invoked Article 50(1) of the Constitution, Section 12(3) (vii) of the Industrial Court Act, Rules 16(1) & (2) of the Industrial Court Rules 2010, section 15 of the Civil Procedure Act and all other enabling provisions of law. It was prayed that the claim be forthwith transferred to the Industrial Court sitting at Nairobi; and that pending the transfer of the claim to the Industrial Court in Nairobi, the orders granted on 21<sup>st</sup> March 2014 be stayed.

The application was supported by the affidavit of Andrew Kiragu filed together with the application. The ground in support of the application was that the filing of the claim at the court in Nakuru amounted to serious forum shopping by the claimant because the respondent horticultural, forestry and livestock farm is located at Thika and the correct territorial place of filing the suit was the court at Nairobi; previous suits between the parties have been determined by the court at Nairobi; and the court at Nakuru has in previous cases made decisions favourable to the claimant and in the present case the court had made an interim order favourable to the claimant.

The respondent filed on 02.04.2014 the replying affidavit of Thomas Kipkemboi. It was urged that the practice directions relating to the filing of suits, applications and references in proper courts published on 27.2.2009 by the Honourable Chief Justice under Legal Notice No. 1756 had no effect on the filing of disputes in the Industrial Court as it was published long before the establishment of the court in accordance with the Constitution of Kenya, 2010. The affidavit further stated that previous suits as alleged by the applicant were filed, heard and determined on their own merits and the applicant will not suffer any prejudice if the suit is heard by the court at Nakuru. Further, the applicant had failed to demonstrate the prejudice it would suffer in view of the orders made in this case and the Labour Commissioner would be exercising his statutory authority towards conclusion of the collective agreement between the parties. It was urged that the suit should not be transferred to the court sitting at Nairobi because the court diary at Nairobi was full up to April 2015 and as per the court's notice being exhibit **TK2** on the replying affidavit. The respondent (claimant) also filed the notice of preliminary objection and stated that the application violated rules 4 and 5 of the rules of the court for want of filing of the statement of claim before filing the application. Thus, the application was incompetent, an abuse of court process, premature and fatally defective.

The court has considered the submissions, the affidavits and all documents filed and make the following findings:

- a. The court has considered that the application was filed in the pending suit filed for the claimant and there was nothing irregular in the applicant filing the notice of motion as was done in the suit. The court finds that the application is properly before the court.
- b. The applicant prayed for stay of the orders of 21<sup>st</sup> March 2014 pending stay of transfer of the case to the court sitting in Nairobi. The court finds that the prayer was in the nature of an application for review and no such application was before the court as envisaged in

the rules of the court or were grounds for review urged or established.

- c. The practice directions relating to the filing of suits, applications and references in proper courts published on 27.2.2009 by the Honourable Chief Justice under Legal Notice No. 1756 obviously referred to the High court's supervisory jurisdiction over subordinate courts within the stated areas. The practice note, in the opinion of the court, is a good guide where appeals are to be preferred from the subordinate courts to this court. Nevertheless there are obvious challenges of strictly attempting to apply the directions because this court does not sit in as many stations as the High Court which is wide spread as set out in the Legal Notice. Thus, the court's opinion is that this court will determine the place of hearing of the proceedings that fall within its jurisdiction from case to case as will be necessary to do so.
- d. The court finds that the Industrial Court of Kenya as established is vested with nation-wide territorial jurisdiction. As submitted for the respondent, despite where the court may sit, it applies the same substantive and procedural law. The court finds that despite the place the court may sit, it constitutes one forum and platform for resolving the disputes that fall within its jurisdiction. Accordingly, the court finds that the applicant's allegations on forum shopping were misconceived.
- e. The court is guided that under section 3 of the Industrial Court Act, 2011, the court is obligated to facilitate the just, expeditious and proportionate resolution of disputes governed by the Act. The court is further guided that under section 29(1) of the Act, the court shall ensure reasonable, equitable and progressive access to the judicial services in all counties. Taking into account those principles, the court has particularly considered that the place of the applicant's business is in Thika, the claimant's offices and place of business is in Nakuru, and on a balance of convenience or the court's distribution of workload, the case may be heard by the court sitting in Nairobi or at Nakuru. There is no dispute that previous disputes between the parties have been heard and determined by the court at Nairobi and there is no dispute that the court diary at Nairobi may have been outstretched as submitted for the claimant (respondent in the application).
- f. Taking into account all the circumstances of the case and there being no hard grounds to direct the hearing and determination of the case to proceed in Nairobi or Nakuru, it is the view of the court that this matter shall be mentioned before the Honourable Principal Judge of the Court at Nairobi for his considered directions on the place for hearing and determination of the suit.

In conclusion, the application is determined with orders:

- a. The suit shall be mentioned before the Honourable Principal Judge at Nairobi on a date convenient to the parties for his considered directions on the place of hearing and determination of the suit.
- b. The costs of the application shall be in the cause.
- c. The parties are now invited to agree and record the convenient mention date before the court at Nairobi.

**Signed, dated and delivered in court at Nakuru this Wednesday, 30<sup>th</sup> April, 2014.**

**BYRAM ONGAYA**

**JUDGE**