



**REPUBLIC OF KENYA**  
**IN THE INDUSTRIAL COURT OF KENYA**

**AT MOMBASA**

**CAUSE NO. 260 OF 2014**

**WILSON WACHIRA WANIIGE .....CLAIMANT**

**VERSUS**

**TELKOM KENYA LTD .....RESPONDENT**

**RULING**

**INTRODUCTION**

1. The Notice of Motion before the court is dated 25/9/2013 and was filed by the defendant. It seeks the following orders:

**The arrest of the ruling and/or judgment due and/or pending delivery.**

**The court lacks jurisdiction to hear and determine the case being an industrial complaint.**

The Motion is supported by the affidavit of Linda Bii, the learned counsel for the defendant. The claimant has opposed the Motion by the replying affidavit of Joseph Karanja Kanyi her learned counsel sworn on 16/10/2013.

**BACKGROUND**

2 The suit was initially filed in the high Court at Mombasa on 24/5/2004. Defence was filed on 18/6/2004. After many years of delay the plaintiff's case was heard by Maureen Odero J. on 7/5/2009 and 29/7/2010 when the plaintiff testified and called one witness. When the defence case came up for hearing on 8/10/2010, both the defendant and her counsel never turned up. Consequently, the court closed the defence case under order 9(6) of the Civil procedure rules and directed parties to file written submission before the court retired to write its judgment.

3 On 8/5/2013 the matter was mentioned before the said trial judge where the court stated that both parties had filed written submission and proceeded to fix the case for ruling on 25/7/2013. No ruling was delivered on 25/7/2013 and instead the defendant brought the present motion on 30/9/2013 under certificate of urgency. After several adjournments the parties agreed to dispose of the motion by written submission. Before they all filed their written submissions the parties filed a consent order on 21/5/2014 transferring the suit from the High Court to this court. The said consent order was adopted by the said trial judge on 28/5/2014 and finally the case was mentioned before this court on 18/7/2014. The parties requested the court To proceed to make a ruling on the present motion based on the written submissions by the parties.

## **ANALYSIS**

4 The court has carefully perused the court record including the pleadings, testimonies, the Notice of Motion, the supporting and replying affidavits and the filed submissions. It is not in dispute that when the suit was filed and heard the High court had jurisdiction under Section 60 of the repealed constitution to entertain the suit as filed. It is also not in dispute that Article 165(5) of the new constitution extinguished the jurisdiction of the High court in labour disputes like the one before the court. The only issue for determination is whether the defendants notice of motion dated 25/9/2013 has merits.

5 With tremendous respect to the applicant the court finds that the Motion to be devoid of merits. The reason for the foregoing finding is that the prayer for arresting the intended judgment is not making any legal sense. The prayer is copied below

***“ 2. THAT the Honourable court do arrest the ruling and/or judgment due and/or pending for delivery, or there about.”***

The court does not see any reason for arresting its decision after the close of the hearing for no purpose at all. This is a 10 years old suit which must come to an end.

6 On the other hand, the prayer for an order that high court lacks jurisdiction on the matter is already overtaken by events. The parties filed a consent order on 21/5/2014 and the same was adopted by the court. Nothing remains to be done on that issue because the suit is now before a court which is fully seized of the relevant jurisdiction.

## **DISPOSITION**

7 The Notice of Motion dated 25/9/2013 is dismissed with costs for lack of merits and/or for being overtaken by events. The proceedings shall be typed within 14 days of this ruling and the suit be mentioned for direction thereafter.

**Signed, dated and delivered this 3<sup>rd</sup> October 2014**

**O.N. Makau**

**Judge**