



**REPUBLIC OF KENYA**

**Industrial Court of Kenya**

**Cause 1636 of 2011**

MORRIS SHIKUVALE MURUNGA.....CLAIMANT

**VERSUS**

THE DIRECTOR KENYA AGRICULTURAL RESEARCH

INSTITUTE ((KARI).....RESPONDENT

*Rika J*

*CC. Leah Muthaka*

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*Mrs. Nguti instructed by Pauline Mbuthu Masila Advocates for the Claimant ;*

*M/s Gulenywa instructed by Gulenywa Jonathan & Co. Advocates for the Respondent*

**RULING**

The Respondent has raised a preliminary objection on two grounds. Firstly, the Respondent argues that the claim is *sub judice*. There is another Claim filed by the Claimant against the Respondents in Nairobi

Milimani Chief Magistrates' Court Civil Case No. 6828 of 2010. That claim involves in part, the same subject matter of terminal benefits as is being pursued in Industrial Court Cause No. 1636 of 2011. Secondly, the Director of KARI cannot be sued on behalf of the Institution. KARI is State Corporation, with its own legal personality.

The Claimant is opposed to the preliminary challenge. He answers that the claim in the Magistrates' Court seeks recovery of damages, for wrongful arrest. The claim herein is between an employer and employee. Secondly the joinder of the Director of KARI is not fatal to the claim. Directors of corporate bodies can be sued. Lastly, the Claimant has sufficient evidence to sustain his claim, and if need be, has the option of amending his claim.

The Court does not think that the two grounds raised by the Respondent, warrant the striking out of the claim. The Claimant appears to have made a rectifiable error in filing two separate claims, and replicating the remedies sought. The law on employment jurisdiction had not crystallized during the year when the claim in the Magistrates' Court was filed. The Claimant has the option of amending or withdrawing the Civil Claim, to bring it out of the limitation imposed by the *sub judice* rule. The Court does not think the joinder of the Director KARI on its own, is a ground for striking out the claim. Directors of Corporates, Managers and even Foremen can be sued as employers. The definition of the term employer under Section 2 of the Employment Act 2007, is broad enough to encompass these officers.

*The Courts Orders:-*

***(a)Proceedings in this claim are hereby stayed;***

***(b)The Claimant shall take such measures as are deemed appropriate to ensure this claim if formally valid;***

***(c)The Claimant shall move the Court for further Orders when he is ready;and***

***(d)Costs in the cause.***

Dated and delivered at Nairobi this 23<sup>rd</sup> day of April 2013

James Rika

Judge