



REPUBLIC OF KENYA

Industrial Court of Kenya

Miscellaneous Application 13 of 2013

ELIZABETH TUMAINI ADHOLA.....APPLICANT

VERSUS

THE MANAGEMENT BOARD OF ST. MARY'S SCHOOL.....RESPONDENT

RULING

This is an *ex parte* application by the applicant dated 4th April, 2013 and filed on 11th instant. It seeks orders that;

1. **THAT** Chief Magistrate's Court Civil Suit No. 457 of 2007 at Nairobi pending between the parties herein be transferred to this Honourable Court for hearing and disposal.
2. **THAT** the costs of this application be costs in the cause.

and is grounded on the following;

- a) **THAT** the subject matter of the dispute in CMCC No. 457 of 2007 arise out of the employment relationship as the applicant who is an ex-employer of the respondent is claiming *inter alia* severance pay as a result of termination of employment which amounted to a redundancy.
- b) **THAT** Article 162(2) of the Constitution has established the Industrial Court as the sole Court with exclusive Jurisdiction to hear and determine disputes arising out of the employment relationship.
- c) **THAT** Parliament has enacted the Industrial Court Act No. 20 of 2011 which vests on this Honourable Court exclusive original jurisdiction in employment disputes at Section 12 thereof in compliance with Article 162(2) of the Constitution relating to employment and labour relations.
- d) **THAT** the Applicant having been an employee of the Respondent has a suit pending before the Chief Magistrate's Court at Milimani under CMCC No. 457 of 2007 arising out of breach of her contract of employment by the respondent.
- e) **THAT** the Magistrate's Court has now been divested of jurisdiction to hear employment cases by operation of the law.
- f) **THAT** since the Industrial Court is a Superior Court and has concurrent jurisdiction with the High Court and in the Light of Article 165 (5) (b) of the Constitution, the Industrial Court can order the transfer of the case pending in the Magistrate's Court to be heard by the Industrial Court.
- g) **THAT** the Applicant is desirous of having this matter heard and disposed off by this Honourable

Court being of a competent jurisdiction and that the respondent will not suffer any prejudice and cannot be compensated by way of costs.

The application is further supported by the affidavit of Elizabeth Tumaini Adhola sworn on the 4th April, 2013

Like he submitted by counsel for the applicant, this is a straight forward matter. A perusal of the application and the supporting affidavit automatically leads the court to a finding in favour of the applicant. I therefore allow the application and order as hereunder;

1. **THAT** CMCC No. 457/2007 at Milimani Courts, Nairobi be and is hereby transferred to this Honourable court for hearing and disposal.

2. **THAT** the costs of this application be costs in cause

Dated and delivered this **7th** day of **May**, 2013

D.K. Njagi Marete
JUDGE

Appearances

1. Mr. Burugu instructed by Obura Mbeche & Company Advocates for the applicant.