

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT GARISSA

JUDICIAL REVIEW APPLICATION NO. 5 OF 2014

MOHAMOUD HUSSEIN ABDI.....APPLICANT

VERSUS

COMMISSIONER GENERAL OF PRISONS.....1ST RESPONDENT

ATTORNEY GENERAL.....2ND RESPONDENT

RULING

This is a simple application seeking leave to file a case seeking Judicial Review orders. It is normally argued ex parte. Briefly, Mr. Nyasani, counsel for the applicant moved this court to grant him leave to institute Judicial Review Application to seeks orders of certiorari and prohibition. He seeks further order that such leave do operate as stay of the decision by the 1st Respondent to retire the Applicant on age grounds. The applicant is one Mohamoud Hussein Abdi (Ex parte applicant).

I restrained myself from pointing out to the ex parte applicant and his counsel my reservations on handling this matter for fear of prejudicing the matter before the court was addressed. Now that I have been addressed, I feel it is proper for me to bring out my reservations.

From my reading of the file, it is clear to me that the relationship between the ex parte applicant and the 1st Respondent is employer and employee. The subject of this case is the retirement of the ex parte applicant on age grounds as can be discerned from the letter reference PF/76000515/168 dated 13th November 2013. This letter confirms that the relationship between the two is that of employer/employee.

Section 12 of the Industrial Court Act (Cap. 234) gives the Industrial Court exclusive original and appellate jurisdiction to hear and determine all disputes to it in accordance with Article 162 (2) of the Constitution and the provisions of the Industrial Court Act or any other written law which extends jurisdiction to the Court relating to employment and labour relations including, inter alia, disputes relating to or arising out of employment between an employer and an employee.

Under section 12 (3) of the same Act, the Industrial Court has power to make any order provided under that sub-section including any other appropriate relief as the Court may deem fit to grant. These are wide powers and I have no doubt that the Judicial Review Orders are among those this Court is empowered to grant.

In my own thinking to save on time and in line with the principles espoused under Article 159 of the Constitution that justice shall not be delayed and that justice shall be administered without undue regard to procedural technicalities, it is befitting not to dismiss this case for being filed in the wrong court but instead order that this matter be and is hereby transferred to the Industrial Court for determination.

In this regard, I decline to entertain the application for leave argued before me and deny granting the orders sought in that application. The applicant is at liberty to argue the same application before the Industrial Court or to seek directions before that court as to the way forward. Due to the urgency of this matter I order this this file be transmitted to the Industrial Court to be placed before the Principal Judge on a date to be agreed by the party for further orders. It is so ordered.

Dated, signed and delivered this 10th day of June 2014.

S.N.MUTUKU

JUDGE