IN THE HIGH COURT OF FIJI AT SUVA

CIVIL JURISDICTION

Civil Action No. HBC 239 of 2015

BETWEEN	:	KALIPATE VUCAGO
		Plaintiff
A N D	:	FIJI HARDWOOD CORPORATION LIMITED
A N D	:	FAIZ KHAN
A N D	:	LAVISAI SEROMA
		Defendants
COUNSEL	:	Mr. I. Tuberi for the Plaintiff
		Mr. F. Haniff for the Defendants
Date of Hearing	:	7th December, 2015
Date of Ruling	:	12th February, 2016

RULING

[1] The plaintiff was an employee of the 1st defendant company. On 30th January 2015 he was served with a letter requiring him to show cause why his services should not be

terminated. The plaintiff sent his reply to the said letter on 04th February 2015 and on 02nd March 2015 the 1st defendant served him with the notice of termination of employment.

[2] The plaintiff then filed this action by way of originating summons seeking the following reliefs;

(1) The decision to dismiss the plaintiff from services was wrong in law.
(2) The plaintiff be reinstated to his former position without loss of salaries and other benefits.
(3) The defendant be ordered to pay damages both general and punitive.
(4) Costs of the action.

[3] When this matter came up for hearing before this Court on 07th December 2015 the learned counsel for the defendants raised the following preliminary objections to the maintainability of the action;

(1) In view of the provisions of Essential Services Industries (Employment) Decree 2011 (No. 35 of 2011) and Essential National Industries and Designated Corporations (Amendment) (No. 2) Regulations 2013 the decision of the 1st defendant cannot be challenged in a Court of Law.
(2) The plaintiff has filed this action in the wrong Court.

[4] By Essential Industries & Designated Corporations (Amendment) (No. 2) Regulations 2013 the 1st defendant was declared a designated corporation.

[5] Sections 30 subsections (1) and (2) of the Essential Services Industries (Employment) Decree 2011 (No. 35 of 2011) provide as follows;

1. No court, tribunal, commission or any other adjudicating body shall have the jurisdiction to accept, hear, determine or in any other way entertain any proceeding, claim, challenge or dispute by any person or body which seeks or purports to challenge or question—

(a) the validity, legality or propriety of this Decree;

(b) any decision of any Minister, the Registrar or any State official or body, made under this Decree; or

(c) any decision of any designated corporation made under this Decree.

2. Any proceeding, claim, challenge or dispute of any nature whatsoever in any court, tribunal, commission or before any other person or body exercising a judicial function, against any designated corporation that had been instituted under or involved the Employment Relations Promulgation 2007 before the commencement date of this Decree but had not been determined at that date or is pending on appeal, shall wholly terminate immediately upon the commencement of this Decree, and all orders whether preliminary or substantive made therein shall be wholly vacated and a certificate to that effect shall be issued by the Chief Registrar or the registrar of the Employment Relations Tribunal.

[6] In view of the above provisions the Court has no jurisdiction to accept, hear or to make a determination on the correctness of the decision of the 1st defendant.

[7] The learned counsel for the plaintiff submitted that section 100 of the Constitution confers an unlimited jurisdiction on the High Court and therefore, this Court has the power to adjudicate upon the dispute between the parties.

[8] Section 100(3) of the Constitution provides that the High Court has unlimited original jurisdiction to hear and determine any civil or criminal proceeding under any law and such other jurisdiction as is conferred on it under the Constitution or any written law.

[9] The above provisions do not have the effect of conferring on the High Court to hear and determine any matter that is brought before it as it pleases. The High Court under these provisions can exercise jurisdiction that is conferred upon it by the Constitution or any other written law. The Essential Services Industries Decree 2011 (No. 35 of 2011) is a statute enacted by the Parliament which takes away the jurisdiction from the High Court on matters stated therein. Therefore, the view of the

this Court is that the argument of the learned counsel for the plaintiff that this Court has power to hear and determine any matter irrespective of the limitations contained in the legislative enactments has no merit.

[10] The learned counsel for the defendants also submitted that after these proceedings were instituted on 02nd March 2015 the Employment Relations (Amendment) Act 2015 (Act No. 4 of 2015) was enacted to amend the Employment Relations Promulgation 2007 which confers upon the Court the jurisdiction to hear and determine the matters of this nature. The said amendment was brought into operation after the institution of these proceedings and the said amendment has no retrospective effect. Therefore, the plaintiff cannot rely on the provisions of the amending Act No. 4 of 2015.

[11] Section 167 of the Employment Relations Promulgation 2007 lays down the procedure relating to the settlement of employment disputes and section 167 provides that the purpose of that Part is to set out procedures for the resolution of employment disputes.

[12] The provisions contained in section 167 to section 173 do not clearly state whether it is imperative for the parties to refer a dispute for mediation under those provisions. Section 168 provides as follows;

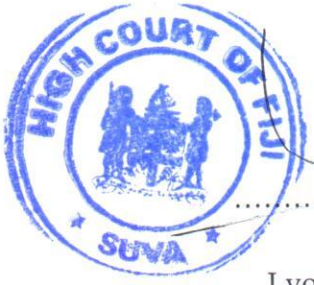
> (1) An employment contract must contain procedures for settling disputes.
>
> (2) The procedures required by subsection (1) must be—
>
> agreed procedures that are not inconsistent with the requirements of this Part; or
>
> if there are no agreed procedures, the procedures set out in Schedule 6.
>
> (3) The agreed procedures of the types referred to in subsection (2)(a) may confer jurisdiction on the Permanent Secretary to refer the employment dispute to the Mediation Services or to the Tribunal.

[13] There is no contract of employment attached to the originating summons of the plaintiff. The document marked as annexure "KV1" is the letter of offer and it does not say the manner in which any dispute between the employee and the employer should be settled as required by section 168(1) referred to above. In such a situation in terms of section 168(2) the procedure set out in Schedule 6 becomes applicable. But none of these provisions have the effect of excluding the jurisdiction of the Court from entertaining and deciding upon a matter of this nature. I am therefore, not inclined to the argument of the learned counsel for the defendants that the plaintiff has brought this matter before the wrong Court. However, the plaintiffs summons is liable to be struck out on the 1st preliminary issue.

[14] For these reasons I make the following orders.

[15] **ORDERS**

1. The originating summons of the plaintiff is struck out.
2. I make no order for costs.



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Lyone Seneviratne

JUDGE

12.02.2016