IN THE COURT OF APPEAL

AT NAIROBI

(CORAM: KIHARA KARIUKI, PCA, MWERA, SICHALE JJ.A.)

CIVIL APPLICATION NO. NAI. 43 OF 2012

BETWEEN

JOSEPH MCHERE AOKO.....APPLICANT

AND

CIVICON LIMITED.....RESPONDENT

(Application to strike out the notice of appeal for an intended Appeal from the Award and Decree

In the Industrial Court of Kenya at Nairobi (Paul. K. Kosgei, J) delivered on 15th December, 2011

in

Industrial Cause No. 716(N) OF 2009

****

RULING OF THE COURT

This is an application by way of Motion on Notice by ***JOSEPH MUCHERE AOKO*** *(hereinafter the applicant)* dated 16th June, 2012 expressed to be brought under ***Rules 42, 43, 84*** of the ***Court of Appeal Rules,*** seeking, in so far as is relevant, the following order:-

(1). That the Notice of Appeal lodged in the Industrial Court on the 5th day of January 2012 be struck out.

The application is supported by the affidavit of ***JOSEPH MUCHERE AOKO*** sworn on the same day. Several averments in the affidavit which are relevant to this application are essentially the same as the grounds in the body of the application and more particularly that:

a. ***The appeal herein does not lie in view of the provisions of Section 64(1) of the Constitution of Kenya notwithstanding Article 162(a) and 164(3) of the Constitution of Kenya 2010, and the provisions of Section 27 of the Labour Institutions Act. No. 12 of 2007.***

b. ***The Court lacks Jurisdiction to entertain the intended appeal.***

Conversely, the respondent through its officer Mr. Alfred Ouma has sworn a replying affidavit dated 20th February 2015 in opposition to the instant application asserting that an appeal from an Award of the former Industrial Court could be made as a matter of right to the Court of Appeal but only in respect of matters of law.

This application is therefore of a very narrow stricture and indeed, the only issue we are tasked to determine herein is whether or not this Court has jurisdiction to entertain an appeal from the former Industrial Court established under **Section 11** of the **Labour Institutions Act No. 12 of 2007,**

When this application came before us for hearing on 14th July, 2015. ***Mr. Ezekiel Oduk*** represented the applicant while ***Mr. Mugambi*** holding brief for ***Mr. Muthama,*** represented the appellant/respondent. They both addressed us as to whether or not the appellant has the right of appeal to this Court.

Mr. Oduk for the applicant relied on the application, the grounds set out therein as well as the supporting affidavit to stress that there was no right of appeal to the Court of Appeal under the former Constitution from awards, decisions and/ or judgments of the former Industrial Court established under the Labour Institutions Act No. 12 of 2007, . Further that, the jurisdiction of the Court of Appeal under **Article 164(3)** of the Constitution, 2010 has no retrospective effect so as to confer a right of appeal from the former Industrial Court established under the old Constitution. He submitted that under **section 65** of the old Constitution, the former Industrial Court was a subordinate court with the High Court having supervisory jurisdiction over it. That an appeal from the decisions of the Industrial Court therefore lie to the High Court and not to the Court of Appeal in view of the provisions of **section 64** of the old Constitution. For this proposition counsel placed reliance on ***United States International University (USIU) v. AG & 2 Others*** HCC Petition No. 170 of 2012, ***Mecol Limited v. AG & Others*** HC Misc App. No. 1784 of 2004, ***Brookside Dairy Limited v. AG & Others*** Petition No. 33 of 2011, ***Samule Momanyi v AG & Anor*** HCC Petition No. 341 of 2011 and ***Senior Best E.P.Z. Ltd v. Tailors & Textile Workers Union***- Civil Appeal No. 162 of 2010.

On his part Mr. Mugambi countered that the appellant's right of appeal arose as at the time and date of delivery of the award and not from the time the claim was filed. He submitted that the award the subject of this appeal was delivered on 15th December, 2011after the promulgation of the Constitution 2010 and the enactment of the **Industrial Court Act No. 20 of 2011**. He argued that logically and reasonably, the appellant's right of appeal can only be said to have accrued as at the date and time of making the award. Counsel further took refuge in the wording of **section 32 of the Industrial Court Act, 2011** , the transitional provision, for the proposition that the lay members who presided over the former Industrial Court are deemed to be judges. That Section provides that:

32. ***(1) Any regulation or other instrument made or issued under the Labour Institutions Act, 2007, shall continue to have effect as if such regulation or other instrument were made or issued under this Act.***

He finally countered that as at the time of filing the Notice of Appeal, the law was very clear vide **section 27** of the **Labor Institutions Act, 2007** , that an appeal from an award of the former Industrial Court could be made as a matter of right to the Court of Appeal but only in respect of matters of law, as is the case in the appeal before us. Reliance was placed on ***Senior Best E.P.Z. Ltd v. Tailors & Textile Workers Union***- Civil Appeal No. 162 of 2010 and ***Director Kenya Medical Research Institute v Agnes Muthoni & 35 others-***Civil Appeal No. 15 of 2011.

We have carefully considered the application before us, the rival affidavits , the oral submissions and attendant authorities in support of each party's case.

Rule 84 of the Court of Appeal Rules on application to strike out a notice of appeal or appeal provides as follows:

"A person affected by an appeal may at any time, either before or after the institution of the appeal, apply to the Court to strike out the notice or the appeal, as the case may be, on the ground that no appeal lies or that some essential step in the proceedings has not been taken or has not been taken within the prescribed time.

Provided that an application to strike out a notice of appeal or an appeal shall not be brought after the expiry of thirty days from the date of service of the notice of appeal or record of appeal as the case may be".

The provision of this Rule is what is akin to a preliminary objection as applied in the lower courts. On this point we wish to restate the postulation of Law JA in the land mark decision of the predecessor of this court, the Court of Appeal for Eastern Africa in the case of ***Mukisa Biscuit Manufacturing Company Limited versus West end Distributors Limited*** **[1969] EA 696**. At page 700 where he had this to say:-

"*So far as I am aware a preliminary objection consists of a point of law which has been pleaded or which arises by clear implication out of pleadings and which if argued as a preliminary point may dispose off the suit. Examples are an objection to the jurisdiction of the court or a plea of limitation or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration…"*

At page 701 Sir Charles Newbold, P. added the following:-

"A preliminary objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion"

For reasons which will shortly become apparent, we consider it important to set out in extenso the legal status, the composition and the jurisdiction of the former Industrial Court established under the **Labour Institutions Act No. 12 of 2007**, before the advent of the Constitution 2010.

Unlike the ordinary courts, the former Industrial Court of Kenya was not established by the old Constitution, but was established under **section 11** of the **Labour Institutions Act No. 12 of 2007**. **Section 12(1)** conferred jurisdiction on the court in respect of any matter which may arise at common law between an employer and employee in the course of employment, between an employee or employer's organisation and a trade union or between a trade union, an employer's organisation, a federation and a member thereof. Vide the provisions of **section 11(2)** of **Labour Institutions Act No. 12 of 2007**, the President of the Republic had powers to appoint as many ***judges*** of the court on the advice of the Judicial Service Commission . **N*on-judge members*** of the court were appointed National Labour Board by dint of **section 17(1)** by the Minister upon advice of the of the Act.

Whenever it appeared to be expedient and for quorum purposes, each judge appointed two assessors, one to represent employees, from a panel of assessors appointed by the Minister, to assist in the determination of any trade dispute before the Court. The jurisdiction of the Court was exercised by a ***judge*** and the ***two other members*** [emphasis supplied]. A person was not qualified to be appointed as a judge unless he or she was an advocate of the High Court of Kenya of not less than seven years' standing.

By terms of **section 27** of the Act**,** a party aggrieved by any final judgment, award or order of the Industrial Court could appeal to the Court of Appeal but such appeals were restricted to matters of law only. The impugned section stipulates that:

"..Any party to any proceedings before the Industrial Court may appeal to the Court of Appeal against that judgment, award or order of the Industrial Court."

It follows therefore that an Act of Parliament **(the Labour Institutions Act 12 of 2007)** which was passed in the previous Constitutional dispensation did confer jurisdiction on this Court in respect of matters of law emanating from the former Industrial Court. This is the crux of this appeal.

In the present application, the issue for determination is whether the Court of Appeal has jurisdiction to hear appeals from the former Industrial Court established under **section 11** of the **Labour Institutions Act No. 12 of 2007** before the **Constitution 2010**. The starting point for this jurisdictional question is the decision of this court in ***Lillian 'S' Case*** as restated by the Supreme Court ***In the Matter of Advisory Opinions of the Supreme Court under Article 163(3) of the Constitution- Constitutional Application No. 2 of 2011:-***

"The Lillian 'S' case [[1989] KLR 1] establishes that jurisdiction flows from the law, and the recipient-Court is to apply the same, with any limitations embodied therein. Such a Court may not arrogate to itself jurisdiction through the craft of interpretation, or by way of endeavours to discern or interpret the intentions of Parliament, where the wording of legislation is clear and there is no ambiguity."

Article 164 of the **Constitution** establishes the Court of Appeal whose jurisdiction is succinctly spelt out in **Article 164 (3).** Its jurisdiction is to hear appeals from the High Court and ***any other court or tribunal*** as prescribed by an Act of Parliament. **Section 3(1)** of the **Appellate Jurisdiction Act, Cap 9 of the laws of Kenya**, further espouses the jurisdiction of this Court and it provides that the Court of Appeal shall have jurisdiction to hear and determine appeals from the High Court in cases in which an appeal lies to the Court of Appeal under any law.

Further, **section 75** of the **Civil Procedure Act**, (**Chapter 21 of the laws of Kenya)** lists the orders out of which appeals lie to this Court as of right. In any other case under the Civil Procedure Act not provided for, an appeal only lies with leave of the court. Such leave must be sought and obtained in the court of the first instance. If the leave is refused then this becomes a ground of appeal. Otherwise all other statutes, independent of the Civil Procedure Act and Rules have provisions for appeals.

The Court of Appeal also has original and discretionary jurisdiction to grant orders for stay under **Rule 5 (2) (b***)* of the **Court of Appeal Rules 2010**. In ***Ishmael Kagunyi Thande v Housing Finance of Kenya Ltd*** Civil Application No. Nai 157 of 2006, the jurisdiction of the Court of Appeal was stated in the following manner: ***"The jurisdiction of the Court under rule 5(2) (b) is not only original but also discretionary."*** It is worth noting that this ***"original "*** *jurisdiction"* under **Rule 5(2)(b)** is what was recently christened as the *"inherent jurisdiction"* of the Court of Appeal by the Supreme Court in ***Teachers Service Commission v Kenya National Union of Teachers and 3 others*** Application no. 16 of 2015.

As regards, appeals arising from election petitions, the Court of Appeal is empowered to hear such appeals by dint of **section 85A** of the **Elections Act 2011**.

From the foregoing, this Court's jurisdictional competence we have expounded above, makes it crystal

clear that there is no express provision either in the

Constitution 2010 , ***Appellate Jurisdiction Act***, ***Cap 9***, the ***Court of Appeal Rules 2010*** or the ***Civil Procedure Act***, ***Cap 21*** providing for an appeal from the former Industrial Court to the Court of Appeal's appellate jurisdiction under ***Article 164(3)*** of the Constitution 2010.

Further, **section 64** of the old Constitution restricted the appeals to the Court of Appeal to only those matters emanating from the High Court as could be conferred on it by law. Secondly, **section 65 (2)** of the old Constitution further conferred the High Court with *supervisory jurisdiction* over any other *subordinate courts* established by Parliament. **Section 123** of the old Constitution defines subordinate court as follows:

"***Subordinate court means a court of law in Kenya other than:***

a. ***the High Court,***

b. ***a court having jurisdiction to hear appeals from the High Court; or***

c. ***a court-martial."***

Analysis of the above provisions of the old Constitution leaves no doubt that the former Industrial Court established under the Labour Institutions Act, 2007 was a subordinate court to the High Court and therefore amenable to the judicial review jurisdiction of the High Court.

In the circumstances and in any event that there was any conflict between **section 27** of the **Labour Institutions Act. No. 12** of 2007 with **section 64** and **section 65** of the old Constitution, then the old constitutional provisions take precedence and prevailed over the statute. This is fortified by the provisions of **section 3** of the retired constitution which specifies clearly that the Constitution has primacy over any other legislation and where there is a conflict then the constitutional provisions prevail. In this context, the views expressed recently by this court in ***Director Kenya Medical Research Institute v Agnes Muthoni & 35 others*** Civil Appeal No. 15 of 2011 may be gainfully quoted here:

"But our finding that the caution is well founded not withstanding, we are in agreement that we are capable of construing section 3 of the retired constitution competently and when so construed it is evidently clear that by virtue of this provision the retired constitution declared both supremacy over and primacy legislative law. By reason of this afore said declaration of supremacy and primacy, section 27 of the labour institutions Act falls into the category of a legislative law. It therefore means that as long as section 3 and 64 of the retired constitution and section 3 of the appellate jurisdiction Act (supra) stood then as at the time appellate process objected to herein were set in motion, the court of appeal had no mandate to receive direct appeals from the industrial court as it was then established. We are in agreement with the argument of the preliminary objector that this was a right which was void and incapable of being enjoyed."

We therefore cannot agree with the argument advanced by counsel for the respondent that the appellant had a right of appeal to the Court of Appeal by the fact that the award was made after the promulgation of the Constitution 2010. His arguments only militate against express constitutional and statutory provisions. We say so because a right of appeal is a fundamental jurisdictional question which cannot be conferred on a court of law by the administrative dictates of dates and times for delivery of a judgment. This Court's jurisdiction can only be conferred by the Constitution and statute law and judicial

Precedents. See ***Samuel Kamau Macharia & Another v. Kenya Commercial Bank Limited & 2 Others,*** S.C. Application No. 2 of 2012; [2012] eKLR.

Our next point of call is to determine which court under our judicial system has the appellate jurisdictional competency to entertain the intended appeal. Specifically in this case, **Article 162** of the Constitution provides as follows:

1. ***The Superior Courts are the Supreme Court, the Court of Appeal, the High Court and the courts referred to in clause (2) [emphasis supplied]***

2. ***Parliament shall establish courts with the same status of the High Court to hear and determine disputes relating to:-(a)employment and labour relations; and***

(b) the environment and the use and occupation of, and title to, land

(3) Parliament shall determine the jurisdiction and functions of the courts contemplated in clause (2)

From the above constitutional provisions, the Employment and Labour Relations Court is one of the courts contemplated under **Article 162(2)** as a superior court just like the Environment and Land Court. Both courts have the ***same status as the High Court*****.** The Constitution does not define what ***"status"*** means but in our view it implies that the court so created must have the same juridical incidents as the High Court.

By terms of **Article 162(1)** of the Constitution 2010, to qualify as a judge and for one to have jurisdictional competency to preside in the Employment and Labour Relations Court established under **Article 162(2)(a)** , one must be ***a Judge*** appointed under conditions prescribed in **Article 166(2)** which provides that:

(*2) each Judge of a superior court shall be appointed from among persons who*

a. ***hold a law degree from a recognized university, or are advocates of the High Court of Kenya, or possess an equivalent qualification in a common-law jurisdiction.."***

In other words, the appeals to the Court of Appeal contemplated under **Article 164(3)** must be presided over by ***a judge*** appointed under and with qualifications prescribed under **Article 166(2).** Therefore, the decisions of the former Industrial Court with members appointed under **Section 17** of the Labour Institutions Act which was composed of lay men, who were not advocates of the High Court of Kenya or judges cannot be appealed to this Court.

It would appear and we hold then that apart from the appellant having no statutory right of appeal to the Court of Appeal, it follows that the intendment of the Constitution 2010 did not envisage that appeals relating to decisions made by the former members of the Industrial Court as was then appointed and constituted *a Judge and two lay members,* could be the subject of an appeal to the Court of Appeal established under **Article 164(3)** of the Constitution 2010.

The Supreme Court in the cases of ***In Re The Matter of the Interim Independent Electoral Commission, S.C., Constitutional Application No. 2 of 2011; [2011] eKLR***, and in ***Samuel Kamau Macharia & Another v. Kenya Commercial Bank Limited & 2 Others, S.C. Application No. 2 of 2012; [2012] eKLR,*** held that the assumption of jurisdiction by courts in Kenya, is a subject regulated by

the Constitution, statute law, and judicial precedent. It was stated:

"A Court's jurisdiction flows from either the Constitution or legislation or both. Such a Court may not arrogate to itself jurisdiction through the craft of interpretation, or by way of endeavours to discern or interpret the intentions of Parliament, where the wording of legislation is clear and there is no ambiguity."

We further find support in the case of ***Haryan Singh Bhogal T/A Haryan Singh & Co. V. Jadva Karsan*** (1953) 20 EACA 17 at page 18 where this Court stated that:-

"It is well settled law that a right of appeal can only be founded on a statute and that any party who seeks to avail himself of the right must strictly comply with the conditions prescribed by the statute."

This was reinforced by the decision of this Court in ***Rafiki Enterprises Limited V Kingsway Tyres & Automart Limited Civil Application No. Nai 375 of 1996 (C.A.)*** where it was stated as follows:-

"……. and of course it is now trite law that a right of appeal must expressly be given by law and such a right cannot even be implied or inferred."

It was exactly in that context that a line of decisions, prominent among them ***Anarita Karimi Njeru v the Republic, (No. 2) (1976-80) 1 KLR 1283,*** held that the Court of Appeal has only such jurisdiction as is expressly conferred on it by statute and cannot claim a general supervisory role over the judicial process.

See also ***Niazsons (K) Limited V China Road & Bridge Corporation (Kenya);***

Civil Appeal No. 187 of 1999. These cases have laid down principles regarding the right of appeal which the appellant has not satisfied.

Finally, as we said from the outset, we are also tasked to state the law as to the jurisdictional question of what court established under the Constitution 2010 should hear appeals from decisions made by the former Industrial Court. We note that the pleadings and counsels' arguments revolved only on the question on whether the appeal from the former Industrial Court should lie to the High Court or the Court of Appeal. The law is also trite that although an appellate court should be wary of formulating or introducing new issues for determination in an appeal before it, where the issues are not pleaded but canvassed before the court, the court may in appropriate cases having regard to the circumstances, identify relevant issues taking extreme caution not to go outside the grounds of appeal filed or issues not canvassed by the parties in their respective briefs of argument. To this extent, we note that Jurisdictional questions were canvassed before this court, but were, however, not adequately addressed by the rival counsel, which leaves the matter for our exploritative determination. In the case of **Odd Jobs Vs. Mubia [1970] EA 476** it was held as follows:

"A court may base its decision on an un-pleaded issue if it appears from the course followed at the trial that the issue has been left to the court for decision."

By the terms of **Article 162(3)** of the Constitution, Parliament has determined the jurisdiction and functions of the Employment and Labour Relations Court and the Environment and Land Court. This has been done through the enactment of the **Industrial Court Act, 2011** and **the Environment and Land Court Act, 2011.**

The jurisdiction and functions of the Industrial Court now the Employment and Labour Relations Court is provided for under **section 12(1)** of the **Industrial Court Act, 2011** which provides that:

(1) The Court shall have exclusive original and appellate jurisdiction to hear and determine all disputes referred to it in accordance with Article 162(2) of the Constitution and the provisions of this Act or any other written law which extends jurisdiction to the Court relating to employment and labour relations including—[Emphasis supplied]

a. ***disputes relating to or arising out of employment between an employer and an employee;***

b. ***disputes between an employer and a trade union;***

c. ***disputes between an employers' organisation and a trade unions organisation;***

d. ***disputes between trade unions;***

e. ***disputes between employer organizations;***

f. ***disputes between an employers' organisation and a trade union;***

g. ***disputes between a trade union and a member thereof;***

h. ***disputes between an employer's organisation or a federation and a member thereof;***

i. ***disputes concerning the registration and election of trade union officials; and***

j. ***disputes relating to the registration and enforcement of collective agreements.***

From the above, a comparative analysis of the provisions of both **Article 162(2**) of the Constitution 2010 , and **section 12** of the **Industrial Court Act, 2011** leaves no doubt that both the Constitution and the Industrial Court Act have vested the Industrial Court with original and exclusive jurisdiction to hear and determine all disputes relating to employment and labor relations. It is noteworthy that both the Constitution and the Industrial Court Act, 2011 use the same phrase *".....disputes relating to employment and labour relations.."* What this means is that any dispute regardless of its nature which arises in the context of employment and labor relations is within the exclusive jurisdiction and competence of the Employment and Labor Relations Court.

Whereas **Article 165 (6)** confers on the High Court supervisory jurisdiction , this jurisdiction is subject to and limited by **Sub Article 5** of **Article 165** which states that the High Court shall not have jurisdiction in respect of matters falling within the jurisdiction of the courts contemplated under **Article 162(2),** i.e the Employment and Labour Relations Court (ELRC) and the Environment and Land Court (ELC) more precisely, the Constitution 2010 and emerging jurisdiction fortifies the argument that jurisdiction of the High Court is ousted in three respects:

i. ***matters "reserved for the exclusive jurisdiction of the Supreme Court";***

ii. ***matters falling within the jurisdiction of certain special Courts established by the legislature dealing with employment and labour relations, and with environment and land****.* [Emphasis

supplied]

iii. ***Decisions of Judges and Magistrates Vetting Board pursuant to Section 23 (2) of the Sixth Schedule to the Constitution. (See the Supreme Court vetting Board Case in Judges & Magistrates Vetting Board & 2 Others v Centre for Human Rights & Democracy & 11 others [2014] eKLR****)***

On the other hand, the transitional and saving clause of judicial proceedings and pending matters under **section 22** of the Sixth Schedule to the Constitution 2010 provides that:

" All judicial proceedings pending before any court shall continue to be heard and shall be determined "by the same court" or a "corresponding court" established under this Constitution or as directed by the Chief Justice or the Registrar of the High Court**."** [Emphasis supplied]

To our mind, a clear reading of the above provision implies that the ***" same court"*** referred to under **section 12** of the Sixth Schedule is the ***" High Court"*** where appeals from the former Industrial Court were originally preferred. However, first, we find that the High Court having been divested the appellate jurisdiction by **Article 165(5)** cannot then hear an appeal in labour and employment disputes emanating from the decisions of the former Industrial Court. Secondly, the *" Corresponding Court"* established under **Article 162(2)** with the same status as the High Court and with exclusive jurisdiction to determine labour and employment disputes is the Employment and Labour Relations Court (ELC).

We further find support in the wording of **section 12(1)** of the Industrial Court Act, 2011, which stated that the Court shall have ***exclusive original*** and ***appellate jurisdiction*** to hear and determine all disputes relating to labour and employment matters.

We therefore hold and state for avoidance of doubt that the Labor and Employment Court is a competent court with both ***"original jurisdiction"*** in labour and employment disputes arising under the new Constitution 2010 and an ***"appellate jurisdiction"*** for labor and employment disputes arising from the decisions of the former Industrial Court established under the retired Constitution.

We are in this regard in agreement with the postulations of Ibrahim J (as he then was) in the case of ***Rob De Jong & Another Vs Charles Mureithi Wachira***) on exclusive special jurisdiction of the Industrial Court in labour matters, where he held thus:

"…. The legislature has in its wisdom created a specialized court for adjudicating upon labor related disputes. The law created the Industrial Court as a specialized court to determine all labor related disputes. The Labor Institutions Act in Section 12 provides as follows:

"***The Industrial Court shall have exclusive jurisdiction to hear, determine and grant any appropriate relief in respect of an application, claim or complaint or infringement of any provisions of this Act or any other legislation which extends jurisdiction to the Industrial Court or in respect of any matter which may arise at common law between an employer and employee in the course of employment, between employee and employer's Organization and a trade union or between a trade union, an employer's organization, a federal and a member thereof".***(emphasis mine)

"…. It is clear that the law gives exclusive jurisdiction to the Industrial Court to hear and determine all industrial related matters. It is therefore wrong for other courts at the instigation of

litigants to take away or attempt to share jurisdiction with the Industrial Court. This in the end also serves the interest of the Industry in allowing quick and effective disposal of Industrial disputes by specialized courts…."

This holding was carried In ***Anne Kinyua V Nyayo Tea Zone Development Corporation & 3 Others*** [2012] eKLR where the learned judge held :

"..The Constitution and the Industrial Court Act has given the Industrial Court original and exclusive jurisdiction to hear and determine disputes relating to employment and labour relations. That means, any dispute regardless of its nature which arises in the context of employment and labor relations is within the exclusive mandate of the Industrial Court..."

Consequently, and for these reasons stated, we are constrained to allow as we hereby do the application by the notice of motion dated and filed in this Court on 15th February, 2012 and hold that we have no jurisdiction to entertain the Notice of Appeal dated 5th January, 2012.

Given the peculiar circumstances of the case, we order that each party shall bear his/her own costs.

Dated and delivered at Nairobi this 23rd day of October, 2015.

P. KIHARA KARIUKI (P.C.A)

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JUDGE OF APPEAL

J. W. MWERA

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JUDGE OF APPEAL

F. SICHALE

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JUDGE OF APPEAL

I certify that this is a true copy of the original.

DEPUTY REGISTRAR