

Appeal No. 2 of 2023 Pontrilas Investments Limited v The Central Bank of Kenya & Another

Coming up for Hearing: 14th February 2024.

Appeal filed: on 17th February 2023

Treaty, Rules: Article 35A of The Treaty for the Establishment of the East African Community 1999.

Subject matter: Jurisdiction

This Appeal arises from the Judgment of the First Instance Division dated 17th November 2022 in *Application No. 6 of 2022 The Central Bank of Kenya v Pontrilas Investment & Another* originating from *Reference No. 8 of 2017 Pontrilas Investments Limited v The Central Bank of Kenya & Another*. In the said decision the First Instance Division ruling on an issue of jurisdiction, decreed that it had no personal jurisdiction as against the 1st Respondent (Central Bank of Kenya) and that the main Reference should proceed to hearing and determination against the second Respondent only (The Attorney General of Kenya).

The Appellant, aggrieved by the said decision, proceeded to file *Appeal no 2 of 2023 Pontrilas Investment Limited v The Central Bank of Kenya & The Attorney General of Kenya* where the Appellant submits that the First Instance Division of the Court committed a procedural irregularity by ordering bifurcation and a separate hearing on the preliminary point of objection based on jurisdiction of the Court as against the 1st Respondent. In advancing this ground the Appellant argues that the First Instance Division had already ruled that the issue as raised, had both matters of law and fact and it thus requires a full hearing and adduction of evidence. The Appellants further points out that the First Instance Division did not afford them a chance to properly present and argue their case an action which is a proper ground for Appeal under Article 35 A of the Treaty for the Establishment of the East African Community.

The Appellants thus prays that the Appellate Division allows the Appeal with costs, and issue orders to the First Instance Division to hear the main Reference in accordance with the directions and orders the First Instance Division issued on 4th of July 2019.

The 1st Respondent on his part opposes the Appeal and advances an argument that the decision of the First Instance Division was legally sound since no Court can proceed with determination of a dispute without determining the issue of jurisdiction. They further argue that the issue of jurisdiction is of utmost importance and it can be raised at any stage of litigation by the parties or the Court on its own motion. They further argue that, it would have been injudicious to allow the Appellants to submit their case on merit and adduce evidence in support thereof only for the Court to determine that it had no jurisdiction as against them. In their view that would amount abuse of the Court process and a waste of the Court and parties' time.

The 2nd Respondent on their part support the arguments advanced by the 1st Respondent in whole and they pray, as the 1st Respondent does for the Appeal to be dismissed with costs.

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