



**Abdalla v Karisa; Mwangangi (Interested Party) (Civil Appeal
E001 of 2020) [2024] KEHC 13451 (KLR) (30 October 2024) (Judgment)**

Neutral citation: [2024] KEHC 13451 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT GARSEN
CIVIL APPEAL E001 OF 2020
SM GITHINJI, J
OCTOBER 30, 2024**

BETWEEN

BASHIR ALI ABDALLA APPELLANT

AND

PETER LUGANJE KARISA RESPONDENT

AND

JOHN MUSYA MWANGANGI INTERESTED PARTY

*(Being an Appeal arising from the Ruling issued on the 12th day of
November, 2020 before Hon E.Kadima – Senior Resident Magistrate
dismissing the Appellant’s Application dated 10th August, 2020)*

JUDGMENT

1. The background to this appeal is that on 12th November 2020, the learned trial magistrate Hon. Kadima (SRM) in CMCC No. 33 of 2019, dismissed the Appellant’s application dated 10th August 2020 wherein the Appellant had sought orders inter alia, to set aside ex-parte judgment delivered on 19th December 2019. The basis of that application was that firstly, the trial court did not have jurisdiction to determine a claim under the Work Injury Benefits Authority and secondly that the parties had entered into a settlement agreement and signed a discharge voucher to that effect.
2. Aggrieved by the trial court’s ruling, the Appellant moved to this court. He filed a memorandum of appeal dated 17th November 2020 raising the following grounds: -
 1. That the learned magistrate erred in both law and fact in failing to take cognizance of the fact that the honourable court had no jurisdiction to handle the matter being an employer-employee relationship.



2. That the learned magistrate erred in both law and fact in proceeding to assert that the Appellant ought to have raised the issue of jurisdiction from the onset of the matter; without taking into cognizance of the fact the said judgment was entered ex-parte and that the issue of jurisdiction was raised on the application lodged by the Applicant vide the certificate of urgency dated the 10th of August, 2020.
 3. That the learned magistrate erred in both law and fact in disregarding the discharge voucher entered between the Appellant and the Respondent herein, which absolved any future litigation proceedings as against the Appellant on such basis that the same had been amicably settled out of court.
 4. That the learned magistrate erred in both law and fact in proceeding to dwell on technicalities on a mistake of name attributed on the part of the counsel on record; in which supporting evidence clearly enunciated that the said magistrate was well aware of and a deliberate dismissal.
 5. That the learned magistrate erred in both laws and fact in proceeding to call the 2nd Defendant for cross-examination and not affording the Defendant's counsel an opportunity to cross-examine the Plaintiff's witness on the contents of the discharge voucher.
 6. That the learned magistrate erred in both law and fact in proceeding to mitigate on behalf of the counsel for the Respondent; and hence not affording an opportunity upon the Plaintiff/respondent to respond to the salient issues.
 7. That the learned magistrate erred in law and in fact in proceeding to assert that in discharge voucher, the names of the witness was written as Nelson Kenga and the National Identity Card bore the names Nelson Kenga Zero without taking into cognizance of the fact that the same was one and the same person as per the identification number.
 8. That the learned magistrate erred in both law and fact in proceeding to deny the existence of the said Rashid Abdalla the defendant herein, whose identification number tallied with the one on the discharge voucher and who had availed himself in court as a cross-examination witness.
 9. That the learned magistrate erred in both law and in fact in failing to take into consideration that both parties had voluntarily entered into a binding contract.
 10. That the learned magistrate erred in both law and fact in proceeding to misconstrue the contents of the discharge voucher.
 11. That the learned magistrate erred in both law and fact in proceeding to disregard the submissions lodged by the appellant which raised tenable issues.
 12. That the learned magistrate erred in both law and fact in conducting the proceedings unfairly; and hence affording the Plaintiff's counsel an unfair higher leverage upon the Plaintiff/respondent.
3. The Appellant sought the following reliefs: -
- a. That a declaration do issue that the Principal Magistrate Court in Garsen Civil Suit No. 33 of 2019; Peter Lujanje Karisa versus Aisha Hassan Hemed and Bashir Abdalla had no jurisdiction to hear and determine the suit before it.
 - b. That the attached asset namely KBH 834X, be hereby released unconditionally in favour of the Appellant.



- c. That orders do issue setting aside the judgment and decree entered in Garsen CMCC No. 33 of 2019 on the basis that the honourable court lacked the jurisdiction to hear and determine the matter.
 - d. That a declaration hereby do issue that the discharge voucher dated 20th September 2017 was authentic, mutually binding and hence enforceable.
 - e. That a declaration do hereby issue that any purported sale or transfer in favour of a third party in enforcement of the judgment and decree in Garsen CMCC No. 33 of 2019 be hereby deemed as null and void.
 - f. That the costs of the appeal be borne by the Appellant/applicant.
4. The appeal was canvassed by way of written submissions.

The Appellant's Submissions

- 5. In the submissions dated 18th May 2021, counsel for the Appellant identified five issues for determination which he addressed as below-
- 6. Counsel submitted that the relationship between the Appellant and Respondent being employer-employee and following the Supreme Court's decision in *Law Society of Kenya v AG & another* [2019] eKLR, the learned magistrate had no jurisdiction to determine the suit in the first place as he did.
- 7. Counsel pointed out the names Rashid Abdalla and Nelson Kenga Abdalla appearing on the application and discharge voucher were an inadvertent mistake which the trial court ought not to have focused on to arrive at dismissal of the Appellant's application. He added that the trial process was biased and unfair to the Appellant since he was denied an opportunity to determine the authenticity of the Respondent's thumb print signature on the discharge voucher; and in turn the trial magistrate decided on the same relying on the testimony of one witness. To further demonstrate bias, counsel submitted that the trial magistrate failed to consider the Appellant's submissions.

The Respondent's Submissions

- 8. In relation to the issue of jurisdiction, counsel argued that this appeal ought to have been filed in the Employment and Labour Relations Court (ELRC) as established under Article 162 (2) of the Constitution. Relying on the case of *Owners of Motor Vessel "Lilian S" v Caltex Oil (K) Limited* [1989] eKLR and Article 165 (5) (b) of the *Constitution*, counsel submitted that the high court has therefore no jurisdiction.
- 9. Counsel added that while it is true that the suit arose out of a work injury claim, the same was filed on 20th June 2019 long before the said supreme court decision of 3rd December 2019. He relied on Gazette notice no. 5476 of 2023 regarding the Chief Justice directives on such matters where claims filed after commencement of *WIBA* but before the Supreme court decision were to be determined by those courts. Counsel added that section 2 and 9 (b) of the *Magistrates Court Act* equipped the trial court with the requisite jurisdiction to determine the suit and could not be faulted for doing so.
- 10. Counsel further submitted that the affidavit in support of the application to set aside was signed by a stranger to the suit hence incompetent by virtue of Order 19 rule 4 of the *Civil Procedure Rules*, the effect which the application was bad in law. To buttress this point, counsel relied on the cases of *Moiyo Matanya Ole Keiwua v Chief Justice of Kenya & 6 others* [2008] eKLR; and *Kenya Power & Lighting Company Limited v Julius Wambale & another* [2019] eKLR.



Analysis and Determination

11. Having considered the memorandum of appeal, arguments advanced by both parties, authorities presented and the record of appeal filed, I find that the significant issues for determination are: -
 1. Whether this court has jurisdiction to determine this appeal.
 2. Whether the trial court had jurisdiction to determine the primary suit.
 3. Whether the appeal is merited.
12. The issue of jurisdiction is the life of any adjudication. Ibrahim, JSC in Supreme Court of Kenya Civil Application No. 11 of 2016 *Hon. (Lady) Justice Kalpana H. Rawal -v- Judicial Service Commission & Others* where he quoted from the decision in Supreme Court of Nigeria Supreme Case No. 11 of 2012 *Ocheja Emmanuel Dangana vs. Hon. Atai Aidoko Aliusman & 4 Others* where Walter Samuel Nkanu Onnoghen, JSC expressed himself as follows: -

“...It is settled that jurisdiction is the life blood of any adjudication because a court or tribunal without jurisdiction is like an animal without blood, which means it is dead. A decision by a court or tribunal without requisite jurisdiction is a nullity - dead - and of no legal effect whatsoever. That is why an issue of jurisdiction is crucial and fundamental in adjudication and has to be dealt with first and foremost...”
13. It is also important to note that while it is preferable for a challenge on jurisdiction to be raised at an early stage of proceedings, nothing stops a party from raising the same at any time while the suit is still active.
14. Article 165 of the *Constitution* of Kenya, 2010 establishes the High Court with unlimited original jurisdiction in criminal and civil matters save for matters exclusively reserved for the Supreme Court or those falling within the jurisdiction of the Environment and Land Court and the ELRC. Section 12 (1) of *ELRC Act* sets out the jurisdiction of this court in relation to employment and labour relations matters as follows;
 12. Jurisdiction of the Court
 - (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—
 - (a) disputes relating to or arising out of employment between an employer and an employee;...
15. It is established and conceded by both parties that the dispute herein is employment related for reasons that the Respondent sustained injuries in the course of employment by the Appellant. As aforesaid, there is established a special court for such matters. Article 162 (2) of the *Constitution* of Kenya, 2010 as read with section 12 of the *ELRC Act*, 2011 provide for establishment and jurisdiction of the Employment and Labour Relations Court. It is also trite that Article 165(5) (b) of the *Constitution* of Kenya, 2010 ousts this court’s jurisdiction in respect of matters falling within the jurisdiction of the courts established under Article 162 (2). It follows therefore that the proper forum to lodge the present appeal would have been the ELRC as opposed to the High Court. Having found that this court lacks jurisdiction to determine the appeal, the court must immediately down its tools. I have done so to the effect that this appeal is dismissed for want of jurisdiction with costs to the Respondent.



JUDGMENT READ, SIGNED AND DELIVERED VIRTUALLY AT MALINDI THIS 30TH DAY OF OCTOBER, 2024.

S.M. GITHINJI

JUDGE

Representation:

Mr Kokul Advocates for the Appellant

Mr Wambua Kilonzo Advocate for the Respondent

Mr Mwaure Wahiga is for the Interested Party

In the Presence of; -

1. Miss Mureithi for the Respondent
2. Mr Mariambo holding brief for Mr Kokul for the Appellant.

