



Trident Insurance Company v Ripe Freight Services Limited (Civil Appeal 242 of 2019) [2023] KEHC 27574 (KLR) (29 September 2023) (Ruling)

Neutral citation: [2023] KEHC 27574 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
CIVIL APPEAL 242 OF 2019
F WANGARI, J
SEPTEMBER 29, 2023**

BETWEEN

TRIDENT INSURANCE COMPANY APPELLANT

AND

RIPE FREIGHT SERVICES LIMITED RESPONDENT

RULING

1. The application coming up for determination is the Notice of Motion dated 4/4/2023 and filed on an even date seeking the following orders;
 - a. Spent
 - b. Spent
 - c. That an order is hereby made calling for the record of Civil Case No. 1432 of 2014, *Ripe Freight Services Limited v Trident Insurance Services Limited*, currently before Hon. Maureen Nabibya and the same is brought before the judge for directions.
 - d. That the court makes a declaration that Hon. Maureen Nabibya lacks jurisdiction to sit on appeal of the decision of Hon. Justice Olga Sewe made on the 10th February 2023 and her decision shall be in direct conflict with a decision already made in the appellant court.
 - e. That there is a clear bar of subsequent applications for review since a decision or ruling was already made by Hon. J. Kassam delivered on 20/1/2019 and Hon. Maureen Nabibya might make a conflicting decision that is expressly braved by Order 45 Rule 6 and also appealed against and determined already by the High Court in Civil Appeal No. 242 of 2019.
 - f. That costs be in the cause of this application



2. The Respondent in the Replying Affidavit dated 24/4/2023 denied that the application before the lower court was intended to embarrass the court, but it was seeking for the recalculation of the interest payable, since the Applicant had already commenced execution proceedings.
3. Directions were given that the application be disposed of by way of written submissions. Both parties complied by filing their rival submissions. From the pleadings, both parties made reference to the application before the lower court, and which is the subject of this application.

Analysis and Determination

4. The application in the lower court is a Notice of Motion dated 20/2/2023 which is currently pending before Hon. Maureen Nabibya. The Respondent submits that it is similar to the Notice of Motion dated 24/12/2018 and ruling was delivered on 25/1/2019 by Hon. J.K. Kassam, and which was subject to this appeal. The judgment on appeal was delivered on 10/2/2023 by Justice Olga Sewe.
5. None of the parties have attached the application dated 20/2/2023. This court cannot rely on the submissions by the parties as to the contents of the said application. In order to make an informed decision on this application, it is paramount that the lower court records be availed for perusal and further orders and directions.
6. In the case of *Samuel Kamau Macharia & ano v Kenya Commercial Bank Ltd & ano* [2012] eKLR, the court stated as follows;

“(68) A court’s jurisdiction flows from either the Constitution or legislation or both. Thus a court of law can only exercise jurisdiction as conferred by the Constitution or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law”

7. The Constitution has conferred to this court the supervisory jurisdiction over the subordinate courts. Article 165 (6) (7) of the Constitution provides as follows;

“(6) The High Court has supervisory jurisdiction over the subordinate courts and over any person, body or authority exercising a judicial or quasi-judicial function, but not over a superior court.

(7) For the purposes of clause (6), the High Court may call for the record of any proceedings before any subordinate court or person, body or authority referred to in clause (6), and may make any order or give any direction it considers appropriate to ensure the fair administration of justice.”

8. For reasons as given above, this application is partly allowed and I make the following orders: -
 - a. That the court record in Mombasa of Civil Case No. 1432 of 2014, *Ripe Freight Services Limited v Trident Insurance Services Limited*, be availed before this court for perusal and directions.
 - b. That prayer (4) of the application shall be determined upon the perusal of the lower court file.
 - c. Each party to bear its own costs.

DATED, SIGNED AND DELIVERED AT MOMBASA THIS 29TH DAY OF SEPTEMBER, 2023

F. WANGARI



JUDGE

In the presence of: -

Tindi Advocate for the Appellant

N/A by the Respondent

Barile, Court Assistant

