

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

CIVIL APPEAL NO. 99 OF 2019

PROTECTIVE CUSTODY LIMITED.....APPELLANT

VERSUS

JOSEPH MUMIA NDUBI.....RESPONDENT

(An appeal arising from the ruling and order of the Hon. B Ochieng, Chief Magistrate (Ag PM), in Kakamega CMCCC No. 220 of 2018 of 25th September 2019)

JUDGMENT

1. According to the plaint filed in the primary suit, dated 30^h April 2018, the appellant herein was the employer of the respondent. That would mean that there was an employer-employee relationship between them, and the dispute before the court related to labour relations. The High Court has no jurisdiction, since 2010, to handle disputes that turn on employment and labour relations, by dint of Articles 162(2) and 165(5) of the Constitution of Kenya. That would mean that I have no jurisdiction to handle the appeal herein.

2. By dint of the decisions of the Court of Appeal in *Phoenix of EA Assurance Company Limited vs. SM Thiga t/a Newspaper Service* [2019] eKLR (**Karanja, Gatembu & Sichale JJA**) and *Equity Bank Limited vs. Bruce Mutie Mutuku t/a Diani Tour Travel* [2016] eKLR (**Makhandia, Ouko & M'Inoti JJA**), where the High Court has no jurisdiction over a matter before it, it would have no jurisdiction, under sections 17 and 18 of the Civil Procedure Act, Cap 21, Laws of Kenya, to transfer the suit, in respect of which it has no jurisdiction, to the court with jurisdiction.

3. The appeal before me was filed at the wrong forum, before a court which has no jurisdiction to entertain it. It is, therefore, incompetent. It is accordingly struck out. The respondent shall have the costs.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT KAKAMEGA THIS 28TH DAY OF JANUARY, 2022

W. MUSYOKA

JUDGE

Mr. Erick Zalo, Court Assistant.

Mr. Khayumbi, instructed by Messrs. JJ Khayumbi & Co., Advocates, for the appellant

Ms. Shibanda, instructed by VA Shibanda & Co., Advocates, for the respondent.