



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

CIVIL APPEAL NO. 96 OF 2016

CHARLES MATATA KUSINYO.....APPELLANT

VERSUS

CHANNAN AGRICULTURAL CONTRACTORS.....RESPONDENT

(An appeal arising from the decision of Hon. CAS Mutai, Principal Magistrate, of 27th June 2016, in Butere SPMCCC No. 192 of 2014)

RULING

1. The Constitution 2010, at Article 162(2), establishes a special court to handle disputes that revolve around the employment and labour relations. Article 165(5) of the same Constitution strips the High Court of jurisdiction over such matters.

2. For avoidance of doubt, Article 162(2) states as follows: –

‘Parliament shall establish courts with the status of the High Court to hear and determine disputes relating to –

(a) employment and labour relations; and

(b) ...’

3. On the other hand, Article 165(5) of the Constitution states as follows:-

‘The High Court shall not have jurisdiction in respect of matters-

(a) reserved for the exclusive jurisdiction of the Supreme Court under this Constitution; or

(b) falling within the jurisdiction of the courts contemplated in Article 162(2).’

4. In obedience to Article 162(2) of the Constitution, Parliament did, through the Employment and Labour Relations Court Act, No. 20 of 2011, establish such a court, known as the Employment and Labour Relations Court. The jurisdiction of the Employment and Labour Relations Court is set out in section 12 of the Employment and Labour Relations Court Act. The said court has exclusive original and appellate jurisdiction to hear and determine all disputes referred to it in accordance with Article 162(2) of the Constitution, relating to employment and labour relations.

5. For avoidance of doubt, the provisions of section 12, relevant to the dispute at hand read as follows:

“(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;

(b) ...

(c) ...

(d) ...

(e) ...

(f) ...

(g) ...

(h) ...

(i) ...

(j) ...

(2) An application, claim or complaint may be lodged with the Court by or against an employee, an employer ...

(3) In exercise of its jurisdiction under this Act, the Court shall have power to make any of the following orders –

(i) ...

(ii) ...

(iii) ...

(iv) ...

(v) ...

(v) An award of damages in any circumstances contemplated under this Act or any written law;

(vi) ...

(vii) ...”

6. In the plaint filed at the trial court, it is averred that the parties to the dispute were in an employee-employer relationship, and the cause of action accrued within the context of the said relationship. It was further alleged that the accident the subject of the dispute was occasioned by breach of the duty that the employer owes an employee under statute or as a consequence of breach of the terms of the employment contract between them.

7. The dispute herein is squarely located within employment and labour relations. The High Court no longer has jurisdiction over matters revolving around employment and labour relations. That jurisdiction lies with the Employment and Labour Relations Court.

8. Jurisdiction is at the heart of any proceedings and a court should be sensitive to it. Without jurisdiction, nothing moves. The Court of Appeal said so in *Owners of the Motor Vessel “Lillian S” vs. Caltex Oil (Kenya) Ltd* [1989] eKLR, in these words:

“Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law downs its tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.”

9. Specific to the exercise of the power to transfer suits, the Court of Appeal stated, in *Equity Bank Limited vs. Bruce Mutie Mutuku t/a Diani Tour Travel* (2016) eKLR, as follows:

“In numerous decided cases, courts, including this Court, have held that it would be illegal for the High Court in exercise of its powers under S. 18 of the Civil Procedure Act to transfer a suit filed in a court lacking jurisdiction to a court lacking jurisdiction and therefore sanctify an incompetent suit. This is because no competent suit exists that is capable of being transferred. Jurisdiction is a weighty fundamental matter and to allow a court to transfer an incompetent suit for want of jurisdiction to a competent court would be to muddle up the waters and allow confusion to reign. It is settled law that parties cannot even by their consent confer jurisdiction on a court where no such jurisdiction exists. It is so fundamental that where it lacks parties cannot even seek refuge under the O2 principle or the overriding objective under the Civil Procedure Act, the Appellate Jurisdiction Act or even Article 159 of the Constitution to remedy the same.”

10. More recently, in *Phoenix of EA Assurance Company Limited vs. SM Thiga t/a Newspaper Service* (2019) eKLR, the Court of Appeal said:

“... Jurisdiction is primordial in every suit. It has to be there when the suit is filed in the first placed. If the suit is filed without jurisdiction, the only remedy is to withdraw it and file a compliant one in the court seized of jurisdiction. A suit filed devoid of

jurisdiction is dead on arrival and cannot be remedied. without jurisdiction, the Court cannot confer jurisdiction upon itself ...”

11. In view of the decisions that I have cited above, there can be no doubt that the appeal herein, filed at the High Court, instead of the Employment and Labour Relations Court, is incompetent, and it is hereby struck out. Each party shall bear their own costs.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT KAKAMEGA THIS 22ND DAY OF MAY, 2020

W. MUSYOKA

JUDGE