



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYAMIRA

MISC. CIVIL CASE NO. 24 OF 2020

ERICK NYANDIEKA MONG'ARE.....PLAINTIFF/RESPONDENT

- VRS -

ZHONGMEI ENGINEERING GROUP LTD....DEFENDANT/RESPONDENT

RULING

By the Notice of Motion dated 26th May 2020 the applicant seeks orders: -

“(i) That Nyamira HCCA No. 2 of 2019 be withdrawn and thereafter transferred to Kisumu Employment & Labour Relations Court for hearing and determination of the Appeal.

(ii) That there be temporary stay of execution of (sic) judgement/and or decision delivered and dated 15th day of January 2019 and the proclamation and attachment dated 10th February 2020 and all the consequential Orders emanating therefrom.

(iii) Costs of this Application be provided for.”

The application is premised on grounds that: -

“1. That Nyamira CMCC No. 163 of 2016 was filed in the Chief Magistrates Court.2. That the matter was heard and determined by the Chief Magistrates court during the pendency of the Appeal determining the jurisdiction of WIBA claims at the Supreme Court.

3. That the defendant being aggrieved by the Judgement of the trial court, proceeded and logged an appeal in the High Court at Nyamira vide NYAMIRA HCCA NO. 2 OF 2018.

4. That on the 19th of December 2019, the High Court at Nyamira downed its tools citing lack of jurisdiction pursuant to the Supreme Court ruling which ousted jurisdiction of WIBA matters from the Civil courts.

5. That despite lack of Jurisdiction by the High Court, the lower Court has proceeded to issue warrants of proclamations dated 10th day of February 2020.

6. It is against this actions that we now seek for the Orders herein in the interest of justice as we move to the appropriate court.

7. It is in the interest of justice that the parties be heard by the appropriate Court and the real questions in controversy be therein identified, tried and adjudged.

8. The Plaintiff/Respondent stands to suffer no prejudice should the Honourable Court make the Orders prayed for in this Application.

9. That both the Chief Magistrates' and the High Court do not have the jurisdiction to entertain the case.

10. There will be no prejudice to the plaintiff should the order sought in this Application be granted.

11. That unless this court exercises its Inherent Supervisory Powers, the plaintiff will proceed with an illegality to the detriment of the applicant herein.”

The application is supported by the affidavit of Lazarus Mobagi Mose, Advocate sworn on 26th May 2020 in which he reiterates the grounds on the face of the application.

In answer to the application the respondent filed a replying affidavit sworn on 30th June 2020 by Benard Nyagaka Ogari, Advocate.

The application proceeded by way of written submissions.

I have considered the application, the grounds thereof, the affidavits both in support and in reply and the rival submissions of the advocates and perused the cases cited by both sides. As I stated in the appeal HCCA No. 2 of 2020, the jurisdiction to hear appeals challenging the decisions of lower courts in matters filed under the **Work Injuries Benefits Act (WIBA)** lies in the **Employment & Labour Relations Court (The ELRC)**. For that reason, although I had admitted the appeal, I could not proceed to determine the same and whereas I had downed my tools, the order that best commends itself to me in this application since I did not strike out the appeal is to allow the application for transfer of the appeal to the **Employment & Labour Relations Court**.

However, this court has no jurisdiction to entertain the prayer for stay of execution of the judgement of the lower court and accordingly it will not make any determination on the same.

The Deputy Registrar shall formally have the appeal file transmitted to the **Employment & Labour Relations Court Kisumu** as prayed in the application and the same shall be mentioned before the **ELRC Judge on 21st September 2020**. The applicant shall bear the costs of the application. It is so ordered.

Dated, signed and delivered in open court this 30th day of July 2020

E. N. MAINA

JUDGE

Judgement delivered Electronically via Video Link