



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MACHAKOS

Coram: D. K. Kemei – J

CIVIL APPEAL CASE NO. 116 OF 2016

S. S. MEHTA & SONS.....APPELLANT

VERSUS

KITUVA KIMINZA.....RESPONDENT

(Being an appeal from the judgement and decree of Honourable E. K. Too (Senior Resident Magistrate delivered on 16th March, 2016 at Principal Magistrate's Court at Mavoko in PMCC No.498 of 2013)

RULING ON DIRECTIONS

1. The appeal arises from the judgement and decree of Hon. E. K. Too SRM in **Mavoko PMCC. No. 498 of 2013** delivered on 16/03/2016 wherein general damages of Kshs. 150,000/= and special damages of Kshs.20,000/= were awarded to the Respondent and liability apportioned in the ratio of 80% to 20% in favour of the Respondent.

2. The Appellant was aggrieved by the said judgment and lodged its Memorandum of Appeal dated 18/10/2016 in which it raised eight grounds of appeal namely:

- 1. That the learned Magistrate erred in fact and in law awarding a quantum of general damages in the sum of Khs.120,000/- in the Respondents favour and against the evidence submitted at the trial.***
- 2. That the learned magistrate erred in failing to consider whether the Third Party already enjoined in the proceedings had been duly served with a hearing notice by the Respondent's Advocates, informing them of the hearing of the suit on 10th August, 2015.***
- 3. That the learned magistrate erred in failing to appreciate the impact of the admitted failure by the Respondents Advocates, to notify the Third Party of the ensuing hearing of the main suit, upon the final determination of the suit.***
- 4. That the learned magistrate erred in fact and in law and in law in failing to appreciate the impact of the uncontroverted joinder of the Third Party into the proceedings on 30th May, 2014 and the imperative need to notify them of all subsequent hearing proceedings.***
- 5. That the learned magistrate erred in fact and in law in making findings which were not supported by the pleadings and evidence on the court record, that the Respondent discharged his burden of proof on a balance of probabilities to warrant the said findings.***
- 6. That the learned magistrate misapprehended and misunderstood the circumstances surrounding the events that are the subject of this suit on liability and quantum against the Appellant.***
- 7. That the learned magistrate misapprehended and misunderstood the extent and severity of the injuries sustained by the Respondent, thereby leading to an excessive award of damages.***
- 8. The learned trial magistrate erred in fact and in law in making a manifestly high award in general damages in view of the contradictory evidence pleaded and adduced by the Respondent in proof thereof as to the Appellant's culpability and the eventual erroneous estimate of loss/damages suffered by the Respondent.***

3. A perusal of the pleadings and record of proceedings reveals that the dispute relates to a work injury claim for which this court lacks jurisdiction to entertain under the Work Injury Benefits Act 2007. The issue for determination therefore is whether this court has jurisdiction to handle the matter.

4. The guiding principles to all courts is that where a suit is filed in a court that lacks jurisdiction to hear and determine the suit, then the suit would be deemed a nullity as per the decision of Nyarangi J A in the case of **Owners of Motor Vessel ‘Lilian ‘s’ –vs- Caltex Oil (K) limited [1989] eKLR** as follows:

“Jurisdiction is everything without which a court of law has no power to make one more step. Where a court of law 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 the moment it holds the opinion it is without jurisdiction.”

5. In selecting a court with power to handle the type of litigation regard must be made to the enabling law which empowers such court to hear such a case. This matter relates to a work injury where the Respondent sustained injuries while in the course of employment with the Appellant. Hence the dispute is basically an employment and labour relations one which should be handled by the Employment and Labour Relations Court. Parliament enacted the employment and labour Relations Act No. 20 of 2011 to regulate labour related disputes. Section 12(1) thereof provides for the jurisdiction of the court 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 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 the Employment and Labour Relations including:

- (a) disputes relating to or arising out of employment between an employer and employee;***
- (b) disputes between an employer and a trade union;***
- (c) disputes between an employer’s organization and a trade union’s organization;***
- (d) disputes between trade unions;***
- (e) disputes between employer organizations;***
- (f) disputes between an employer’s organization and a trade union;***
- (g) disputes between a trade union and a member thereof;***
- (h) disputes between an employer’s organization or a federation and a member thereof;***
- (i) disputes concerning the registration and objection of trade union officials;***
- (j) disputes relating to the registration and enforcement of collective agreement.***

6. The Employment Act No. 11 of 2007 vide Section 87 thereof had provided that disputes between employer and employee were to be determined by the Industrial Court which is the precursor to the present Employment and Labour Relations Court. As the relationship between the Appellant and Respondent is one of employer and employee and owing to the coming into operation of the Work Injury Benefits Act 2007 as well as the establishment of the Employment and Labour Relations Court, it follows that the disputes herein ought to be tried before the said court. Even though the suit might have been pending before the Magistrate’s court or that it had been finalized there, the next forum to determine the appeal should be the Employment and Labour Relations Court. Hence the appeal ought not to have been lodged here in the first place since this court lacks jurisdiction.

7. Having established that this court lacks jurisdiction, the next issue for determination is whether the appeal should be struck out or dismissed for lack of jurisdiction by this court. Striking out or dismissing the appeal obviously is a drastic measure as it has the effect of disorienting the parties herein. I find the best option is to have the matter transferred to the Employment and Labour Relations Court for determination. There will be no prejudice suffered by the parties if such direction is made as both have legitimate expectations to have their dispute determined on merit.

8. In the result, I order that this matter be and is hereby transferred to the Employment and Labour Relations Court (ELRC) for determination.

It is so ordered.

Dated and delivered at **Machakos** this **29th** day of **July, 2020**.

D. K. Kemei

Judge