



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

Coram: D. K. Kemei – J

CIVIL APPEAL CASE NO. 181 OF 2015

KENYA BUILDERS & CONCRETE CO. LTD.....APPELLANT

VERSUS

AARON KIMEU KIOKO.....RESPONDENT

(Being an appeal from the judgement of Honourable Mwangi (Principal Magistrate delivered on 30th October, 2015 in the Chief Magistrate's Court at Machakos in CMCC No.272 of 2013 . Aaron Kimeu Kioko –Vs- Kenya Builders and Concrete Co. Ltd)

RULING ON DIRECTIONS

1. The appeal is against the judgement of Hon. Mwangi – Principal Magistrate in **Machakos CMCC No.272 of 2013** delivered on the 30/10/2013 wherein liability was apportioned between the Appellant and the Respondent at 85% to 15% and that general damages were assessed at Kshs. 300,000/= while special damages were assessed at Kshs.3,000/=.

2. Being aggrieved by the said judgement the Appellant lodged its Memorandum of appeal dated 19/11/2015 in which it raised the following grounds of appeal namely:-

- a. The learned Magistrate erred in finding that the Respondent had proved its case on balance of probability and proceeded to apportion liability in favour of the Respondent at 85:15.*
- b. The learned magistrate further erred in arriving at a decision that was wholly against the weight of the evidence produced.*
- c. The learned magistrate failed to consider the evidence of the appellant which clearly demonstrated that the Respondent was not injured as alleged in his pleadings.*
- d. The learned magistrate failed to consider the Appellant's submissions seeking to dismiss the suit against the Appellant for lack of evidence.*
- e. The learned magistrate erred in awarding the plaintiff the sum of Kshs. 300,000/= general damages and Kshs. 3,000/= as special damages less apportionment of 15% in the circumstances.*
- f. The learned magistrate misdirected himself on the evidence presented before him and reached on erroneous decision wholly against the weight of the evidence before him.*

3. A perusal of the pleadings in the trial court indicates that the suit relates to a cause of action brought about as a result of a work injury claim 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 **28th** day of **July, 2020**.

D. K. Kemei

Judge