



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

CIVIL APPEAL NO. 99 OF 2016

FESTO SIVONI MASIKINI alias FESTO SIVANO MASKINI.....APPELLANT

VERSUS

BARKRESA GRAIN MILLING (K) LIMITED.....RESPONDENT

(Being an Appeal from the whole Judgment of the Honourable H. Nyakweba (SPM)

delivered on 28th June, 2016 in SRMCC No.40 of 2015)

RULING

1. Before this Court for determination is an Application dated **19.8.2020** brought under the provisions of **Sections 1A, 1B, 3A and 63(e)** all of the **Civil Procedure Act, Order 2 rule 15(1)(c) and (d)** and **Order 42 rule 13** both of the **Civil Procedure Rules** and all other enabling provisions of the law seeking the following orders:-

a) That this Honourable Court be pleased to strike out the Memorandum of Appeal dated 26th July, 2016 and filed in court on 26 July, 2016;

b) That costs of this application and appeal be borne by the Appellant/Respondent;

c) That this Honourable Court be pleased to issue any other or further orders as it may deem fit and just to grant.

2. The application is supported by the **Affidavit of Immaculate Baraza** sworn on **19th August, 2020** and the grounds in support of the application.

3. The Appellant (Respondent) filed a **Replying Affidavit** sworn on **25th September, 2010** by **Pauline Awino Osino**, who is the Appellant's advocate.

4. The Respondent in her **Replying Affidavit** at **paragraph 5** admits that the instant **Appeal** was one of the matters affected by **Civil Appeal No. 287 of 2018** consolidated with **Civil Appeal No.3 of 2017, Law Society of Kenya Nairobi Branch..Vs...Malindi Law Society & 6 Others [2017]eKLR**, during the period between **11th November, 2016** and **19th October, 2017**.

Analysis and Determination

5. I have considered the application dated **19th August 2020**, the respective Affidavits by both parties, the pleadings of the Lower Court and Memorandum of Appeal. According to the pleadings filed in the Lower Court, and the **Memorandum of Appeal** filed on **26th July, 2016**, it is clear that the **Appeal** is in respect of a dispute relating to a **work injury** claim as set out at **paragraph 3, 4 & 5** of the **Plaint** dated **13th January, 2015** and **ground 4** of the **Memorandum of Appeal**.

6. It is noteworthy that jurisdiction is everything and whether this court has or lacks jurisdiction to entertain a matter, it is a matter of the law that must be dealt with before all else. In the case of **Owners of the Motor Vessel "Lilian S"...Vs...Caltex Oil (Kenya) Limited [1989]KLR 1, Nyarangi, JA** expressed himself 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 that it is without jurisdiction.”

7. However, the starting point must be the constitutional provisions set at **Articles 162(2) and 165(5)** of the **Constitution, 2010**, which I consider oust the jurisdiction of the High Court from entertaining disputes reserved for the **Employment and Labour Relations Court**

8. Under **Article 162(2)** of the **Constitution** as read with **Section 12(1)** of the **Employment and Labour Relations Act, 2011**, the ELRC has exclusive jurisdiction to hear Appeals from Lower Courts and Tribunals on Labour and Employment disputes. The issue of jurisdiction of the ELRC vis-à-vis the High Court in relation to disputes between employer and employee was dealt with by the Supreme Court in the case of **Republic...Vs...Karisa Chengo & Others, Supreme Court Petition No.5 of 2015 [2017]eKLR**, where it was held as follows:

“[52] From a reading of the Constitution and these Acts of Parliament, it is clear that a special cadre of courts, with sui generis jurisdiction, is provided for. We therefore entirely concur with the Court of Appeal’s decision that such parity of hierarchical stature does not imply that either Environment and Land Court or Employment and Labour Relations Court is the High Court or vice versa. The three are different and autonomous courts and exercise different and distinct jurisdictions. As Article 165(5) precludes the High Court from entertaining matters reserved to the Environment and Land Court and Employment and Labour Relations Court, it should, by the same token, be inferred that the Environment and Land Court and Employment and Labour Relations Court too cannot hear matters reserved to the jurisdiction of the High Court.”

9. From the foregoing, this Court has no hesitation but to find that work injury claim is an employment underpinned matter, hence a reserve of the exclusive jurisdiction of the Employment and Labour Relations Court and not the High Court. It is a reserve for that court because the entire claim was grounded upon alleged breach of Contract leading to the injury pleaded.

10. Accordingly, this Court declines jurisdiction to hear this **Appeal** and order that the same be transferred to the **Employment and Labour Relations Court, Mombasa**, for final determination.

11. Costs shall abide the outcome of the **Appeal** because the issue of jurisdiction has been raised at the instance of the Court.

It is so ordered.

DATED, SIGNED and DELIVERED at MOMBASA on this 18th day of NOVEMBER, 2020.

D. O. CHEPKWONY

JUDGE

In view of the declaration of measures restricting court operations due to the **COVID-19** pandemic and in light of the directions issued by His Lordship the Chief Justice on **15th March 2020**, this Ruling has been delivered to the parties online with their consent. They have waived compliance with **Order 21 Rule 1** of the Civil Procedure Rules which requires that all Judgments and Rulings be pronounced in open Court.

D. O. CHEPKWONY

JUDGE