

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

CIVIL APPEAL NO. 155 OF 2015

INTCOIN AFRICA LIMITED.....APPELLANT

VERSUS

JOACHIM MUTISYA NDUVA.....RESPONDENT

RULING OF THE COURT

1. This ruling relates to an appeal that was filed on 28th August, 2017 in this court.
2. The issue for determination is whether the court has jurisdiction to entertain the appeal.
3. In addressing the appeal, I deemed it necessary to examine the issue of jurisdiction *in extenso*.
4. It is not contested that the dispute relates to a work injury and there have been considerable developments with regard to the law that governs such disputes that ought not to be ignored.
5. 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) LTD [1989] KLR 1** that:-

“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.”

6. In the case of **Law Society of Kenya v Attorney General & Another (2009) eKLR**, Section 16 of the Work Injury Benefits Act that barred actions for recovery of damages for occupational accident except as provided for by the Act was declared unconstitutional by Judge J.B Ojwang. The consequence thereof is that appeals in relation to work injuries are handled by the Employment and Labour Relations Court and it is patently clear from the interpretations of this case and I find that this court had no jurisdiction to entertain the appeal in the first place. This was observed in the case of **Saidi Mohammed v Diamond Industries Ltd (2018) eKLR** where the court observed that the Employment and Labour Relations Court has appellate jurisdiction in disputes relating to work injury.
7. The overriding objective of the Civil Procedure Act and Rules made thereunder is to facilitate the just, expeditious, proportionate and or affordable resolution of civil disputes governed by the Act. In the furtherance of this overriding objective, the courts are mandated to ensure the just determination of proceedings, efficient disposal of business of the court, the efficient use of available judicial and administrative resources and the timely disposal of proceedings at a cost affordable by the respective parties.
8. I find that it is not the function of this court to entertain any appeal in disputes relating to work injury, however it would be just, convenient and fair to let the case now pending judgement before this court to be transferred to the Employment and Labour Relations Court. Nevertheless I have no such powers to transfer the suit because this court is not clothed with the jurisdiction to entertain the appeal in the first place.
9. In the result the appeal is dismissed. Each party to bear their own costs.

It is so ordered.

Dated and delivered Court at Machakos this 24th day of January, 2019.

D.K. KEMEI

JUDGE